

Riporto di seguito le conclusioni del "Report on Democracy, limitation of mandates and incompatibiliy of political functions", adottato dalla European Commission for democracy through law (Commissione di Venezia) all'esito della sua sessione plenaria del 14 e 15 dicembre 2012 (tratte dal sito www.venice.coe.int). Come nota Marina Castellaneta, lo studio (che passa in rassegna le costituzioni di numerosi Stati e analizza le differenze legislative tra i diversi Paesi, approfondendo il tema delle incompatibilità dovute alla commissione di reati e ai casi di conflitto di interesse per motivi economici), in modo sorprendente, sembra ritenere che l'Italia abbia una legislazione adeguata per evitare situazioni di conflitto di interessi, malgrado, in realtà, nessuno sul piano effettivo se ne sia mai accorto e la percezione sia proprio nel senso opposto. ...

"X. Conclusions

116. Modern democracy can only function with or through the limitations that it has set for itself as being legitimate and reasonable. Of course, the limitation of mandate and the right to (re)-election of the holders of political functions, as well as the issue of political and economic incompatibility, and the issue of non-electoral status are the key principles that "limit" democracy, but at the same time make it possible.

117. The effects of the principles of limitation of mandates and incompatibility of political functions in a given country widely depend not only on their constitutional and legal dimension but mainly on the model of separation of powers in that country. The separation of powers has also been endangered by technocratic powers claimed by governments over parliaments. Government policy is more shaped by practical requirements, lobbying and pressure groups than by electoral considerations.

118. Democracies are not all the same. It is true that some democratic systems foster representation better than others. Certainly, the quality of representation of the citizens' interests in the politics of a given country depends widely on many variables such as: geography, history, tradition, the way in which democracy has come about, political culture, electoral and party system, leadership, civil society, media.

119. Seen through the constitutional prism of most of the Council of Europe member countries, the limitation of the mandate of the president of state is closely linked to the right to only two consecutive mandates. There are countries that deviate from this general rule (e.g. Azerbaijan

with no limitation, Israel with only one mandate). When it comes to the function of members of parliament, however, the situation is very different, since there are in general no constitutional limitations here, not in the Council of Europe states, nor beyond, with regard to the right to (re)election, like there are for the presidential function. This comes as a result of three main factors. The first factor concerns the need for an experienced legislature which has to be in a position to control the executive branch of power; the second one refers to the work of the opposition parties in parliament, and the third one to the increased openness and publicity in the work of the parliaments.

120. When it comes to the incompatibility of functions, the constitutional practice is quite diverse. In most countries with a parliamentary organisation of government, the combination of ministers' and MPs' mandates is not only allowed, but it is supported, with the goal of strengthening the bonds between the legislative and the executive government.

121. Incompatibility is different from ineligibility. While ineligibility is defined as a principle which prevents the holders of certain public or private functions from running at parliamentary elections or elections for other levels of government, incompatibility is a much broader principle and refers to the holders of political functions who are already elected. Unlike ineligibility, incompatibility does not prevent the election of the same person, nor does it influence the legal quality of the election results.

122. Despite the permanent controversy about the nature of representation, there is a general agreement that the representative process is intrinsically linked to elections. Elections are a conditio sine qua non of democracy, but democracy cannot be simply reduced to competitive elections. In reality, elections are more of a “one – way street’ than a “two-way street”: they do not always provide a real opportunity for mutual influence between the government and the voters. The limitation of mandates aims to strength democracy as does the incompatibility principle between different political functions.

123. Democracy and representation have been at the centre of the European public debate for years. The on-going crisis of democracy and representation requires measures to extend and increase the participatory rights of citizens, to establish new participatory and deliberative structures and to strengthen independent supervisory institutions so as to enhance political accountability and responsibility.

124. The Venice Commission is ready to continue studying the issue of limitation of mandates with a view of providing recommendations in this field."