JUDGMENT NO. 35 YEAR 2017

In this complex case, the Court jointly considered five referral orders challenging various provisions of Electoral Law no. 52 of 2015, pertaining to the election procedures for both the Chamber of Deputies and the Senate.

The Court ruled that five of the questions raised were inadmissible and considered seven questions on the merits. Citing broad legislative discretion in this area, the Court limited its scrutiny to the test of reasonableness and proportionality and to verifying the compatibility of the challenged provisions with the right to vote and the right to proportional representation of the citizenry.

It held that five of the questions were unfounded.

First, it held that assigning a majority bonus in the interests of stability and governability, conditioned upon a list's achievement of a fixed percentage of validly cast votes on a national basis, was not manifestly unreasonable and fell within the discretion of the legislator, and that the minimum threshold of 40 per cent of validly cast votes stipulated by the provisions did not effect a disproportionate distortion of the constitutionally mandated representativeness of the elected body.

The fact that basing the minimum threshold for the bonus on validly cast votes (rather than total number of voters) could hypothetically distort representativeness dramatically in cases of high voter abstention did not make the legislator's choice on this delicate matter manifestly unreasonable.

The Court added that the combination of two mechanisms (a minimum threshold for access to seats and the majority bonus), taken together, were neither manifestly unreasonable nor disproportionate means of pursuing legitimate aims.

Second, the Court rejected the argument that, where two lists obtain more than 40 per cent of validly cast votes, the assignment of the bonus to the list that took the highest number of votes would unreasonably reduce the number of seats assigned to the list that took second place. The Court held that this was not an unreasonable way of assigning the bonus, and that in a proportional electoral system which envisages such a bonus, all minority lists would see a reduction – not inconsistent with constitutional requirements – in the number of seats compared to those that they would have obtained under a purely proportional system.

Third, with reference to the system to elect the Chamber of Deputies, the Court rejected arguments that the last-resort method for assigning seats, which allowed seats to be removed in some electoral districts and assigned in others, violated constitutional principles, finding that the legislator had provided adequate safeguards and had reasonably pursued constitutionally protected interests.

Fourth, the Court rejected a challenge to the system of regulating fixed and preference-based candidates within lists. In particular, the Court rejected the submission that, within this system, minority parties would only be able to return "closed" candidates. In holding that such a system does not violate the right to vote, the Court compares the electoral system currently under review with the previous one, noting that the new law contained safeguards including shorter lists, fewer and knowable fixed candidates, and the ability for voters to express two preferences for candidates of different genders.

The Court also held two questions to be well-founded. The Court struck down provisions establishing that, in cases in which no single list had reached the forty percent minimum threshold necessary to receive the majority bonus, there would be a run-off round of voting between the two lists winning the most votes. The Court held that this way of artificially creating a winning list excessively compromised the constitutional principles of the equality of the vote and representativeness of the elected body by radically reducing voter options in the second round of voting through overly strict requirements. The Court pointed out that

annulling these provisions nevertheless left a system in place capable of governing new elections.

Second, the Court struck down provisions allowing head of list candidates elected in more than one multi-member constituency to arbitrarily choose the one in which to be elected, without any stipulation of objective criteria, holding that this allowed for a distortion that compromised the freedom and equality of the vote. The Court pointed out that the annulment of this provision would require legislative intervention, but that it nevertheless left the residual mechanism of drawing lots, making possible the enforcement of the electoral systems.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning: the constitutionality of Articles 1(2), 18-*bis*(3), first sentence, 19(1), first sentence, 83(1-5), 83-*bis*(1)(1-4), 84(1), (2), and (4), and 85 of d.P.R. [decree of the President of the Republic] no. 361 of 30 March 1957 (Approval of the unified text of laws containing rules for the election of the Chamber of Deputies), as substituted, modified, and/or supplemented, respectively, by Articles 2(1), (10)(c), (11), (25), (26), and (27) of Law no. 52 of 6 May 2015 (Provisions for the election of the Chamber of Deputies); the constitutionality of Articles 16(1)(b), and 17 of Legislative Decree no. 533 of 20 December 1993 (Unified text of the laws containing rules for the election of the Senate of the Republic), as amended by Article 4(7) and (8), of Law no. 270 of 21 December 2005 (Changes to the rules for the election of the Chamber of Deputies and the Senate of the Republic); and the constitutionality of Articles 1(1)(a), (d), (e), (f), and (g), and 2(35) of Law no. 52 of 2015, initiated by the Ordinary Tribunals of Messina, Turin, Perugia, Trieste and Genoa, with referral orders of, respectively, 17 February, 5 July, 6 September, 5 October, and 16 November 2016, registered as no. 69, 163, 192, 265, and 268 of the Register of Referral Orders 2016 and published in the Official Journal of the Republic no. 14, 30, 41, and 50, first special series of 2016.

Considering the appearances of V.P. et al., L.P.C. et al., M.V. et al., F.S. et al., and S.A. et al., as well as the appearances of F.C.B. et al., C.T. et al., S.M., F.D.M. et al. (who intervened in the judgment registered as no. 163 of the Register of Referral Orders 2016 with two acts of intervention, the first timely and the second untimely), of CODACONS (*Coordinamento delle associazioni per la difesa dell'ambiente e la tutela dei diritti di utenti e consumatori* – Cooperative of associations for the defense of the environment and the protection of user and consumer rights) et al. (which party intervened in a timely manner in the judgments registered as no. 265 and 268 of the Register of Referral Orders 2016, and in an untimely manner in the judgments registered as no. 69 and 163 of the Register of Referral Orders 2016), of V.P, of E.P. et al., of M.M. et al., and of the President of the Council of Ministers;

having heard from Judge Rapporteur Nicolò Zanon during the public hearing of 24 January 2017;

having heard from council Enzo Paolini on behalf of E.P. et al., F.C.B. et al., S.M., and V.P, Claudio Tani on behalf of C.T. et al., Carlo Rienzi on behalf of Codacons (*Coordinamento delle associazioni per la difesa dell'ambiente e la tutela dei diritti di utenti e consumatori* – Cooperative of associations for the defense of the environment and the protection of user and consumer rights) et al., Vincenzo Palumbo and Giuseppe Bozzi on behalf of V.P. et al., Roberto Lamacchi on behalf of L.P.C. et al., Michele Ricciardi on behalf of M.V. et al., Felice Carlo Besostri on behalf of F.S. et al. and S.A. et al., Lorenzo Acquarone and Vincenzo Paolillo on behalf of S.A. et al., and State Counsel [*Avvocati dello Stato*] Paolo Grasso and Massimo Massella Ducci Teri on behalf of the President of the Council of Ministers.

[omitted]

Conclusions on Points of Law

[omitted]

5.– Moving on to an examination of the individual questions of constitutionality, the first challenge raised by the Ordinary Tribunal of Messina concerns Article 1(1)(f), of Law no. 52 of 2015 and Articles 1(2) and 83(1-5), of d.P.R. no. 361 of 1957, as they were substituted, respectively, by Article 2(1) and (25) of Law no. 52 of 2015. These provisions delineate a system in which: a majority bonus is assigned, after the first round of voting, to the list that obtained 40 per cent of the votes, a percentage calculated on the basis of actual voters and not on the number of people who have the right to vote. The bonus is also attributed after the outcome of the run-off ballot; a minimum threshold is stipulated at three per cent on a national basis, to have access to the distribution of seats.

The referring judge holds that this overall regulatory scheme violates Article 48(2) of the Constitution, under which each vote ought to contribute "potentially and with equal efficacy to the formation of the elected bodies."

Only in the operative part of the referral order, that is, unaccompanied by a description of the reasons for their alleged contradiction with the challenged provisions, does the referral order mention Articles 1(1-2), 3(1-2), 49, 51(1), and 56(1) of the Constitution, as well as the third Additional Protocol of the European Convention on Human Rights. As well-established case law provides, the questions raised in reference to these constitutional guidelines are inadmissible, since they fail to provide any argument that they are not manifestly unfounded (Judgments no. 59 of 2016 and 248 and 100 of 2015; Orders no. 122 and 33 of 2016).

As for the remaining constitutional question, based on the challenged provisions' alleged violation of only Article 48(2) of the Constitution, State Counsel identifies two distinct challenges, the first relating to the stipulation of the majority bonus, and the second relating to the introduction of the three per cent minimum threshold. The State General Counsel's Office [*Avvocatura Generale dello Stato*] objects that both challenges are inadmissible on the grounds that they fail to provide sufficient reasoning in support of the argument that they are not manifestly unfounded.

