

Mixed Electoral Systems as a Political Way Out: a Comparative Perspective

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Abstract: Sistemi elettorali misti come compromesso politico: una prospettiva comparata – The debate around mixed electoral systems has been ongoing among scholars starting 1989. Since then, mixed systems – originally introduced by Germany after the Second World War – formed a new electoral model in both a quantitative and a qualitative perspective. Democratic transitions of Central and Eastern Europe guaranteed the circulation of this model among States which were beginning their transition process to democracy. Scholars unanimously consider mixed systems as one of the most relevant legislative instruments that were used to reach a compromise between the former but still ruling parties and the new political powers during the '90s. The purpose of this essay is to provide an overview of mixed electoral systems in Europe after about three decades of their explosion. The analysis – which includes a review of the technical elements of mixed electoral systems – aims to compare, where possible, the different issues at stake.

2719

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1. Introduction

The purpose of this essay is to provide an overview on mixed electoral systems in the European area after three decades of their explosion¹. The research relies on a comparative analysis of the different technical elements adopted in different countries. The aim is to find – whether possible – a common *ratio* underlying the adoption of this peculiar electoral system.

As well known, the debate around mixed electoral systems has assumed a new theoretical dimension since 1989. Starting then, mixed systems – originally introduced by Germany after the Second World War – became a new electoral model in both a quantitative and a qualitative perspective. As a matter of fact, the democratic transition of Central and Eastern Europe guaranteed the circulation of this model among those States at that time facing a transition process to democracy. Scholars agree to consider mixed systems as one of the most relevant legislative instruments during the '90s, as they have enabled a compromise between the (still ruling) former parties and the new political powers².

¹ B. Bugarič, *A crisis of constitutional democracy in post-Communist Europe: "Lands in-between" democracy and authoritarianism*, I-CON (2015), Vol. 13 No. 1, 219-245.

² A. Chiaramonte, *Tra maggioritario e proporzionale, l'universo dei sistemi elettorali misti*, il Mulino, 2005.

To date, it is possible to observe a lull from the mixed electoral systems, past three decades from their explosion. In this vein, «[I]n Central and Eastern Europe the golden age of mixed electoral system might soon be over»³. And nevertheless, in some cases, such as for the Italian experience, mixed systems still are the way out for political and constitutional impasses.

Before proceeding with the essay, some methodological remarks are required. Scholars researching in this field have divergent backgrounds, namely constitutional law, political science, and sociology. Such occurrence has originated debates and studies which embraced systemic classifications of mixed electoral systems and analysis of the electoral behaviours, usually supported by massive empirical dataset. This essay follows a different approach, as there is no room neither to provide empirical and quantitative outputs' analysis of mixed electoral systems nor to analyse the numerous and controversial psychological behaviours linked to these systems⁴.

A further preliminary remark is that this essay is consistent with the Massicotte and Blais definition of mixed electoral systems. According to their definition, these systems show some proportional and majority features, which are distinguished in different formulas and tiers⁵. The assumption of this definition makes it possible to analyse the main electoral system features, keeping the s.c. Duvergerian effects⁶ and the elector's behaviour⁷ on the background.

On this basis, Paragraph 2 will provide an overview of the role of the mixed electoral systems in the post-1989 era, and their evolution in recent years. Paragraph 3 will combine the key elements of the systems at stake, following a

³ D. Bochslers, *Are Mixed Electoral Systems the Best Choice for Central and Eastern Europe or the Reason for Defective Party Systems?* in *Politics & Policy*, Volume 37, No. 4 (2009): 735-767, 756.

⁴ See on this point P. Riera, D. Bol, (2017) *Ticketing-splitting in mixed-member systems: on the importance of seat linkage between electoral tiers*, in *West European Politics*, 40:3, 584-597.

⁵ L. Massicotte, A. Blais, *Mixed electoral systems: a conceptual empirical survey*, *Electoral Studies* 18 (1999) 341-366. Similarly, M. S. Shugart, M. P. Wattenberg, *Mixed-Member Electoral Systems: A Definition and Typology*, Oxford Scholarship Online, 2003, state that «In a mixed-member system there are (at least) two separate overlapping tiers, one of which employs allocation of seats nominally, while another employs allocation to party lists. Typically, each vote in each tier, which in this volume we shall call the nominal vote and the list vote. However, there are cases in which the voter casts only a nominal vote. In such cases allocation of seats in the list tier is based on an aggregation of nominal votes on the basis of party», 10. A rather “*minimalist*” definition provides that «*An electoral system is “mixed” if more than one formula is employed to distribute legislative seats*», F. Ferrara, E. Herron, M. Nishikawa, *Mixed Electoral Systems, Contamination and Its Consequences*, Palgrave Macmillan, London, 2005, 16.

