Neither What Italy Needed, Nor What it Deserved

The 2026 Constitutional Referendum and the Rejection of the Nordio Reform

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On 22 and 23 March 2026, the Italian electorate rejected a constitutional reform of the judiciary introduced by the Meloni Government (see, on this Blog, Lobina). This vote, while unlikely to deal a decisive blow to Meloni's government, has already had notable political repercussions – most prominently, the resignations of two key figures within the Ministry of Justice: Undersecretary Andrea Delmastro and Chief of Staff Giusi Bartolozzi. Both were close collaborators of Minister Nordio, the principal architect of the unsuccessful reform. At the same time, the Prime Minister has publicly called for the resignation of Tourism Minister Daniela Santanchè. Although her role is unrelated to the reform, she remains a highly controversial figure due to her ongoing legal challenges, including a pending trial for alleged false accounting. She subsequently resigned following mounting political pressure.

When situating the popular rejection of the reform and its political consequences in the broader Italian political context, and, specifically, in the context of the ongoing erosion of the Rule of Law in Italy, it goes too far to conclude, as some commentators have, that the reform would have pushed Italy in a direction similar to Hungary's. However, the outcome of the referendum indeed does say something about the current state of Italian democracy. While the Italian judicial system faces significant issues, this reform failed to address them. It was neither the solution Italy needed, nor the one the country deserved.

Setting the Scene

The procedural framework for the referendum is anchored in Article 138 of the Italian Constitution, which mandates a popular vote for constitutional amendments under specific conditions. Specifically, if a reform is approved by an absolute majority but fails to secure a two-thirds majority in both Houses, it may be subject to a referendum within three months of its publication upon the request of one-fifth of the members of either chamber, 500,000 electors, or five Regional Councils. Crucially, the amendment remains unpromulgated unless it receives the endorsement of a simple majority of valid votes, as no quorum of participation is required.

Within legal scholarship, the essence of this consultative mechanism remains a subject of rigorous debate. The fundamental question is whether the vote acts as a "confirmatory" validation of the parliamentary will or, conversely, an "oppositional" instrument. The latter interpretation is particularly compelling: it frames the referendum not as a rubber stamp for the government, but as a strategic safeguard allowing political and social minorities to veto a constitutional shift that would otherwise take effect by default.

What exactly was at stake: a brief overview of the failed reform

The reform which was rejected at the ballot boxes had two main aims (for an overview in English see here, here, and here). The first was to formally separate judicial and prosecutorial careers, creating two distinct career tracks. The second was to reform the modalities for the appointment of the members of the Superior Council of the Judiciary (CSM).

As to the first aspect (the separation of the adjudicating and prosecutorial careers), the reform would have definitively overturned the organization of the Italian judiciary, which was traditionally rooted in a "unitary" architecture, where judges and public prosecutors are part of a single, indistinguishable corps. This shared institutional identity begins at the entry

level, through a common competitive examination and a unified training process and is reflected in the existence of a single constitutional body responsible for the judiciary self-government, the CSM. While the system originally drew inspiration from the French Napoleonic model during the Unification of Italy, the two paths diverged sharply in the post-war era. Unlike their French counterparts – who remain formally under the executive aegis of the Ministry of Justice – Italian prosecutors have gradually achieved a constitutional status (pursuant to Article 107) that is functionally equivalent to that of the sitting judiciary, ensuring their independence from political oversight.

Against this background, the reform would have formally separated the judicial and prosecutorial careers, consequently splitting the currently single Superior Council of the Judiciary into two distinct and separate bodies, one for judges, the other for prosecutors. In this regard, it should be noted that already under the current system, there is a separation of functions. Resulting from reforms introduced through ordinary legislation under the Draghi government, while the judicial career is unitary, it is extremely difficult to change the roles. Moreover, magistrates are generally not allowed to switch between adjudication and prosecution, except in very rare, exceptional cases. Such a framework was introduced with the aim of ensuring impartiality by preventing judges from having previously served as prosecutors.

Secondly, the reform would have deeply reformed the appointment system for the two CSMs. Under the reform, members would have been appointed through a lottery system replacing the traditional elections by Parliament and the judiciary: one-third of the members would have been randomly selected (by draw) from a list of law professors and senior lawyers compiled by Parliament. The remaining two-thirds would have been selected by lot from judges or prosecutors. In both cases, the constitutional reform deferred to subsequent legislation, at the same time providing virtually no guidance on how the legislature would have to regulate this radically innovative procedure, leaving many blank spots in very delicate and potentially problematic areas. For example, the reform said nothing about the modalities of the parliamentary deliberation on the list from which to select at random the members of the CSMs, failing to address issues such as the guarantees for involving parliamentary minorities and the length of the list itself.

Now, a formal separation between judicial and prosecuting magistrates' careers is not inherently implausible or constitutionally inconceivable. In fact, the Constitutional Court – most notably in its decision permitting a referendum on the issue (Judgment no. 58/2022) – had already recognized that such a separation could, in principle, be compatible with the existing constitutional order.

However, the reform would have introduced specific mechanisms that generated considerable criticism: these contentious features, together with the political context, largely accounted for the outright rejection of the reform. Chief among these was the creation of a dedicated body – the High Disciplinary Court – tasked with imposing disciplinary measures, whose partial selection by lot appeared, to many commentators, difficult to justify in light of coherent institutional design principles. This constitutional referendum served as a crucial litmus test for a government currently managing another major constitutional overhaul: the so-called *premierato* (the direct election of the Prime Minister). Had the justice reform passed, the government might have accelerated this second reform; however, it is now possible that the *premierato* will drop off the executive's agenda, at least until the 2027 general elections.