The tone of the position taken by the referral order and the fact that the referring judge formulates only a single operative part concerning it, nevertheless lead to the conclusion that the referral order raises only a single challenge, despite putting forward three distinct arguments (one of which points to the coexistence of the majority bonus and the minimum threshold of three per cent).

Thus formulated, the question is inadmissible.

The referring judge intends to challenge the entire system by which the legislator has chosen to attribute the majority bonus, after the first and second rounds of voting. Nevertheless, the referral contains a particularly succinct reasoning section, in which the individual grounds for the challenge relating to the various aspects of the electoral system are not distinct. It is unclear whether the stated need to introduce a quorum of voters for the attribution of the majority bonus refers to the first or the second round, or both. The reasons for which the attribution of the bonus allegedly results in unreasonably compromising the representative nature of the Chamber of Deputies are not given, and, again, there is no explanation of whether it is compromised at the first round, the second round, or both.

Finally, the lack of clarity in the reasoning section is accentuated by the fact that only Article 48(2) of the Constitution is invoked, making it the only pillar of support put forward to sustain the entire question of constitutionality (as mentioned previously, the other constitutional parameters that are alleged to have been violated only appear in the referral order's operative part).

Presented in this way, the issue ends up raising an indistinct and non-specific evaluation, substantively related to the entire electoral system established by Law no. 52 of 2015. Such imprecision in the grounds for the challenge, together with the lack of reasoning supporting the claim that they are not manifestly unfounded, makes it impossible to understand the effective claim put forward by the referring judge (Judgments no. 130 and 32 of 2016, and n. 247 and 126 of 2015).

6.– The Ordinary Tribunal of Genoa holds that the attribution of 340 seats to the list that, after the first round of voting, obtains forty per cent of the votes at the national level – a percentage calculated on the basis of validly cast votes – unreasonably compromises the equality of the vote

and the representative nature of the Chamber, and, therefore, challenges Article 1(1)(f), of Law no. 52 of 2015 and Articles 1 and 83(1)(5-6), and (2), (3), and (4) of d.P.R. no. 361 of 1957, as modified and substituted by, respectively, Article 2(1) and (25) of Law no. 52 of 2015, on the grounds that they violate Articles 1(2), 3, and 48(2) of the Constitution.

The referring judge, despite observing that – considered in the abstract – the minimum threshold of votes necessary to obtain the bonus would not give rise to constitutional questions, expresses doubts about the reasonableness of the threshold in the concrete, after having carried out some mathematical calculations which allegedly demonstrate an excessive distortion of the outcome of the vote in favor of the winning list from the first round.

In particular, this distortion allegedly derives from the situation that the calculation of the percentage is based on the number of valid votes cast, and not in relation to the entire number of people who have the right to vote, and must also take into account, in the evaluation of the entire system, both the bonus and the three percent minimum threshold at the national level in order for a list to have access to the distribution of seats.

In light of these arguments, the referring judge requests a declaration that the provisions that would assign the majority bonus after the first round are unconstitutional.

Presented in this way, the issue is unfounded.

As a preliminary matter, this Court has always recognized that the legislator has broad discretion in choosing the electoral system that it considers to be best suited to the historical-political context in which that system is intended to operate, limiting its possibility for intervention only to those cases in which the established regulatory scheme is manifestly unreasonable (Judgments no. 1 of 2014, 242 of 2012, 271 of 2010, 107 of 1996, 438 of 1993, and Order no. 260 of 2002). Specifically concerning electoral systems that add a majority bonus onto a distribution of seats based on proportionality, constitutional case law has already held that, in the absence of the stipulation of a minimum threshold of votes and/or seats as a condition for assigning the majority seats, the bonus mechanism presages an excessive over-representation of the list that has secured a relative majority (Judgments no. 1 of 2014, 13 of 2012, and 16 and 15 of 2008).

The provisions under constitutional review here do provide for a minimum threshold of valid votes in order to receive the bonus, equal to forty per cent of the overall vote. It is, therefore, a matter of a "majority" bonus, which allows an absolute majority of seats in a representative assembly to be allocated to a list that has obtained a certain relative majority. Considering the aforementioned legislative discretion in this area, this threshold is not, in and of itself, manifestly unreasonable, since it is intended to balance the constitutional principles mandating the representative nature of the Chamber of Deputies and the equality of votes, on the one hand, with the objectives (themselves of Constitutional import) of the stability of the government of the Nation and the efficiency of the decision-making process, on the other.

To reach the opposite conclusion, one would have to argue that a fixed numerical threshold for assigning the bonus is incompatible with constitutional principles, to the point of considering – as a condition for the bonus system to survive scrutiny based on reasonableness and proportionality – that only the grant of a bonus "of governability," and not one "of majority" is allowable, made conditional upon reaching a threshold of fifty per cent of votes and/or of seats, and intended to increase the number of seats assigned to a list or coalition that has already independently met the threshold, for purposes of assuring the formation of a stable executive.

In light of the discretion to which the legislator is entitled in this area, an analysis in concrete terms of the constitutionality of the minimum threshold chosen by the legislator (which is currently equal to forty per cent of validly cast votes, a percentage, moreover, that was incrementally raised during the course of the parliamentary working sessions that led up to the approval of Law no. 52 of 2015) falls outside the realm of constitutional scrutiny as a matter of principle. But it remains to review the proportionality pertaining to the hypotheses in which the stipulation of an unreasonably low threshold of votes for assigning a majority bonus effects so great a distortion of the representative nature that it amounts to a sacrifice thereof that is disproportionate to the legitimate objective of

guaranteeing the stability of the government of the Nation and facilitating the decision-making process.
The result of the analysis laid out thus far is not invalidated by the fact, critically highlighted by the judge in the pending proceedings, that the threshold of forty per cent is calculated on the basis of validly cast votes, rather than on the sum total of people who have the right to vote. Although it cannot be denied in the abstract that, at times of dramatic abstention from the vote, the assignment of the bonus may be made in favor of a list the real representativeness of which is weak, making the bonus conditional upon achieving a threshold calculated on the basis of validly cast votes, or rather on the total number of people with voting rights is the object of a sensitive political choice, entrusted to the discretion of the legislator, and is certainly not a constitutionally required solution (Judgment no. 173 of 2005).
Moreover, in Judgment no. 1 of 2014, this Court considered the question of the constitutionality of electoral provisions that did not stipulate the assignment of a bonus contingent upon the attainment of a certain minimum threshold of votes and/or seats, without any mention of the total number of people with voting rights.
Finally, the conclusion reached does not call into question the other characteristic criticized by the referring judge for purposes of supporting the constitutional questions raised, that is, the presence, in addition to the bonus, of a corrective mechanism for representativeness (Judgment no. 1 of 2014), consisting of the three per cent minimum threshold based on validly cast votes calculated nationally, as a condition for any given list to have access to the distribution of seats.
Indeed, in general, even "[t]he stipulation of minimum thresholds and that of the ways in which they should be applied […] are typical manifestations of legislative discretion, intended to avoid the fragmentation of political representation and to contribute to governability" (Judgment no. 193 of 2015).
In the case at bar, the referring judge expresses doubts about the derivative effects of the contextual stipulation of a majority bonus and a minimum threshold, drawing the conclusion that the bonus is unconstitutional precisely from the juxtaposition of the two.
Nevertheless, in the first place, the stipulations of Law no. 52 of 2015 introduce a minimum threshold that is not unreasonably high and that does not, in and of itself, amount to a disproportionate distortion of the representativeness of the elected body.
Moreover, a pronouncement that the bonus is unconstitutional cannot be based on the juxtaposition of bonus and threshold, in the specific entity and forms concretely fixed by the electoral law. While it is true that any minimum threshold entails an artificial alteration of the representativeness of an elected body, which could, in the abstract, aggravate the distortion brought about by the bonus. But it is not manifestly unreasonable that the legislator, in consideration of the political/party-based system that it intends to regulate with electoral rules, should resort contemporaneously, in its discretion, to both these mechanisms. After all, if the bonus has the goal of assuring the existence of a majority, a reasonable minimum threshold may, in turn, contribute to the goal of not preventing its formation. Nor should we overlook the fact that the threshold may favor the development of an opposition of parties that is not overly fragmented, thus allaying, rather than aggravating, the imbalances brought about by the stipulation of the majority bonus.
7.– The Ordinary Tribunal of Genoa raises questions of constitutionality, involving the violation of Articles 1(2), 3, and 48(2) of the Constitution, of Article 1(1)(f), of Law no. 52 of 2015, in the part in which it provides that, "in any case, 340 seats shall be assigned to the list that obtains, on a national basis, at least forty per cent of validly cast votes," and of Article 83(1)(5-6), and (2), (3), and (4) of d.P.R. no. 361 of 1957, as substituted by Article 2(25) of Law no. 52 of 2015, since these provisions allow for the assignment of the majority bonus to the list that has obtained the greatest number of votes, even in the case that two lists both obtain more than forty per cent of them in the first round of voting.