⁶ Following M. Duverger: «Pour schématiser celle-ci, on peut prendre comme point de départ les trois formules suivantes ... : 1 ° la représentation proportionnelle tend à un système de partis multiples, rigides et indépendants; — 2 ° le scrutin majoritaire à deux tours, à un système de partis multiples, souples et indépendants ; — 3 ° le scrutin majoritaire à un seul tour, au dualisme des partis». M. Duverger, G. Gouguel (cur.), *L'influence des systèmes électoraux sur la vie politique*, Paris, Colin, 1950, 3.

⁷ G. Sartori, *Le “leggi” sulla influenza dei sistemi elettorali*, in *Rivista Italiana di Scienza politica*, vol. 14, 1984, 3-40. According to which: «Se l'elettore non subisce nessun condizionamento, nessuna pressione, nessun “ricatto”, in tal caso il sistema elettorale è ininfluente, non ha nessun effetto: punto e finito lì. Restano i casi nei quali una manipolazione-pressione avviene. Se detta pressione è forte, allora dirò che il sistema elettorale è forte. Se è debole, dirò che il sistema elettorale è debole. E i casi intermedi (tra un massimo e un minimo di efficacia manipolativa) saranno assegnati alla classe forti-deboli», 18.

comparative approach, while Paragraph 4 will focus on the Italian case. Finally, Paragraph 5 some conclusions are drawn.

2. The role of mixed electoral system in the transition: the success of a model

For decades, the mixed electoral system has been a rare exception, as after 1949 it was adopted in its archetypal way only by Germany⁸.

Until 1990, the main options in the electoral field were the broad models of majority and proportional electoral systems. Contrariwise, since 1989 mixed electoral systems have played a crucial role in the third wave of democracies of the Central and Eastern Europe⁹.

Constitutional transitions, as well known, have not been violent because of the dialogue promoted by Round Tables. This approach resulted in a soft transition which in the meantime guaranteed a certain continuity in the discontinuity. Somehow, mixed electoral systems have stimulated this continuity through a sort of “*transition compromise*”, delivering the political passage from the old constitutional frameworks to the new ones¹⁰.

This is particularly true in those seven countries that has followed the path of the mixed electoral system: Albania, Bulgaria, Croatia, Lithuania, Hungary, and Russia.

As well known, all communist parties in the area formally disappeared or suddenly lost their power in 1989¹¹, and in somehow mixed electoral systems fostered the transition to democratic constitutional frameworks. As well argued, «it has been reflected insecurity expressed by the leading political forces as to which electoral system would be best suited to their interests and would be best suited to their interests and would provide them with a new electoral victory. As a result of such doubts segmented electoral systems emerged, which provided the political forces in power with a lot of manoeuvring space, primarily in terms of reducing the opposition’s election chances»¹². In this respect, it is worth stressing that mixed electoral systems did not avoid the prominence of ruling parties and, in the meantime, that they did not allow the opposition to flourish in the ongoing democratic scenario¹³.

⁸ For a detailed overview see S. E. Scarrow, *Germany: The Mixed-Member System as a Political Compromise*, in M. Soberg Shugart, M. P. Wattenberg (ed.), *Mixed-Member Electoral Systems: The Best of Both Worlds?*, Oxford Scholarship Online, 2003.

⁹ S. Huntington, *The third Wave: Democratisation in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1992)

¹⁰ See on this point F. Ferrara, E. Herron, M. Nishikawa, *Mixed Electoral Systems, Contamination and Its Consequences*, (cit.) according to which «in the postcommunist world, the selection of alternative electoral rules may have reflected the distribution of power in the transition process. Institutional design was a consequence of authoritarian collapse», 27.

¹¹ H.J. Hobsbawm, *The Age of Extremes: The Short Twentieth Century, 1914-1991*, Abacus, London, 1995.

¹² M. Kasapovic, *Segmented or «Entrenched» Electoral Systems*, in *Politicka Misao-Croatian Political Science Review*, vol. 32, pp. 173 and following.

¹³ See on this point C. Flores Juberías, *Eastern Europe: General Overview*, in J. M Colomer, B. Grofman (ed.), *Handbook of Electoral System Choice*, Palgrave Macmillan, UK, 2004, p. 309

The Hungarian case clearly shows the role assumed by the s.c. Roundtables in reaching the mentioned democratic compromise. As a matter of fact, the Hungarian Parliament has ratified the same electoral law settled by the Roundtable (s.c. “*Roundtable laws*”), as a result of a massive bargaining between political parties¹⁴.