Is Italy a democracy in crisis?

In the recently published V-Dem Institute's 2026 Democracy Report, Italy was categorized among the so-called "Autocratizing Countries", a classification influenced in part by the security-focused legislation introduced by the Meloni government. This leads us to consider the claim that Italy may currently be experiencing democratic backsliding. However, we do not believe that Italian democracy is currently more at risk than others – a sentiment that the outcome of the constitutional referendum itself seems to validate. Indeed, the turnout figures provide compelling

evidence of a robust and engaged civil society. The robust voter turnout caught many by surprise, especially when measured against the previous four constitutional consultations. Historically, participation in constitutional referendums in Italy has been inconsistent; for instance, in 2001, turnout dipped significantly to 34,05%. However, the recent trend in Italy – across general, local, European elections, and abrogative referendums – has been one of steadily increasing abstentionism. Consequently, many analysts initially assumed that a lower turnout (projected around 55%) would benefit the "Yes" vote.

This unexpected surge in engagement represents a significant shift following a long period of civic disengagement. Yet, such high participation inevitably framed the referendum as a political litmus test. The final outcome is, in part, a reflection of growing opposition to the Meloni government. While the executive had previously enjoyed a period of notable stability, its late-campaign rhetoric, stressing the alleged "hyper-politicization" of the judiciary, likely galvanized the electorate. Ultimately, the divide between the two camps largely mirrored traditional party affiliations, with only a few significant deviations.

This, of course, does not suggest that Italy is free from issues concerning the administration of justice, as the 2025 Rule of Law Report highlights. On the contrary, there are highly compelling questions arising from reforms introduced or announced by the Meloni government, as well as from the country's long-standing structural challenges, first and foremost the excessive length of judicial proceedings, with civil and commercial cases taking on average six years to resolve. This keeps Italy under enhanced supervision by the Council of Europe's Committee of Ministers.

The Meloni government has introduced or announced several controversial reforms. Decree-law no. 48 of 11 April 2025 was adopted as an emergency measure pursuant to Article 77 of the Constitution. A decree-law is a legislative instrument enacted under conditions of necessity and urgency that must be converted into law by Parliament within 60 days (as occurred in this case thanks to Law no. 80 of 9 June 2025); otherwise, it lapses retroactively (ex tunc). This act, as already noted on this Blog, mandated urgent public security measures, relying heavily on criminal law: new offences, harsher penalties, and expanded police powers in urban spaces and detention centers. Controversial provisions include the offence of possessing material for terrorist purposes, criminalization of online dissemination of violent instructions, stricter anti-squatting rules with immediate eviction powers, and reinforced preventive controls.

Media pluralism is at risk, with concerns over RAI (Italy's public broadcaster)'s independence, stalled defamation reform, restricted access to judicial information, and ongoing threats to and intimidation of journalists, including strategic lawsuits against public participation (SLAPP). Institutional issues include the frequent use of emergency decrees, the absence of a National Human Rights Institution, and potential civil liberties implications of the new security law. According to the 2025 Media Pluralism Monitor, the most problematic area remains the status and protection of journalists. High-profile political figures, including government members, are becoming more involved in initiating both civil and criminal defamation proceedings against journalists.

Precarious working conditions for freelance journalists, rising threats and intimidation and shortcomings in source protection and cases of surveillance underscore ongoing vulnerabilities. Critics claim new restrictions on media coverage of ongoing judicial proceedings, justified as protecting the presumption of innocence, limit access to judicial information. Commentators raise concerns about university autonomy.

A proposed bill provides for the appointment by the Minister of Education of one member of the university board of directors (CDA), which could undermine institutional independence.

The government has granted anti-abortion activists access to counselling centers, subtly intruding into women's private lives without altering the legal right to abortion under Law 194/1978 (see Alber and Malfertheiner). While these measures formally preserve the secular nature of these centers, they facilitate ideological influence aligned with the govern-

ment. Access to abortion services in Italy has become increasingly difficult. The government has opposed progressive social reforms, including marriage equality and gender recognition for LGBTQIA+ individuals, contributing to Italy's low ranking on LGBTQIA+ rights. In October 2024, Law 169/2024 extended its ban on surrogacy, by making it a crime for Italians to access surrogacy abroad (even in countries where surrogacy is legal), further limiting the rights of LGBTQIA+ families and complicating legal recognition of their children.

Thus, overall, the Meloni Government has overseen more subtle regressions in rights, reflecting a gradual weakening of democratic norms.

Conclusion

While Italy has remained untainted by overt "court-packing" strategies, its judiciary has nonetheless faced years of intense scrutiny and hostility. A more alarming trend, however, lies in the erosion of public discourse and the legislative shifts marked by the Meloni government's "security decrees". This legislative climate is further exacerbated by the dehumanizing language often adopted by government officials regarding the migration crisis. Beneath these symptoms lies a systemic failure: a deep-seated crisis of traditional political parties, rooted in a national culture that historically perceives partisan organizations as catalysts for corruption and national division.

Is Italian constitutional democracy truly at a breaking point? The reality suggests a system in poor health – a condition that predates the current executive. While this institutional strain has not yet culminated in an outright democratic backsliding, the appearance of significant structural cracks suggests that the status quo is increasingly fragile.

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