Although the State General Counsel's objection that the question is inadmissible for failure to provide adequate reasons must be rejected, since the object of the referring judge's complaint is clear and well-supported, nevertheless, the question is not well-founded on the merits.

The referring judge correctly assumes that the challenged provisions should be interpreted to mean that – in a situation in which two lists obtain more than forty per cent of votes in the first round – the majority bonus would in any case be assigned, and attributed to the list that took the greater number of votes. Nevertheless, the referring judge holds that such a scenario would result in the unreasonable reduction of the number of deputies coming from the list in second place, as a result of the distortion effected by the assignment of the bonus, in violation of the cited constitutional parameters.

Various scenarios may unfold after the outcome of the first round of voting, the actual occurrence of which is more or less probable or possible depending on the concrete conditions of the political system. But it is, in any case, within the logic of an electoral system with a majority bonus that the minority lists, regardless of the percentage of votes they obtain, will receive a number of seats that is inferior to the number they would have been assigned under a proportional system with no corrective mechanisms in place. This same logic naturally applies to the minority list in second place overall, and it is not relevant that it may have also obtained forty per cent of the validly cast votes, but rather that it obtained a total number that was smaller, in absolute terms, than the votes won by the winning list.

The referring judge requests an additive judgment that declares the challenged provisions to be unconstitutional in the parts in which they do not exclude the possibility of assigning the bonus in the case that the described scenario occurs.

This request has no foundation, first of all in light of the holding above (at point 6) that the stipulations of Law no. 52 of 2015 that regulate the assignment of the bonus at the first round are not manifestly unreasonable.

Moreover, and finally – even without considering the contradictions inherent to an electoral system, like the one described by the referring judge, which does not assign the bonus if two lists receive more than forty per cent of votes in the first round of voting, or if the difference in the number of votes received by the winning list and the other lists does not match a fixed number or percentage – an addition of this kind would not fall within the powers of this Court, but would, if anything, properly pertain to the discretion of the legislator.

[omitted]

9.– With arguments that in large part agree, and sometimes overlap, the Ordinary Tribunals of Turin, Perugia, Trieste, and Genoa raise doubts about the compatibility with Articles 1(2), 3 and 48(2) of the Constitution of the provisions of Law no. 52 of 2015, in the parts in which they provide, in the case that no list has obtained at least forty per cent of the total of validly cast votes in the first round – a second round of voting among the lists that have met the national minimum threshold of three per cent and obtained, in the first round, the two highest electoral totals nationally. As a result, they challenge Article 1(1)(f), of Law no. 52 of 2015 and Article 83(5) of d.P.R. no. 361 of 1957, as substituted by Article 2(25) of Law no. 52 of 2015. The Ordinary Tribunal of Genoa included Article 1 of d.P.R. no. 361 of 1957, as modified by Article 2(1) of Law no. 52 of 2015, in its challenge as well.

[omitted]

9.2.– As for the merits of the challenge, the referring judges allege that the majority resulting from the second round of voting would be "artificial," to the extent that the legislator limited itself to stipulating that only the two lists with the most votes can participate in that round (provided that they obtain three per cent of validly cast votes, or twenty per cent if they represent linguistic minorities); to the extent that the bonus is assigned to the group that obtains fifty per cent plus one of validly cast votes, without any consideration of the important, and perhaps even considerable, role that may be played by abstention from voting, as a foreseeable consequence of the radical reduction of the electoral offerings in the second round, and, therefore, without providing for

corrective mechanisms like, for example, requiring the achievement of a minimum quorum of voters in that round, or of a minimum quorum in the first round; and to the extent that any formation of alliances among lists in the second round is prohibited.
According to the referring judges, this entire method for assigning the bonus upon the second round of voting, without corrective mechanisms, would entail the risk that the bonus may be attributed to a political formation that lacks a sufficient basis in the electorate.
The referring judges essentially doubt that the use of the second round of voting for the assignment of the bonus conforms to the cited constitutional parameters, because, they claim, the way in which the second round is concretely regulated would result in an excessive and disproportionate alteration of the representativeness of the Chamber of Deputies, in the name of the need to favor the formation of a majority capable of assuring a stable and solid support for the Government within the Parliament.
As a result of this, they call for a declaration that Article 1(1)(f), of Law no. 52 of 2015 and Articles 1 and 83(5) of d.P.R. no. 361 of 1957, as updated by Article 2(1) and (25) of Law no. 52 of 2015 are unconstitutional: a pronouncement that would lead not to changes in the specific regulation of the second round of voting, but to its annulment.
Ultimately, in the proposal put forward by the referring Courts, the three aspects of the second round of voting which they criticize (that a list may have access to the second round even after having won a mere three per cent of votes during the first round; that during the second round the threshold of fifty per cent plus one of the votes necessary to obtain the bonus is calculated on the basis of validly cast votes rather than the number of people with voting rights; and that alliances and alliances between lists are not permitted) amount to arguments in support of a challenge intended to achieve the elimination of the second round of voting, and not individual grounds for unconstitutionality (as the State General Counsel apparently maintains, given that the briefs vacillate between defending the second round in and of itself, and presenting a separate defense of the absence of each of the three characteristics pointed to by the referring judges).
The question is well-founded.
As mentioned above, the legislator is free to add a majority bonus to an electoral system devised for purposes of creating a proportional division of seats, provided that this bonus mechanism does not presage an excessive overrepresentation by the list that has won the relative majority (Judgment no. 1 of 2014).
The legislator decided to follow the guidelines of constitutional case law, both stipulating a minimum threshold of votes required for the assignment of the majority bonus and mandating that, in the case that no one list obtains 340 seats, a run-off round of voting will take place between the two lists that received the most votes. Although, as stated above (at point 6), the first provision does not amount to an unreasonable compromise of the representativeness of the elected body, the concrete methods for assigning the bonus through the run-off round of voting violate Articles 1(2), 3, and 48(2) of the Constitution.
First of all, in the system outlined by Law no. 52 of 2015, the run-off round of voting is not construed as a new vote replacing the one that took place at the first round, but rather as the continuation of the first round of voting. In light of this, only the two lists that received the most votes in the first round have access to the second, and no coalitions or alliances among lists is permitted between the two rounds. Moreover, the percentage-based distribution of the seats, even after the second round of voting has taken place, remains the same as after the first round for all the lists except the winning one, including for the one that participated and lost in the second round. The second round, therefore, serves to identify the winning list, that is, to permit one list to reach the minimum threshold of votes that none of them had succeeded in reaching in the first round.
It is true, as the State Counsel's office points out, that the minimum threshold is raised in the second round to fifty per cent plus one of votes, but it could not be otherwise in any case, since only two lists are admitted on the ballot. Law no. 52 of 2015, establishing a decisive competition between only two lists, lays out strict conditions that make the attainment of an absolute majority of validly

cast votes by the winning list inevitable; and since, on account of the characteristics described above, the second round is nothing more than a continuation of the first round of voting, the bonus assigned based on its outcome remains a majority bonus, and does not become a governability bonus. It follows that the provisions that regulate the assignment of the bonus after the second round run up against, in turn, the limit set by the constitutional requirement that the representative nature of the elected assembly and the equality of the vote not be excessively compromised.

Respect for these constitutional principles is, nevertheless, not guaranteed by the challenged provisions: a given list may have access to the second round of voting despite having obtained only a slim consensus in the first round, and may, irrespective of this fact, attain the bonus and receive double the number of seats that it would have obtained on the basis of the votes it won in the first round. The challenged provisions thus reproduce, albeit at the second round of voting, a distorting effect similar to the one identified by this Court in Judgment no. 1 of 2014, with regard to the previous electoral legislation.