Similarly, Albania adopted a mixed electoral system in 1992. This system was meant for the second round of elections of Albania (the former system was a majority system used during the first democratic elections in 1991) and was drafted after a strong negotiation between Democratic and Socialist Party¹⁵.

In Croatia, during the transition from a tricameral parliament to a bicameral one, the new electoral law introduced a mixed electoral system that once again has been the result of a strong compromise process¹⁶.

Following the same reasoning, Bulgaria adopted a mixed electoral system that was applied in its first democratic elections. It was the result of a long negotiation process between the successors of the former communist Party (Bulgarian Socialist Party) and the opposition forces, linked to the Union of Democratic Forces¹⁷.

In Ukraine and Macedonia, the mixed electoral system has been adopted later (1998),¹⁸ and in both cases they were an attempt to stabilize the unstable political environment¹⁹.

After thirty years, several States, such as Albania, Bulgaria, Croatia, Ukraine, Macedonia have abandoned the mixed electoral system²⁰. It is worth mentioning that all these States have moved to a proportional electoral system (although they followed different paths).

according to which «In countries where the transition to democracy was carried out by means of negotiation, usually between the opposition forces and the more liberal sectors of the single Party – neither of whom were able to impose their points of view on their opponents – the option was a mixed electoral system, combining both proportional and majority elements»

¹⁴ See J. W. Schiemann, *Hedging Against Uncertainty: Regime Change and the Origins of Hungary's Mixed Member System*, in *Mixed-Member Electoral Systems: the Best of Both Worlds?*, Oxford Scholarship Online, 2003, 232 ss. According to the author «Hungary's MM system emerged as the result of a patchwork grafting different components rather than a systematically conceived and coherently designed grand plan to meet broad societal needs».

¹⁵ A. Elbasani, *Mixed Member Electoral Systems in Transition Contexts: How has the System Worked in Albania*, in *CEU Political Science Journal*, Vol No 1., 2008, 72-92., available at ssrn.com.

¹⁶ Following Kasapovic, in Croatia «segmented electoral model seemed to be, formally speaking, an expression of the compromise between the party in power and the opposition; the leading party came into power through a majority election, which, since it was strongest political party, remained suited to its political interests while all opposition parties advocated the proportional electoral system. The choice of the segmented electoral model was based on the political estimate of the party in power that its electoral victory might be threatened if faced with a united opposition in majority elections»

¹⁷ See C. F. Juberías, *Eastern Europe: General Overview*, in J. M. Colomer, *Handbook of Electoral System Choice*, Palgrave MacMillan, London, 2004, 312.

¹⁸ C. F. Juberías, (cit.), 320.

¹⁹ C. F. Juberías, (cit.), 322 and see also J. W. Schiemann, 2.

²⁰ See T.C. Lundeborg (2009), *Post-communism and the abandonment of mixed-member electoral system*, *Representation* 45, (1), 15-27, available at eprints.gla.ac.uk/41366.

Albania used a majority system for its first democratic elections (1990). This system was transformed into a mixed one in 1991 and has remained in force until 2008²¹. Croatia has used the mixed electoral system until the 2000 election, given that this mixed member majority system (see par. 3) was replaced by a proportional system in 1999. Similarly, Ukraine adopted a proportional system instead of a mixed one in 2004. In Bulgaria, the Bulgarian Socialist Party chose to shift from the mixed electoral system, adopted in the 1990 election, to a proportional system in force until 2009. After 2009, a new mixed electoral system was reintroduced; but it has been immediately replaced by a proportional system in 2011. In 2002, Macedonia abandoned the 1998 mixed electoral system for a proportional system. In Russia the transition mixed system was substituted with a proportional system in 2003, and then a mixed electoral system has been introduced in 2013 once again²².

At the end of the day only four Central and Eastern Europe countries maintain a proper mixed electoral system: Hungary, Lithuania, Romania and Russia.

3. Key features from a comparative perspective

The idea behind mixed electoral systems is *prima facie* simply: it represents a conjunction of some elements of proportional and majority systems. According to Massicotte and Blais, an electoral system is mixed if «its mechanics involve the combination of different electoral formulas (plurality or PR; majority or PR) for an election of a single body». In their view, mixed electoral systems «must incorporate two opposed principles: we consider plurality and majority to be too akin to each other (in their mechanics) for a system, combining both to qualify as mixed». In other words, mixed electoral systems are those which «combine two formulas, proportionality and plurality or majority»²³, presenting different tiers, shaped by different formulas²⁴.