The legitimate pursuit of the objective of Government stability, which is certainly a constitutional interest, thus leads to the excessive sacrifice of the two constitutional principles mentioned above. If it is true that, in Law no. 52 of 2015, the second round of voting as a run-off between the lists that received the most votes performs the role of compensating for the failure to reach the minimum threshold for obtaining the bonus in the first round, for purposes of indicating which political party will, through its predominance, support the government of the Nation, this purpose cannot justify a disproportionate sacrifice of the constitutional principles of representativeness and of equality of the vote by artificially transforming a list that boasts a limited consensus, or potentially even a very slim one, into an absolute majority.

Therefore, in this case, too, the test of proportionality and reasonableness (Article 3 of the Constitution) leads to a negative conclusion, such tests requiring a check – which also applies in areas of broad legislative discretion, like the one under review – that the balancing of the principles and constitutionally relevant interests was not carried out in such a way as to compromise or sacrifice one of them to an excessive degree.

The challenged provisions effect a disproportionate deviation between the composition of one of the two assemblies that make up the national political representation, the heart of the system of representative democracy and the parliamentary form of government set out in the Constitution, on the one hand, and the will of the citizenry expressed by means of the vote, which constitutes “the principal instrument for expressing popular sovereignty under Article 1(2) of the Constitution” (Judgment no. 1 of 2014) on the other. It is true that, upon the outcome of the run-off round of voting, the bonus is not artificially determined, since it does still follow from a vote by the electorate, but if the first round reveals that no single list is capable, on its own, of obtaining the majority bonus, only the strict prerequisites for participating in the second round lead, by radically reducing the political options, to the certain assignment of the bonus.

Moreover, it is true that the legislative stipulation of a potential run-off round of voting – based on a decisive competition between only two lists, intended to assign an absolute majority of seats in the representative assembly to the winning list – introduces characteristics of a majoritarian electoral system into the system laid out by Law no. 52 of 2015. But this insertion does not cancel out the overall reasoning of the law, which is based on a proportional distribution of the seats, and which remains such even for the losing list from the run-off round of voting, which keeps the seats it gained in the first round. Thus, pursuing the goal of creating a governing political majority within the representative assembly, intended to assure (not merely favor) government stability, comes at the cost of a deeply unequal evaluation of the weight of votes for purposes of making the final assignment of seats in the Chamber of Deputies, violating Article 48(2) of the Constitution.

It is necessary to stress that it is not a run-off round of voting among lists in and of itself, considered in the abstract, which is unconstitutional, because of a fundamental incompatibility with the cited constitutional principles. Rather, the specific provisions of Law no. 52 of 2015 violate Articles 1(2),

3, and 48(2) of the Constitution because of the concrete way they regulate the run-off round for the election of the Chamber of Deputies.
The voting round under review here – with the bonus assigned upon the results of a run-off round of voting from a single national constituency with list-based voting – is not comparable to other experiences, coming from other systems, in which run-off elections are used, in the context of majoritarian electoral systems, for the elections of single representatives in single-member constituencies of smaller dimensions. In such cases, which deal with the election of a single representative, the second round is functional for purposes of reducing the plurality of candidates, until a majority can be obtained for one of them, and is thus geared toward guaranteeing broad representativeness within the single constituency, in addition to finalizing the election of a single candidate.
The assignment of a majority bonus, however, belongs to a different line of reasoning – presented as a deciding resort within a selective electoral competition between only the two lists that have proven to be the strongest, in the context of a single national constituency – grafted onto an electoral formula primarily based on proportionality, which is intended to complete the composition of the representative assembly with the goal of assuring (and not merely favoring) the presence within that body of a governing political majority. If used within this context, which fundamentally transforms the reasoning and the purpose of the electoral competition (the electorate votes not to elect a single representative of an electoral constituency of limited dimensions, but to decide which political power will be charged with supporting the government of the Nation within a branch of the national Parliament), an additional round of list-based voting must necessarily be regulated in light of the holistic function pertaining to an elected assembly in the context of a parliamentary regime.
In the form of parliamentary government designed by the Constitution, the Chamber of Deputies is one of the two seats of the national representative political system (Article 67 of the Constitution), along with the Senate of the Republic. On equal footing with the latter body, the Chamber grants confidence in the Government and exercises both the political function (Article 94 Constitution) and the legislative function (Article 70 of the Constitution). The application of a system with a decisive run-off round of list-based voting should necessarily take into account the specific function and constitutional position of such an assembly, a fundamental organ in the democratic framework of the entire system, considering that, in a parliamentary form of government, every electoral system, even if it must foster the formation of a stable government, can only be primarily geared toward assuring the constitutional value of representativeness.
The strict prerequisites that Law no. 52 of 2015 establishes in order to have access to the second round of voting do not fulfill these essential roles, as stated above. However, it is not the place of this Court to modify, by means of manipulative or additive intervention, the concrete methods by which the bonus is assigned upon the outcome of elections, by inserting some or all of the corrective mechanisms the absence of which is decried by the referring judges. This task falls under the broad discretion of the legislator (for example, with regard to the choice between assigning the bonus to a single list, or rather to a coalition of lists: Judgment no. 15 of 2008), the place of which cannot be taken by constitutional judges, out of unyielding respect for their own limited role.
Furthermore, certain of these measures (which, considered in the abstract, could render the second round of voting compatible with the qualifying features of the national representative body), do not, in any case, fall within the purview of this Court, due to the technical difficulty of restoring an immediately applicable electoral regulatory scheme at the conclusion of a constitutional review, a scheme which would be, as a whole, capable of guaranteeing the immediate renewal of the elected constitutional organ (most recently, Judgment no. 1 of 2014).
Finally, it bears pointing out that the judgment of unconstitutionality of the provisions under review has no bearing on or consequences for the very different system of second-round voting in place in large cities, which has already passed constitutional scrutiny by this Court (Judgments no. 275 of 2014 and 107 of 1996). Indeed, that system responds to a line of reasoning different from that underlying Law no. 52 of 2015. While it is true that in the city electoral system, the election of a

monocratic official, such as the mayor, which is the primary function of voting, also in part has an impact on the composition of the representative body. But what is more important is that that system is within an institutional framework characterized by the direct election of the person who wields local executive power, and is thus quite different from the parliamentary form of government established by the Constitution at the national level.

Taken together, these considerations give rise to the declaration that Article 1(1)(f) of Law no. 52 of 2015 (from the words "or, if none exists" to the words "between the two rounds of voting"), the last part of Article 1(2) of d.P.R. no. 361 of 1957 (that is, the words, "or following a run-off round of voting under Article 83"), and Article 83(5) of the same d.P.R. no. 361 of 1957 are unconstitutional.

The regulatory scheme that remains in force after the annulment of section (5) of Article 83 of d.P.R. no. 361 of 1957 is capable of guaranteeing the renewal of the elected constitutional organ at any time, as required by well-established constitutional case law (in addition to Judgment no. 1 of 2014, mentioned above, see Judgments no. 13 of 2012, 16 and 15 of 2008, 13 of 1999, 26 of 1997, 5 of 1995, 32 of 1993, 47 of 1991, and 29 of 1987). Indeed, in the instance that the list that takes the highest number of national votes in the first round of voting fails to obtain at least forty per cent of the total of validly cast votes, the apportionment of seats is intended to remain unchanged – among the lists that met the minimum threshold under Article 83(1)(3) of d.P.R. no. 361 of 1957 – according to Article 83(1)(4).

10. –The Ordinary Tribunal of Messina raises questions of constitutionality concerning certain parts of the regulatory scheme that Law no. 52 of 2015 establishes for the assignment of seats and the proclamation of the elected representatives. In particular, it alleges the violation of Article 56 of the Constitution by Article 1(1)(a), (d), and (e) of the law, and Articles 83(1-5) and 84(2) and (4) of d.P.R. no. 361 of 1957 as replaced by Article 2(25) and (26) of previously cited Law no. 52 of 2015.

The referring court alleges that, under the cited provisions, a situation could occur in which a seat to be assigned to a particular electoral district could be assigned to another (thus engendering a phenomenon of transferring seats, known also by the term "shifting"). The referring court assumes that this result clashes with Article 56 of the Constitution, and violates, in particular, the fourth section thereof, which stipulates that, "[t]he division of seats among the electoral districts […] is obtained by dividing the number of inhabitants of the Republic, as shown by the latest general census of the population, by six hundred eighteen and distributing the seats in proportion to the population in every electoral district, on the basis of whole shares and the highest remainders."

In the referring judge's view, this rule expresses the principles of so-called territorial representation and of the responsibility of the elected representative toward the voters who elected him or her, allegedly injured by the challenged provisions to the extent that they stipulate that, if a given list has exhausted the number of potentially eligible candidates within a certain electoral district, the seats due to that list are transferred to another electoral district, in which there are "supernumerary" candidates.

[omitted]

10.2.– It remains to carry out an examination, on the merits, in reference to the contents of Article 56(4) of the Constitution, of the question concerning Article 83(1)(8) of d.P.R. no. 361 of 1957, which regulates the assignment of seats among the various electoral districts (but not among the multi-member constituencies), together with Article 1(1)(a), (d), and (e) of Law no. 52 of 2015, which, in the referring judge's view, has the characteristics of the electoral system that allow for the complained-of effect of transferring seats.

As a preliminary matter it is useful to recall that Law no. 52 of 2015 – as Article 1(1)(a) provides – subdivides the national territory into twenty electoral districts, which are, in turn, divided into one hundred multi-member constituencies (in addition to the single-member constituencies in the districts of Valle d'Aosta and Trentino-Alto Adige), delineated by legislative decree.

The specification of the number of seats attributed to the individual districts and the individual multi-member constituencies within each district is granted, under Article 3 of d.P.R. no. 361 of

1957, to a decree of the President of the Republic, which must be approved, at the same time of the decree summoning electoral campaigns, "on the basis of the results of the last general census of the population, as reported by the most recent official publication of the National Institute of Statistics [*Istituto nazionale della statistica*]."
This operation is carried out before elections are held.
The referring judge challenges the regulatory mechanism for assigning seats to individual lists after the outcome of elections, on the basis of the votes obtained by each list (a mechanism that, according to Article 1(1)(d) of Law no. 52 of 2015, is based upon the assignment of seats on a national basis following a method of whole shares and highest remainders).
Under this regulatory scheme, after the Central National Office [*Ufficio centrale nazionale*] has established the number of seats due to each list at the national level (Article 83(1)(1)-(7), and d.P.R. no. 361 of 1957 (2)-(6)), the same Office, under challenged Article 83(1), number 8) of the cited d.P.R., distributes the seats among the various electoral districts, in proportion to the number of votes that each list obtained in each district (except for the districts of Trentino-Alto Adige and Valle d'Aosta).
The Office must therefore verify – and it is at this point that a potential transfer could take place – whether the total number of seats assigned to the lists in the electoral districts corresponds to the number of seats to which they are entitled on a national level, or whether there are some lists that, on the basis of the distribution of seats at the district level, have taken more (so-called "supernumerary" lists) or less (so-called "deficient" lists) with respect to the seats to which they are entitled at the national level.
In the latter case, the Central National Office is tasked with carrying out corrective measures.
Article 83(1)(8) stipulates that the seats should be removed, starting from the list that has the highest number of excess seats (and, in case of a tie, starting with the one that took the greatest segment of the national electorate), moving on then to the other lists in descending order according to the number of excess seats each one has.
The Office removes the seats from the electoral districts in which the list obtained them with the smallest fraction of whole shares of attribution (that is, with the smallest number of votes).
The seats, thus removed, are then assigned, within the same district, to the deficient lists for which the fractions of shares of attribution did not provide for the assignment of any seats (that is, in cases in which the list did not obtain a seat because the number of votes it took was insufficient to reach a whole share).
If it is not possible for such compensation to be carried out according to the process described here – in that a given electoral district, there may be no deficient lists with unused fractions of shares – the Central National Office must proceed, for the same supernumerary list, in order of ascending fractions, to identify another electoral district within which it is contextually possible to remove the seat from the supernumerary list and assign it to the deficient one.
This set of stipulations – the last one in particular (introduced to the Senate in the course of working sessions on Law no. 52 of 2015) – has the objective of permitting compensatory measures to take place within one single electoral district, even at the cost of injury to the supernumerary list, which could end up losing a seat not in the district where it obtained the least votes, but in the one where it obtained the most. And the process is designed to prevent compensations from taking place, as often happened under previous electoral systems, between different electoral districts – therefore, precisely to avoid the transfer of seats from one electoral district to another.
Indeed, only in a scenario in which – despite all the procedures described – it remains impossible to carry out the compensation between supernumerary and deficient lists within the same electoral district does the challenged provision from the last sentence of Article 83(1), number 8) apply as a residual rule ("[i]n the event that it is not possible to refer to the same electoral district in order to carry out the procedures above, until all the unassigned seats are considered, seats shall be removed from the supernumerary list in the electoral districts in which it obtained them with the smallest fractions of the whole share of distribution, and seats shall subsequently be assigned to the deficient

list in the other electoral districts in which it has the biggest unused fractions of the whole share of attribution") .

In light of these premises, the question is not well-founded.

The State Counsel's Office, in its rebuttal, objects that Article 56(4) of the Constitution obliges the legislator to take stock of the population size of each electoral district, with specific reference to the elections of the Chamber of Deputies, only during the phase prior to elections in which seats are distributed among the districts. It argues that the constitutional provision does not concern the mechanism by which the seats are assigned to the individual lists after the elections.

The objection is not well-aimed.

To maintain that the prescriptive contents of Article 56(4) of the Constitution only apply to the time period prior to the elections, that is, only to the distribution of seats among the various electoral districts and not to the phase in which they are assigned to the lists after the elections, would allow for a substantial circumvention of the meaning of the constitutional rule. In reality, the rule is not limited to stipulating that the seats to assign to each electoral district be distributed in proportion to population size prior to elections. It also intends to prevent that this distribution should be later disregarded when the seats are assigned to the various lists in the electoral districts, on the basis of the votes each one has obtained.

A contrary conclusion based on a formalistic interpretation of Article 56(4) of the Constitution could authorize even significant transfers of seats from one district to another after elections, such as to compromise the guarantee of a proportional distribution of the seats throughout the national territory.

The question's lack of foundation, with reference to the specific electoral system established for the Chamber of Deputies by Law no. 52 of 2015, derives rather from the fact described above that the entire system for assigning seats put in place by the regulatory framework introduced by Law no. 52 of 2015 deploys broad precautions intended precisely to avoid the kind of transfer of seats that the referring judge complains of. Such unfoundedness also derives from the fact that the transfer effect occurs, through the application of the challenged provision, only in the event that recourse to said precautions proves useless, in borderline cases which the legislator intends to be entirely residual.

The challenge's lack of foundation is even clearer in light of the need to interpret the provision found in Article 56(4) of the Constitution not taken alone, but rather as part of a systematic reading, together with principles that are deducible from Articles 67 and 48 of the Constitution.

From this perspective, the system for assigning seats among the electoral districts laid out in Law no. 52 of 2015 – which includes, as a residual hypothesis, the challenged provision – is the outcome of a balancing among various principles and needs, which cannot always be perfectly aligned among themselves (analogously, albeit in reference to the different regulatory scheme established for the election of the Italian members of the European Parliament, see Judgment no. 271 of 2010).

On the one hand, there is the principle that can be inferred from Article 56(4) of the Constitution, intended to guarantee representation that is commensurate with the population of each portion of the national territory; on the other, there is the need to allow for the assignment of seats on the basis of the national election results obtained by each list (a solution, moreover, that serves the function, in the electoral system under review, of identifying the lists that have passed the three per cent minimum threshold under Article 1(1)(e) of Law no. 52 of 2015, as well as the list which shall potentially receive the majority bonus); and, finally, there is the need to give weight to the consensus obtained by each list within the individual districts from the voters' perspective, in light of Article 48 of the Constitution.

The contents of Article 56(4) of the Constitution cannot be understood as requiring, as a constitutionally obligatory solution, the assignment of seats to be entirely enclosed within individual districts, without taking into account the votes obtained by each list at the national level (like, for example, in cases of electoral systems founded entirely upon single-member constituencies with a single round of voting, or a proportional system with distribution of seats occurring only at the district level, without any recovery of the remainders at the national level).