In most cases those systems are two-vote systems, and only Romania after 2008 utilizes a one-vote system. Usually the two tiers are equal, and seats are assigned a half with the proportional system and a half with the majority one. That as in the Bulgaria, Croatia and Russia experiences during 1992 elections. In other cases, the proportional tier is prominent (Hungary and Croatia, 1995) or, conversely, the majority tier prevails (as in Albania and Lithuania). At the end of the day, the majority and proportional variables can be rationed in different amounts. Moreover, it has to be borne in mind that the different components of a mixed electoral system can either be linked together or remain divided. As for the

²¹ I. Petrela, *Electoral systems in Europe, and the case of Albania*, SEE Law Journal, Vol. 1 No. 1, pp. 35-44, January 2014.

²² For an overview see R. G. Moser, F. C. Thames, *Compromise Amidst Political Conflicts: The Origins of Russia's Mixed-Member System*, in M. S. Shugart, M. P. Wattenberg (ed.), *Mixed-Member Electoral Systems: The Best of Both Worlds?*, Oxford Scholarship Online, 2003, 254

²³ D. Bochsler, (cit.), 736.

²⁴ M. S. Shugart, M. P. Wattenberg, (cit), 10.

constituency size, generally there are systems in which there is one national electoral unit (such as in the case of Albania, Croatia, and Russia) or several plurinominal constituencies (such as Bulgaria and Hungary)²⁵.

An abundance of scenarios is therefore at stake. Following a common classification²⁶, it is possible to identify the following sub-types of mixed electoral system: 1) majority systems with a proportional compensation. In these systems, electors can express only one vote, that is calculated in both the majority and proportional levels. This mechanism was applied in Albania (until 1996), where 25 seats were assigned through a proportional mechanism (fixed quotient) with a minimum threshold fixed at 4% and the others 115 seats were assigned through a majority runoff-system on a single member constituency; 2) mixed member proportional systems (very similar to the German archetypal model). Electors can express two votes: one for the proportional level and the other for the majority one. With the proportional system, the quote is calculated for every single party, whilst candidates are identified using the majority formula. This is the case of the Albanian system before 2008, where 100/140 seats were assigned through a majority-runoff system and 40 seats were assigned through a proportional system (LeHare) with a national constituency. 3) mixed member majority system. This the most common model adopted within the post-Soviet area. In this system, a certain percentage of seats is assigned through a majority system with a single-member constituency. The remaining percentage of the seats is assigned through a proportional system, based on a national constituency with a certain minimum threshold. In this model, electors have two votes to express in both the majority and the proportional level (such approach is the model that has been utilized in Russia since 1993)²⁷.

The electoral threshold is usually introduced either in the proportional or in the majority tier, and it is commonly calculated between 2 and 5 (although variations can occur)²⁸. As a matter of fact, at the beginning of the 90s Bulgaria had the 50% of the seats assigned through a majority-runoff system and the other 50% assigned is assigned through the d'Hont formula, calculated in 28 constituencies with a minimum threshold of the 4 % at national level. In Lithuania the electoral system is composed by a different dosage of the majority-runoff system and a Le-Hare proportional system calculated on the national constituency. During the last two decades, the minimum threshold has been modified and the majority formula was replaced by the plurality formula. Similarly, until 2006 (when the proportional system was dismissed), in Ukraine, the 50% of the seats was assigned through a majority-plurality and the remaining

²⁵ M. Kasapovic, *Segmented or «Entrenched» Electoral Systems*, in *Politicka Misao-Croatian Political Science Review*, vol. 32 pp 177 ss.

²⁶ A. Chiaramonte, *Tra maggioritario e proporzionale, l'universo dei sistemi elettorali misti*, Il Mulino, Bologna, 2006.

²⁷ B Owen, *I nuovi sistemi elettorali nei paesi dell'Est europeo*, in M. Luciani, M. Volpi (ed.), *Riforme Elettorali*, Laterza, Roma-Bari, 1995, 391.

²⁸ For a complete but not updated overview see A. Chiaramonte, *Tra maggioritario e proporzionale, l'universo dei sistemi elettorali misti*, (cit.).

50% of the seats was assigned in a completely different way through the proportional system, based on the natural quotient. The Ukrainian case is almost identical to the Russian one²⁹; notwithstanding some marginal differences in the minimum threshold, which is fixed at the 4% in Ukraine, whilst in Russia it has been fixed at 5% starting from 1993 to date. In Croatia, the mixed electoral system adopted in 1992 election, had a fixed threshold of 3% in the proportional tier, whilst the 1995 reforms provided different thresholds, fixed at 5 % for parties, 8% for coalitions made by two parties, and 11 % for the other coalitions (with more than 2 parties).