Article 56(4) of the Constitution is not preordained to guarantee the representativeness of the territories considered in and of themselves (Judgment no. 271 of 2010), but, as stated above, protects the distinct need to distribute the seats in proportion to the population of the various parts of the national territory. Indeed, the Chamber is the seat of national political representation (Article 67 of the Constitution), and the partitioning into electoral districts does not diminish the unity of the national elected body, the individual districts being its various limbs in the different parts of the territory.

With reference to the electoral system introduced by Law no. 52 of 2015, if it is constitutional that the distribution of seats take place at the national level (a scenario that, in any case, the referring judge does not contest), Article 56(4) of the Constitution must, therefore, be observed to the extent that this is reasonably possible, without ruling out the constitutionality of residual and inevitable hypotheses involving the transfer of seats from one district to another.

Ultimately, the mechanism for distributing seats provided for by Article 83(1)(8), of d.P.R. no. 361 of 1957 does not violate Article 56(4) of the Constitution, since the transfer of a seat from one electoral district to another amounts to a residual hypothesis in the procedure for assigning seats, which may be used, on the basis of mathematical reasons and happenstance, only when it has not been possible to identify, through application of the provisions in force, any district in which there are both an supernumerary list and a deficient one with unused fractions of whole shares.

Nor is the question well-founded in reference to Article 56(1), in which the principle of direct voting is enshrined. This section, which requires that the election of deputies take place by the direct action of the voters, without any intermediation, is not relevant in relation to the challenged norms.

11.– The Ordinary Tribunal of Messina raises questions concerning the constitutionality of Article 1(1)(g), of Law no. 52 of 2015 and Articles 18-*bis*(3), first sentence, 19(1), first sentence, and 84(1) of d.P.R. no. 361 of 1957, as modified and replaced by Articles 2(10)(c), 11, and 26 of Law no. 52 of 2015. These allegedly violate Article 48(2) of the Constitution and, mentioned only in the operative part of the referral order, Articles 1(1) and (2), 2, 51(1), and 56(1) and (4) of the Constitution.

The issues thus raised take issue with the stipulations providing that the lists, in the individual constituencies, are composed of a head candidate and a list of candidates among whom voters may express up to two preferences for candidates of different genders chosen from those who are not head of the list.

The referring judge, after having described the system introduced by Law no. 52 of 2015 and having recalled the contents of this Court's Judgment no. 1 of 2014, observes that, as a matter of principle, a mixed system – "partly fixed and partly preference-based" – could be considered consistent with the indications laid out in that judgment. Nevertheless, the referral expresses doubts that the system guarantees voters the possibility of expressing a direct, free, and personal vote, inasmuch as, particularly for those voters who vote for minority lists, a distortionary effect could come about in the concrete owing to the formation of a parliamentary makeup largely dominated by fixed heads of lists, "although with the corrective mechanism of multiple candidacy."

In other words, the referring judge observes that there is a high probability that only the list that receives the majority bonus will obtain elected representatives with the preferences, while those elected from the minority lists will be made up entirely or mostly of fixed heads of lists. And this occurs, the judge underscores, despite the corrective mechanism of "multiple candidacy:" thus the referring judge does not intend to challenge the provision allowing heads of lists to run in multiple constituencies (at most ten), but, on the contrary, acknowledges the fact that this possibility may produce the effect of freeing seats for candidates chosen by means of the preferential vote (for example, if a list presents ten different heads of list, each one running in ten constituencies, it may obtain, at most, ten elected without preferences; if, in the opposite example, that list presents a different head of list in each of the hundred constituencies, it may see up to one hundred elected without preferences).

Regardless of this, the referring judge alleges that the freedom of the electorate's right to vote for minority lists is violated. While the list that receives the majority bonus, securing 340 seats, will certainly have at least 240 deputies elected with preferences (and potentially even more if – as stated above – the heads of list run in multiple constituencies), the losing lists are given the remaining 278 seats and, if the number of losing lists is greater than three, in theory they could place only deputies elected without preferences.

[omitted]

11.2.– Thus formulated, the question lacks foundation.

In Judgment no. 1 of 2014, this Court explained that the system then in place violated the freedom of the vote enshrined in Article 48(2) of the Constitution, since it did not allow voters any margin of choice of their own representatives by stipulating elections for a list composed entirely of fixed candidates, in a context of extremely large constituencies and lists including very high numbers of candidates, potentially corresponding to the entire number of seats assigned to the district, and therefore unlikely to be known by voters. In that system, no member of parliament, without exception, had the support of personal indications by voters, violating the reasoning of the representativeness called for by the Constitution. Similar voting requirements, which forced voters for a given list to choose, as a block, all the many candidates making up the list – candidates whom the voter had no way either to know or to evaluate – who were thus automatically destined, on the basis of their rank within the list, to become deputies or senators, rendered the regulatory scheme "not comparable either with other systems in which there are closed lists only for some seats, or with those comprised of geographically smaller electoral constituencies in which the number of candidates to be elected is sufficiently low that it is effectively possible to know them and correspondingly that the efficacy of the choice and freedom in voting are guaranteed (as occurs in single-member constituencies)."

In essence, while an electoral system with long and fixed lists of candidates, which denies the possibility, for all elected representatives, of providing any indication of voter consensus violated the freedom of the vote, the legislator has discretion to choose the most suitable regulatory scheme for composing the lists and indicating the methods through which to provide that voters may express their support for candidates.

In light of these premises, the challenged provisions do not amount to a violation of the electorate's freedom of the vote, enshrined in Article 48(2) of the Constitution.

The electoral system established by Law no. 52 of 2015 differs from the previous one in three essential aspects: first, the lists are presented in one hundred multi-member constituencies of reduced dimensions, and they are, therefore, made up of a significantly smaller number of candidates; second, the only fixed candidate is the head of list, whose name appears on the election ballot (assuring that he or she is knowable by voters in advance); and finally, voters may express up to two preferences for candidates of different genders among those candidates who are not heads of lists.

In the holistic evaluation of such a regulatory scheme, the circumstance that the selection and presentation of candidacies (Judgments no. 429 of 1995 and 203 of 1975), and so too, as in the present case, the indication of head of list candidates, are expressions of the position assigned to the political parties by Article 49 of the Constitution is not irrelevant, considering, moreover, that this indication, all the more delicate given that the candidates are fixed, must be carried out in light of the role that the Constitution assigns to the parties, the latter being associations that allow the citizens to participate in a democratic way to determine, including through participation in elections, national politics.

It bears noting, moreover, that the effect of which the referring judge complains – that minority lists may see only fixed heads of list elected – is a consequence (certainly a politically relevant one) that derives, de facto, also from the way in which the party system is concretely articulated, and which cannot, in and of itself, transform into a defect of unconstitutionality (on the irrelevance of so-called

de facto flaws in constitutional reviews, see, among many, Judgments no. 219 and 192 of 2016 and Orders no. 122 and 93 of 2016).

Finally, as the State Counsel correctly observed, there are many variables capable of deciding how many candidates are to be elected with or without preferences: in addition to the number of heads of lists who can run in multiple constituencies, which can free seats to assign to representatives elected with preferences, the question of how widespread a consensus each list obtains on a national basis is also relevant. The effect that concerns the referring judge presupposes that this consensus is homogeneously spread out for all the minority lists. But where the consensus is, rather, concentrated above all in certain constituencies, a list may receive more than one seat in those constituencies, thereby electing, in addition to the head of list, one or more candidates with preferences.

12.– The Ordinary Tribunals of Turin, Perugia, Trieste, and Genoa, with largely overlapping arguments, hold that the question of constitutionality concerning Article 85 of d.P.R. no. 361 of 1957 (as modified by Article 2(27) of Law no. 52 of 2015) is not manifestly lacking in foundation. The provision establishes that a deputy elected in more than one multi-member constituency must declare to the President of the Chamber of Deputies, within eight days of the date of the last proclamation, which of the constituencies he or she has chosen.

According to the referring judges, this provision allows head of list candidates elected in more than one multi-member constituency, to make a decision on the basis of a mere opportunistic assessment, and does not subject the choice to any objective and predetermined criterion that would respect, to the greatest extent possible, the will expressed by voters. According to all the referring judges, this regulatory scheme thus violates Articles 3 and 48 of the Constitution, inasmuch as the preferential vote expressed with regard to non-fixed candidates could be frustrated in the constituency arbitrarily picked by the head of list candidate elected in several constituencies: his or her option could, indeed, block the assignment of a seat to a candidate who had obtained a high number of preferential votes, if the head of list chooses that constituency; or, on the contrary, his or her choice could effect the election of a candidate who obtained even a scant personal consensus, in the case that the head of list does not choose that constituency.

The Ordinary Tribunal of Turin, in particular, observes (and the other referring courts do likewise, in similar terms) that the arbitrariness of the choice of constituency by the head of list elected in multiple constituencies creates a distortive effect between the vote of preference expressed by voters and its "outcome" in that constituency. This distortion allegedly violates the principles of equality and freedom of the vote, while no constitutional value may be invoked in favor of the challenged regulations.

[omitted]

12.2.– The question is well-founded.

The absence of an objective criterion within the challenged provision, which would respect the will expressed by voters and be suitable to determine the choice of the head of list elected in more than one constituency, manifestly conflicts with the reasoning underlying the personal indication of the elected representative on the part of voters, which even Law no. 52 of 2015 itself has partly embraced by permitting the expression of the preferential vote. The arbitrary choice allows the fixed head of list elected in more than one constituency to wield not only the power to choose the constituency of his or her election ahead of time, but also, indirectly, the improper power to designate the representative of a given electoral constituency, according to a line of reasoning ultimately capable of conditioning the usefulness of the preferential votes expressed by voters.

The State Counsel's Office objects that, under the proportional electoral system in place prior to 1993, candidates elected in more than one constituency were always given the freedom to choose the constituency of election. It also points to this Court's Judgment no. 104 of 2006, in which it held that, "[t]he right to opt for one of the electoral districts in which the candidate has been elected is the way to allow them to establish a specific tie, in terms of political representation, with the body

of voters that belong to a particular constituency and is a manifestation of the right to run for office, guaranteed to all citizens by Article 51(1) of the Constitution."

It is easy to respond to these observations recalling that under the electoral system in place prior to 1993, as is also the case for the election of the Italian members of the European Parliament, to which the quoted judgment specifically refers, the preferential vote could be made in favor of any candidate, who, if elected in multiple constituencies, could reasonably make a discretionary choice as to the one in which he or she would be proclaimed. Moreover, the ability to run in multiple constituencies was not then reserved for heads of lists, but was also available to the other candidates.

The system introduced by Law no. 52 of 2015 differs significantly. It provides that only heads of lists are fixed and may run for election in multiple constituencies; later it is they who decide, by a free choice, the election – or non-election – of candidates who obtained, rather, preferential votes.

In light of this, the referring judges are not wrong in complaining that the arbitrary choice unreasonably entitles the head of a list to determine the destiny of the vote of preference expressed by voters in the chosen constituency, effecting a distortion of its outcome, not only violating the principle of equality, but also that of the personal nature of the vote, enshrined in Articles 3 and 48(2) of the Constitution. Nor is any other interest of constitutional rank able to balance out this violation, since the free choice of the territorial area in which to be elected – for purposes of establishing a specific bond, in terms of political responsibility, with the electorate of a certain constituency – could be invoked by a head of list who won the election with votes of preference in that constituency, but certainly not, as the referring judge theorizes, by a fixed head of list to the detriment of candidates who did obtain preferential votes.

Having established that Article 85 of d.P.R. no. 361 of 1957 (as modified by Article 2(27) of Law no. 52 of 2015) is unconstitutional in the part in which it allows for arbitrary choice, this Court must acknowledge – in strict observance of the limits of its powers, and all the more so in the area of electoral law, which falls under an area of broad legislative discretion (Judgments no. 1 of 2014, 242 of 2012, 271 of 2010, 107 of 1996, and 438 of 1993, and Order no. 260 of 2002) – that there is more than one possible alternative criterion that would be consistent with the regulatory scheme found in Law no. 52 of 2015 concerning candidacy and the vote of preference.

Indeed, and merely as an example, following a line of reasoning intended to honor the vote of preference expressed by voters, regulations could provide that heads of lists elected in multiple constituencies must be proclaimed elected in the constituency in which the candidate from the same list – who would be elected in place of the head of list – received, as a percentage, fewer votes of preference than the candidates from the same list who ran in other constituencies where the same head of list won. Again, following a very different line of reasoning, one geared to validate the importance and visibility of his or her candidacy, the rules could instead provide that a head of list running in multiple constituencies must be declared elected in the one in which his or her list has obtained, in terms of percentage, the highest electoral total, in relation to the other constituencies in which the same person ran as a head of list.

The choice between these and other potential criteria, and between the advantages and drawbacks that each one entails, belongs to the deliberative assessment of the legislator, and cannot be made by constitutional judges.

This consideration, however, does not lead to a renunciation of this Court's duty to strike down a provision that proves to be unconstitutional, in the part in which it has been challenged by the referring judges.

Indeed, after the annulment of Article 85 of d.P.R. no. 361 of 1957, in the part in which it provides that a deputy elected in more than one multi-member constituency must declare to the President of the Chamber of Deputies which constituency he or she picks, there remains, in the same regulation, as a residual measure, the measure of drawing lots.

This measure is already stipulated by the portion of the provision that is not a part of the question under review, and, therefore, it is not introduced *ex novo* as a substitute for the arbitrary choice

method that has been annulled. In reality it is that which remains, currently, of the original will of the legislator expressed in the same provision that is involved in the judgment of unconstitutionality.
The survival of the measure of drawing lots therefore restores the indispensable factor of a remaining electoral regulatory scheme even concerning this aspect that can be applied immediately following this judgment, capable of vouchsafing the renewal, at any time, of the elected constitutional organ (see, most recently, Judgment no. 1 of 2014, 13 of 2012, and 16 and 15 of 2008).
But it clearly falls to the responsibility of the legislator to substitute this measure with another and more suitable rule, which respects the wishes of voters.

[omitted]

14.– The Ordinary Tribunal of Messina alleges that two provisions of Decree Law [d.lgs.] no. 533 of 1993, concerning the election of the Senate, are unconstitutional, particularly Articles 16(1)(b), and 17, which establish the percentage of votes that the list coalitions and lists without coalitions must obtain in each region in order to qualify for the distribution of seats.
The referring judge, making a particularly succinct argument, recalls first of all that the provisions pertaining to the minimum threshold established by the current electoral system for the Senate differ in content from the ones stipulated by electoral law no. 52 of 2015 for the election of the Chamber of Deputies, and alleges that this difference is detrimental to the objective of governability, since non-overlapping majorities could form in the two branches of Parliament. Therefore, the referral assumes that the question is not manifestly unfounded, for violation of Articles 1, 3, 48(2), 49, and 51 of the Constitution, limiting itself to recalling that this Court's Judgment no. 1 of 2014, in striking down the regulations concerning the majority bonus for the Senate, affirmed that those regulations compromised the functioning of the parliamentary form of government.
14.1.– Formulated in this way, the question is inadmissible, because it provides insufficient reasoning in support of the proposition that it is not manifestly lacking in foundation, and because of the allegation's objective lack of clarity.
The referring judge raises questions of constitutionality concerning the provisions that stipulate the minimum thresholds for the election of the Senate without comparing those thresholds to those introduced by Law no. 52 of 2015 (which is not even cited in the referral), in order to deduce that the differences between the two electoral systems would have a detrimental effect on the formation of homogeneous majorities in the two branches of the Parliament, allegedly violating the cited constitutional parameters.
However, the referral does not lay out the reasons why it should be the different minimum thresholds rather than other, significantly more important differences between the two electoral systems (for example, a majority bonus stipulated only as part of the regulatory scheme for the election of the Chamber of Deputies), to theoretically impede the formation of homogeneous majorities between the two branches of the Parliament.
Moreover, the referring judge alleges that multiple constitutional parameters have been violated (Articles 1, 3, 48(2), 49, and 51 of the Constitution), with clearly varying contents and import, without providing the separate reasons why each one has supposedly been violated. According to this Court's well-established case law (see, among many, Judgments no. 120 of 2015 and no. 236 of 2011, and Orders no. 26 of 2012, 321 of 2010, and 181 of 2009), it is not enough to merely indicate the provisions that should provide the basis for review, in order to evaluate the compatibility of some with regard to the regulatory contents of others, but it is necessary to provide the reasoning that underlies a negative conclusion concerning this evaluation and, where necessary, to describe the interpretive steps taken for purposes of explaining their respective regulatory contents.
Another unusual characteristic of the referral order is its failure to make clear which of the two regulatory schemes, with regard to the minimum threshold, should be adjusted to be like the other; it apparently did not occur to the referring judge that the potential acceptance of the question raised would simply lead to the annulment of the challenged provision of Senate electoral law, resulting in

an ongoing distinct difference between the two systems: no minimum threshold at the regional level for the election of the Senate, and the retention of a three per cent minimum threshold, calculated at the national level, for the Chamber of Deputies.