Hungary has fixed the threshold of the party list at 5% nationwide in both the former and actual electoral laws. Until 2014, 386 seats were being assigned through three connected levels³⁰. The first level using a double turn majority formula, which was necessary to reach 176 seats, with the limit of an absolute majority at the first turn and a relative majority at the second turn. The second level assigned among the 40% of the remaining seats through the proportional formula and a minimum threshold, fixed at the 5% limit, raised up to an implicit 8%. And at the third level, the seats were being assigned to those parties that were over the threshold as for to the votes that were not encompassed in the abovementioned majorities and proportional levels. Since 2014, the new super mixed electoral system has reduced the number of parliamentarians from 286 to 199, eliminating the recalled repartition in three levels, moving to a two-level system. With the electoral system in force, 106 parliamentarians are elected in a single-member constituency with the majority-plurality, formula whilst the remaining 93 ones are elected with a proportional system in the national constituency (following the d'Hond method, integrated with the votes that are not used in the majority system). The threshold is still fixed at 5%.

From a different perspective, mixed electoral systems have the proper scope to encourage a diversification of the subjects in the electoral competition. Such diversification should be ethnic, territorial, ideological, or political; and usually it is not rooted enough to significantly reduce the role of the biggest parties.

As demonstrated by farmer's party, which in some cases has required to be represented in the new Parliaments (as it happened in Bulgaria and Albania as well). Similarly, the ethnic minorities took advantage of mixed electoral systems. Indeed, the only country that guarantees an expressed minority representation through the electoral system is Croatia (and partially Hungary). In Croatia, minorities (Hungarians, Italians, Czechs, Slovaks, Russians, Ukrainians, Germans, Austrians and Serbs) were guaranteed from 1992 until 1995, using special electoral units. But electoral Serbian representation in the Parliament was harshly reduced during the 1995 and the 1999 elections³¹.

²⁹ R. G. Moser, F. C. Thames, *Compromise Amidst Political Conflicts: The Origins of Russia's Mixed-Member System*, (cit.).

³⁰ See G. Romeo, E. Mostacci, *La forma di governo*, in G. F. Ferrari (ed.), *La nuova Legge fondamentale ungherese*, Giappichelli, Turin, 2012, 61.

³¹ C. Flores Juberías, *Electoral Systems and National Minorities in Central and Eastern Europe: A Dilemma in Five Paradigms Revisited*, paper presented at the Conference on Minority

In other cases, the protection of minority is strictly linked to political systems: e.g., the Turkish minority in Bulgaria; the Polish minority in Lithuania; the parties' ethnic divisions (Albanese, Roma) in Macedonia. Differently, according to the new Hungarian electoral law, minorities' seats are facilitated through threshold lowered to less than a quarter of the votes required for other parties³². If this threshold is not reached, minorities can still have a spokesperson in the Parliament (despite without right to vote). As enshrined by art. 2 of the Hungarian Fundamental Law: «nationalities living in Hungary shall participate in the work of Parliament in the manner defined by a Cardinal Act»³³. This «*Cardinal Act*» is the Act CLXXIX of 2011 on the Rights of Nationalities. The latter, in conjunction with Article 9(2) of the Election Acts, provides that to be included in the minority list it is sufficient only a quarter of the votes necessary for the other party on the electoral national quota. Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serbian, Slovakian, Slovenian, and Ukrainian are officially recognized as minorities.

In Lithuania, between 1992 and 1996 the Lithuanian minorities were exempted from the “standard” 4% threshold provided for parties at, awarding seats to minorities parties (Russians, Poles, and Byelorussians) that reached the so-called Hare quota³⁴.

Another noteworthy element is the rank among the legislative sources provided for mixed electoral systems. In this light, the Hungarian Fundamental Law requires Cardinal law to modify the electoral law, giving the electoral system a quasi-constitutional status. As a matter of fact, the Fundamental Law requires the same majority, required for amending the Constitution. Likewise, after the 1997 political crisis, Albania has constitutionalized the main principles of its electoral system in the new Constitution. In this perspective, art. 64 provides the necessity of a mixed electoral system (following the examples of the Brazilian and Portuguese Constitutions)³⁵. The abovementioned article has been amended in

representation and minority language rights: Origins, experiences and lessons to be learned, available at: <http://kv.sapientia.ro>.

³² G. Tóka, *Constitutional Principles and Electoral Democracy in Hungary*, in E. Bos, K. Pózeza (Ed.) *Constitution Building in Consolidated Democracies: A New Beginning of Decay of a Political Systems?*, Baden-Baden: Nomos Verlag, 2014.

³³ T. Kostadinova, *Ethnic and women's representation under mixed electoral systems*, in *Electoral Studies* 26 (2007): 418-431.

³⁴ C. Flores Juberías, *Electoral Systems and National Minorities in Central and Eastern Europe: A Dilemma in Five Paradigms Revisited*, (cit.).