15.– Finally, the Ordinary Tribunal of Messina questions the constitutionality of Article 1(35) of Law no. 52 of 2015, by virtue of which the provisions contained in the same Article 2, that is, the provisions that modify d.P.R. no. 361 of 1957, redesigning the system for the election of the Chamber of Deputies, are intended to take effect on 1 July 2016.

The referring judge holds that this stipulation violates Articles 1, 3, 48(1), 49, 51(1), and 56(1) of the Constitution, in that, "in the event that new elections go forward according to unchanged electoral legislation for the Senate (despite the ongoing constitutional reform of that branch of the Parliament), a situation of blatant non-governability would occur due to the coexistence of two different majorities."

The referring judge raised the question (on 17 February 2016) prior to parliamentary approval (on 12 April 2016) of the constitution reform bill intended, among other things, to transform the Senate of the Republic and to move beyond the equal, bicameral structure. At the time the referral order was written, the new electoral law for the Chamber of Deputies had already entered into force. The legislator, expecting that the processes of constitutional reform would be rapidly concluded, and in order to avoid a situation in which two different electoral systems were both in place at the same time, stipulated that the law would enter into force starting on 1 July 2016.

The referring judge, with a very brief argument, challenges the lawmaker's choice to defer the effectiveness of the new provision to 1 July 2016, rather than make it effective at the conclusion of the process of constitutional reform. This choice allegedly violates the cited constitutional parameters, in that it would allow, beginning from the date in question, for the two branches of Parliament to be renewed through two different electoral systems, on the assumption that this disparity may produce parliamentary majorities that do not coincide.

15.1.– The question is not admissible.

The referring judge subjects the disparity between the two systems to only a generic and assumption-based analysis, without specifying which differing characteristics of the two systems would supposedly give rise to "a situation of blatant non-governability […] due to the coexistence of two different majorities."

A mere assertion of non-homogeneity is not sufficient to give the challenge access to constitutional review on the merits and classification as an admissible claim.

Secondly, the constitutional parameters whose violation is alleged (that is, Articles 1, 3, 48(1), 49, 51(1), and 56(1) of the Constitution), are evoked only in terms of their number, without a separate explanation of the reasons for which each one has allegedly been violated. Here, again, the constitutional case law (cited above at point 14) applies, which underscores that it is not enough to merely indicate the provisions that should provide the basis for review, in order to evaluate the compatibility of some with regard to the regulatory contents of others, but rather, that it is necessary to provide the reasoning that underlies a negative conclusion concerning this evaluation and to describe the interpretive steps taken for purposes of explaining for purposes of explaining their respective regulatory contents.

In addition, the referring judge does not even allege the violation of the two constitutional provisions that should necessarily be taken into consideration (Articles 94(1) and 70 of the Constitution) where one intends to argue that two "different" electoral laws compromise both the functioning of the parliamentary form of government outlined by the Constitution of the Republic, in which the Government must have the confidence of both Houses, and the exercise of the legislative function, which is collectively granted to the two Houses.

15.2.– Without prejudice to these holdings, this Court cannot avoid observing that the outcome of the voter referendum under Article 138 of the Constitution held on 4 December 2016 confirmed a constitutional structure based on the equal positions and roles of the two elected Houses.

In light of this, while the Constitution does not oblige the legislator to introduce identical electoral systems for the two branches of the Parliament, it does nevertheless require that the systems adopted, in order to not compromise the correct functioning of the parliamentary form of government, and despite their potential differences, must not impede, upon the outcome of elections, the formation of homogeneous parliamentary majorities.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the cases,

1) *declares* Article 1(1)(f) of Law no. 52 of 6 May 2015 (Provisions for the election of the Chamber of Deputies), limited to the worlds "or, if none exists, to the one that wins in a run-off round of voting between the two with the highest number of votes, forbidding any and all forms of coalition between lists or of alliances formed between the two rounds of voting;" Article 1(2) of d.P.R. no. 361 of 30 March 1957 (Approval of the unified text of laws containing rules for the election of the Chamber of Deputies) as replaced by Article 2(1) of Law no. 52 of 2015, limited to the words ", or following a run-off round of voting under Article 83;" and Article 83(5) of d.P.R. no. 361 of 1957, as replaced by Article 2(25) of Law no. 52 of 2015, to be unconstitutional;

2) *declares* Article 85 of d.P.R. no. 361 of 1957, as modified by Article 2(27) of Law no. 52 of 2015, in the part in which it allows deputies elected in more than one multi-member constituencies to declare to the President of the Chamber of Deputies, within eight days from the date of the last proclamation, which multi-member constituency he or she picks, to be unconstitutional;

3) *declares* the questions concerning the constitutionality of Article 1(1)(f) of Law no. 52 of 2015 and Articles 1(2) and 83(1-5) of d.P.R. no. 361 of 1957, as modified and replaced by, respectively, Article 2(1) and (25) of Law no. 52 of 2015, raised by the Ordinary Tribunal of Messina in reference to Articles 1(1-2), 3(1-2), 48(2), 49, 51(1), and 56(1) of the Constitution as well as the third Additional Protocol of the European Convention on Human Rights, signed in Paris on 20 March 1952, and ratified and rendered executive with Law no. 848 of 4 August 1955, with the referral order indicated in the headnote, to be inadmissible;

[omitted]

6) *declares* the questions concerning the constitutionality of Articles 16(1)(b) and 17 of Legislative Decree no. 533 of 20 December 1993 (Unified text of the laws containing rules for the election of the Senate of the Republic), raised by the Ordinary Tribunal of Messina in reference to Articles 1, 3, 48(2), 49, and 51 of the Constitution with the referral order indicated in the headnote to be inadmissible;

7) *declares* the questions concerning the constitutionality of Article 2(35) of Law no. 52 of 2015, raised by the Ordinary Tribunal of Messina in reference to Articles 1, 3, 48(1), 49, 51(1), and 56(1) of the Constitution with the referral order indicated in the headnote to be inadmissible;

8) *declares* the questions concerning the constitutionality of Article 1(1)(f) of Law no. 52 of 2015 and Articles 1 and 83(1)(5-6), (2), (3), and (4) of d.P.R. no. 361 of 1957, as modified by Article 2(1) and (25) of Law no. 52 of 2015, raised by the Ordinary Tribunal of Genoa in reference to Articles 1(2), 3, and 48(2) of the Constitution with the referral order indicated in the headnote to be unfounded;

9) *declares* the questions of constitutionality concerning Article 1(1)(f) of Law no. 52 of 2015 and Article 83(1)(5-6), (2), (3), and (4) of d.P.R. no. 361 of 1957, as replaced by Article 2(25) of Law no. 52 of 2015, raised by the Ordinary Tribunal of Genoa in reference to Articles 1(2), 3, and 48(2) of the Constitution with the referral order indicated in the headnote to be unfounded.

[omitted]

11) *declares* the questions concerning the constitutionality of Article 1(1)(a), (d), and (e) of Law no. 52 of 2015 and Article 83(1)(8) of d.P.R. no. 361 of 1957, as replaced by Article 2(25) of Law no. 52 of 2015, raised by the Ordinary Tribunal of Messina in reference to Article 56(1) and (4) of the Constitution with the referral order indicated in the headnote to be unfounded;

12) declares the questions concerning the constitutionality of Article 1(1)(g) of Law no. 52 of 2015 and Articles 18-*bis*(3), first sentence, 19(1), first sentence, and 84(1) of d.P.R. no. 361 of 1957, as modified or replaced respectively, by Article 2(10)(c), (11), and (26) of Law no. 52 of 2015, raised by the Ordinary Tribunal of Messina in reference to Articles 1(1-2), 2, 48(2), 51(1), and 56(1) and (4) of the Constitution with the referral order indicated in the headnote to be unfounded.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 25 January 2017.