³⁵ A. Elbasani, *Mixed Member Electoral Systems in Transition Contexts: How has the System Worked in Albania?*, CEU Political Science Journal, Vol 3, No. 1. 2008, available at papers.ssrn.com According to the previous version of article 64 of the Albanese Constitution «1. The Assembly consists of 140 deputies. One hundred deputies [71%] are elected directly in single member electoral zones with an approximately equal number of voters. Forty deputies [29 %] are elected from multi-name lists of parties or party coalitions according to their ranking. 2. The total number of deputies of a party or a party coalition shall be, to the closest possible extent, proportional to the valid votes won by them on the national scale in the first round of elections. 3. Parties that receive less than 2.5 per cent, and party coalitions that receive less than 4 per cent, of the valid votes on the national scale in the first round of elections do not benefit from the respective multi-name list».

2012, when the country adopted an authentic proportional system in the Constitution³⁶.

4. Focus on the Italian case

The Italian case shows, again, how the mixed electoral system can be an escape instrument for constitutional and representative crisis.

In the Italian political ecosystem, a mixed electoral system is not a completely new phenomenon as far as Italy adopted a mixed member majority system in 1995. This system bipolarised the Italian political forces challenging in the 1994, 1996, and 2001 elections. The so-called “Mattarellum” electoral law³⁷ provided for a 75 % proportional tier with a 25 % majority system³⁸.

This system was replaced by law n. 270/2005, which introduced a proportional system for both the branches of the Parliament, with some crucial differences between the electoral system of the Chamber of the Deputies and the one of the Senate.

According to law n. 270/2005, Chamber of Deputies was elected through a national constituency, and a majority bonus of 340 seats (out of 630) was recognized to lists and coalition lists with a relative majority. Access thresholds were different: 20% of the national constituency for coalition lists (2% for single parties within the coalition lists); 4% for single parties that did not run in coalition lists.

For the Senate, the majority bonus was recognized at a regional level (with 20 regional bonuses), and thresholds were provided as follows: 20% for coalition lists (3 % for the single party within the coalition) and 8% for lists which run alone. These differences between the two branches of the Parliament generated different majorities and a consequent Parliamentary and Governmental instability during the years³⁹.

In 2013, when the Italian Republic President Giorgio Napolitano has been elected for the second time – first case of a second mandate in the Italian Presidency of Republic’s history – one of the crucial points of his mandate was exactly the adoption of a new electoral law. According to the former President Napolitano: «[T]he lack of the 2005 electoral law is unforgivable. The President of the Constitutional Court has remembered how the recommendation, made by the Court itself, about the necessity to amend the majority bonus, conferred without any considerable threshold of votes or seats, has been unheard for years. The lack of amendment to that law has generated a dogged competition for conquering the enormous majority bonus, with the result that the winner had difficulties to handle this over representation within the Parliament. It was a

³⁶ According to art. 64, still in force: «*Assembly is composed of 140 deputies, elected on proportional system with multi-names electoral zones*».

³⁷ L. n. 476/1993 for the Senate and l. n. 277/1993 for the Chamber of Deputies

³⁸ G. Pasquino, *I sistemi elettorali*, Il Mulino, 2006, 55.

³⁹ A. Renwick et al., *Partisan Self-Interest and Electoral Reform: The New Italian Electoral Law of 2005*, in *28 Electoral Studies*, 2009, p. 437.

forecastable fact that the law has generated difficult governability result, generating frustration among citizens that cannot choose their candidates».

4.1 A turning point: rulings 1/2014 and 35/2017

The Parties incapacity to adopt any amendment to the 2005 electoral law, paved the way for the Constitutional Court milestone ruling 1/2014. In this ruling the Court declared the partial constitutional illegitimacy of the electoral law n. 270/2005, stating, *inter alia*, that a certain majority bonus affects the whole electoral system. In this vein, there is lack of proportionality in attributing a huge number of seats to a relative majority. Moreover, the electoral law n. 270/2005 has been struck off also because it ensured the use of blocked lists provided by parties⁴⁰.

Following the Court reasoning, recurring to blocked lists violates the representative principle, since citizens cannot appoint candidates (as they were substantially only appointed by parties).

This ruling was followed by the new Parliament electoral law, whose scope was limited to the Chamber of Deputies. On the other hand, there has been an attempt to regulate the Senate members election by way of a constitutional reform. In this vein, it did not succeed an ambitious constitutional amendment, providing for an indirect election of Senate's members⁴¹.

The mentioned electoral law is law n. 52/2015, and has never applied, as will be explained in the next paragraph. Law n. 52/2015 provided for 100 multi-member constituencies and two single member constituency (Valle d'Aosta/*Vallée d'Aoste* e Trentino Alto-Adige/*Südtirol*), and fixed the threshold at 3% on national basis. The list reaching the 40% of the votes would have gained a majority bonus of 340 seats out of 640. If none of the lists had reached the 40%, the law n. 52/2015 would have provided for a second runoff turn among the two lists with the highest percentages of votes. The winner of this second turn would have been awarded with a majority bonus of 340 seats out of 640.

Consistently to part of the reasoning of ruling 1/2014, in ruling 35/2017 the Constitutional Court declared, once again, the illegitimacy of the above described majority bonus. According to the Court, to grant a majority bonus to the winning list of the second runoff turn is in breach of the representative principle (art. 3.2 and 48.2 of the Italian Constitution) as its outcome is a disproportionality effect. Moreover, the Court declared unconstitutional the part of the law ensuring to the top candidates an *ex post* choice for the constituency of

⁴⁰ See among others E. Longo and A. Pin, *Judicial Review, Election Law, and Proportionality*, in *Notre Dame Journal of International & Comparative Law*, 6-2016, p. 101

⁴¹ See G. Delledonne and G. Martinico, *Yes or No? Mapping the Italian Academic Debate on the Constitutional Reform*, and E. Stradella, *Italy after the Constitutional Referendum: Legal and Political Scenarios, from the Public Debate to the "Electoral Question"*, in *Italian Law Journal*, Special Issue "The 2016 Italian Constitutional Referendum: Origins, Stakes, Outcome", available at www.theitalianlawjournal.it; P. Faraguna, *Do You Ever Have One of Those Days When Everything Seems Unconstitutional?: The Italian Constitutional Court Strikes Down the Electoral Law Once Again*, in *European Constitutional Law Review*, 13, 2017, p. 778.

their election. An actual chance, as the law allowed candidates to concur in different constituencies at the same time.

As a result of this complex evolution, for a limited period of time two different electoral laws coexisted, as will be later explained. Namely, law n. 52/2015 (as modified by the Constitutional Court ruling 35/2017) for the Chamber of Deputies elections, and law n. 270/2005 (as modified by the Constitutional Court ruling 1/2014) for the Senate elections⁴².

4.2 Mixed electoral system as a temporary way out

In 2017, by way of law n. 165/2017 (the so-called “*legge Rosato*” or “*Rosatellum*”) there has been an attempt to introduce an electoral system suitable to the existing pluralism of the Italian political organization⁴³; i.e. an electoral system capable of ensuring both representativeness of the electorate and governability of the Country.

The final systematization of the Italian electoral system is the result of the recent law n. 165/2017 adoption (the so-called “*legge Rosato*” or “*Rosatellum*”), a mixed electoral system archetype. In a nutshell, this law provides for a common electoral system to both the branches of the Italian Parliament. In each branch of the Parliament: about 1/3 of the seats is assigned with the majority system, based on single-member constituencies⁴⁴; about 2/3 of the seats are allocated with the proportional system, based on multiple-members constituencies determined by the aggregation of contiguous single-member constituencies.⁴⁵

As for the multiple-members constituencies, each party is required to make a rigid and “short” list of candidates (so called “blocked” lists), consisting of a minimum of 2 and a maximum of 4 candidates (who are alternated by gender); the voter is not allowed to express a preference among these candidates⁴⁶; moreover,

⁴² See *ex plurimis* A. Baraggia and L.P. Vanoni, ‘The Italian Electoral Law Saga: Judicial Activism or Judicial Subsidiarity’, STALS Research Paper, 2017 p. 1.

⁴³ See among others: F. Sgrò, *Prime considerazioni sulla legge n. 165 del 2017: questioni nodali e specificità del nuovo sistema elettorale italiano*, in *Osservatorio Costituzionale*, Vol. 3/2017, 06 - 12 - 2017; S. Ceccanti, *I sistemi elettorali nella storia della Repubblica: dalla Costituente alla legge Rosato*, in *Federalismi.it*, 20 - 2017, available at www.federalismi.it; A. Ruggeri, *Il Rosatellum-bis alla prova del valore democratico*, in A. Ruggeri, *“Itinerari di una ricerca sul sistema delle fonti”*, Turin, 2019 p. 73.

⁴⁴ In detail, 232 seats (of which 225 in 18 regions, 1 in Val D'Aosta and 6 in Trentino Alto Adige) will be allocated through single-member constituencies, while the other 386 seats will be allocated on a proportional basis (see art. 1 of Presidential Decree 361/1957 as amended by Law N. 165/2017). 12 seats that are assigned in the Foreign Circumscription are excluded from the count. See. S. Ceccanti, *Legislazione elettorale. Italia. Una nuova legge-ponte nella transizione che prosegue*, in www.forumcostituzionale.it, 26 - 10 - 2017.

⁴⁵ In detail, 116 seats (of which 109 in 18 regions, 1 in Val d'Aosta and 6 in Trentino Alto Adige) will be allocated through single-member constituencies, while the other 193 seats will be allocated on a proportional basis (see Article 1 of Legislative Decree N. 533/1993, as amended by Law N. 165/2017); 6 seats that are assigned in the Foreign Circumscription are excluded from the count. See. S. Ceccanti, *Legislazione elettorale. Italia. Una nuova legge-ponte nella transizione che prosegue*, in www.forumcostituzionale.it, 26 - 10 - 2017.

⁴⁶ This provision is consistent with the Constitutional Court ruling 1/2014, which had censured the law n. 270/2005 as for the “long” lists, as the latter prevented the voters to know the existence of the candidates from being known and greatly distorted the electoral will. See

in order to adapt the electoral will to the single lists and/or coalitions, the single voter cannot vote disjointly for parties' candidates; the new electoral thresholds are: 3% for single lists and 10% for coalitions, in both the Chamber of Deputies and the Senate; as for linked lists, on the one hand, coalitions are required to exceed the 10% threshold, and on the other hand, each coalition list is required to exceed the 3% threshold.

With regard to minorities, the Italian electoral reform has introduced an “affirmative racial gerrymandering”⁴⁷ which guarantees to the Slovenian population a dedicated constituency in Friuli Venezia Giulia, and two single member constituencies (Valle d'Aosta/*Vallée d'Aoste* e Trentino Alto-Adige/*Südtirol*) to provide French and German minorities with guarantees. Also, dedicated thresholds allowing access to minorities have been introduced: indeed, minorities can join to the Chamber of Deputies proportional tier by reaching a 20% threshold on a regional scale (instead of the 3% threshold at national level). Same rules apply for Senate, but the scope is not limited to minorities but also extended to all those parties which reach the 20% at the regional level. Moreover, minorities can compete for the Chamber of Deputies and Senate proportional tiers whether they gain at least two seats in a single-member constituency in a regional district.

2730

5. Conclusions

In the light of this overview on mixed electoral system, the latter can be still intended as a valuable compromise for those contexts of political uncertainty. That notwithstanding a substantial leave of this system occurs in the Central and Eastern Europe.

The main purpose of the mixed electoral system during the '90s was to facilitate the transition to democracy by the increase of the new political forces. According to this perspective, the cases of Albania, Bulgaria, Croatia, Ukraine, In this vein, notwithstanding the shift from a mixed system to a proportional system, the Macedonian and Russian experiences are an example of democratic and political evolution, also allowed by the first wave of mixed electoral system there adopted.

An empirical observation shows that mixed electoral systems have been abandoned in most of the analysed countries for proportional system. This data has unarguably to be read in the light of the different political scenarios of each considered country. Whether not possible to consider the adoption of a proportional system as a direct evolutive consequence of mixed electoral system, it should be noted that a proportional system could be considered in somehow

F. Sgrò, *Prime considerazioni sulla legge n. 165 del 2017: questioni nodali e specificità del nuovo sistema elettorale italiano*, in *Osservatorio Costituzionale*, Fasc. 3/2017, 06 - 12 - 2017.

⁴⁷ M. Monti, “*Rappresentanza politica preferenziale delle minoranze e uguaglianza del voto: considerazioni alla luce della recente disciplina del c.d. Rosatellum e del sindacato della Corte in materia elettorale*”, in *federalismi.it*, numero speciale 1/2018, 23-02-2018.

symptomatic of a certain degree of democracy in line with the ongoing transition of the Central and Eastern Europe.

In regard to the diversification of the parties, it is noteworthy that in three decades the threshold was moving up and never down. This could be symptomatic of a certain stability in the parties' scenarios and, in the meantime, of a lower necessity for the Parliament to be inclusive, as they were during the transition. That could enable a sort of institutionalization of the party system⁴⁸.

Because of the abandonment process at stake, the mixed systems are arguably deemed to be a kind of residual path. A path which has been followed mostly in democratic transitions, or constitutional impasse such as the Italian case.

Even if it is not possible to prove empirically the system is the result of the best parts of the "Two Worlds"⁴⁹, there are arguments enough to claim that this kind of system can arguably be a useful institutional tool to unlock transitions and constitutional impasses.

⁴⁸ R. G. Moser, *Electoral Systems and the Number of Parties in Postcommunist States*, in *World Politics* 51 (April 1999), 359.

⁴⁹ M. Soberg Shugart, M. P. Wattenberg (ed.), *Mixed-Member Electoral Systems: The Best of Both Worlds?*

