Italy: Court overturns Berlusconi's immunity law

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23 January 2004

On January 13, the Italian constitutional court revoked a law that had granted Prime Minister Silvio Berlusconi immunity from criminal prosecution until the end of his term in office.

The immunity law was drawn up and named after Renato Schifani, the senate fraction chairman of Berlusconi's own party, Forza Italia. The Italian parliament passed the legislation in record time in June 2003. The law provided immunity from prosecution for five top state officials—the prime minister, the state president, the presidents of both parliamentary chambers and the president of the constitutional court. In reality, the immunity law was tailored to protect Berlusconi, who was facing corruption charges in a Milan court for allegedly bribing judges.

The law halted the legal proceedings, averting the highly embarrassing scenario of Berlusconi being convicted and potentially facing a jail sentence just after his having taken over as chair of the Council of the European Union.

The constitutional court ruled that the Schifani law violates the principle of equal treatment for all citizens and therefore is invalid.

The decision brings to a head a conflict that has been brewing for some time between a section of the Italian judiciary and the government. Judges and attorneys involved in the criminal proceedings against Berlusconi and other corruption cases have applauded the constitutional court's decision, while the prime minister's henchmen have resorted to crude defamation of the judiciary.

Forza Italia's lawyer Carlo Taormina proclaimed that the conservative-leaning judges of the constitutional court were "dammed communists," who had rendered a "political judgement." In 2001, Taormina was removed from his post as undersecretary of state after his tirades against the legal profession became increasingly strident.

Gaetano Pecorella, Berlusconi's chief lawyer, who is also a Forza Italia parliamentary deputy and president of the parliamentary judicial commission, commented on the decision in an interview with the French newspaper *Le Monde*. He praised the immunity law because, as he bluntly declared, "the prime minister and other leading state representatives no longer have to submit to judicial decisions during their entire period in office." Now, after the reversal of the law, he regretted that Italy would become an exceptional case in Europe, where "the exercise of a leading institutional responsibility can be interrupted by the decision of a judge."

Senator Paolo Guzzanti (Forza Italia) went even further, claiming: "Immunity is not a parliamentary privilege, but rather a historical guarantor of the popular will of the people."

According to the paper *Corriere della sera*, Berlusconi himself reacted by raising the possibility of new elections. "When things remain as they are, then it is better to turn to the ballot box," he reportedly declared. He proposed that the council of ministers prepare parliamentary elections parallel to planned European elections in June—a proposal that was greeted with incredulity given that Berlusconi's standing in the opinion polls has hit rock bottom. Another alternative under discussion is a speedy change to the constitution. That, however, would require winning votes from the ranks of the opposition.

For his part, the president of the National Association of Judges (ANM), Edmondo Bruti Liberati, praised the constitutional court's ruling. It showed that the Milan judges involved in the court case against Berlusconi, who had been "accused of a rebellion against parliament," were in fact only doing their duty, he said. The Milan state attorney, Armando Spataro, declared: "One of these vengeance laws has been cancelled and now the same thing must happen to the other laws that have turned Italy into a third-world country."

Parallel to the judicial review of the amnesty law, a popular referendum against the law had also been sought. Last year, Senator Antonio Di Pietro gathered a million signatures to this end. After the court decision, he acknowledged that such a referendum was no longer necessary.

At the start of the 1990s, Di Pietro, in his capacity as state attorney, had played a leading role in the *Mani Pulite* (clean hands) anti-corruption campaign that led to the prosecution of hundreds of politicians and business executives. At that time, previously existing amnesty laws covering politicians were struck from the constitution.

Berlusconi and his closest collaborators were involved in dozens of these cases. Amongst the accusations levelled against Berlusconi were tax evasion, bribery of judges, accounting fraud and keeping secret accounts. On three occasions, he was sentenced to a total of six years in jail. In each case, however, the sentence was not implemented—either because the statute of limitations had elapsed or because of a change in the law.

In the spring of 2003, Berlusconi's lawyer and confidante Cesare Previti was sentenced to 11 years in jail on the charge of bribing judges. He was found guilty of bribing investigatory judges in Rome in the early nineties in order to facilitate a takeover of the Mondadori publishing house by Berlusconi's company, Fininvest.

A few weeks later, Previti, a former defence minister, was once again found guilty of bribery and sentenced to five years in jail—this time in a court case where Berlusconi himself was a defendant. The Rome judge who had accepted the bribes, Renato Squillante, was sentenced to eight years and four months. This time the bribery was part of a deal for the takeover of the food concern SME. The court concluded that in 1991 Squillante accepted $434,000 from Fininvest

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and in return annulled the sale of the state-owned SME to Berlusconi's rival, De Benedetti, allowing Berlusconi to buy the concern.

Previti, who is appealing his convictions, has worked with Berlusconi from the early days. His grandfather was a business executive in Berlusconi's first construction company in Milan. His son is a member of Forza Italia. In the judgement against Previti, the Milan judges accused Berlusconi's Fininvest company of being guilty of corruption "without parallel in Italian history and perhaps in the whole world."

Berlusconi confronts other serious problems besides the threatened reopening of the SME trials.

In December, Italian state president Carlo Azeglio Ciampi refused to sign a new media law that had been pushed through parliament by the government majority. He sent the so-called Gasparri law back to parliament because it violated existing anti-trust laws and benefited in an entirely one-sided manner the Berlusconi companies—Fininvest and Mediaset.

The media law was originally designed to resolve the conflict of interest arising from the fact that Berlusconi was head of government and at the same time Italy's biggest media mogul. The legislation was ultimately crafted as a means not only to confirm Berlusconi's monopoly of Italian private television, but also to allow him to expand his control through the acquisition of a newspaper empire—something previously barred by law.

Investigations have also been going on since the start of the year into the case of the Parmalat company—the largest corporate bankruptcy fraud in Italian history. The family concern headed by the food magnate Calisto Tanzi had developed over a short period of time into a global player with revenues in the billions. At the same time, the company acquired massive debts that it covered up through the crudest forms of accounting fraud.

As a result, a conflict has emerged between the Italian state bank and the government over how to reform controls over the financial markets. Any effective control and investigation of the financial practices of big companies would have to target Berlusconi himself, who is known to have built up his own Fininvest company with dubious methods similar to those employed by Parmalat.

Berlusconi is the richest man in Italy: his Fininvest empire includes Mediaset, the country's biggest TV, film and media concern, as well as construction, insurance and food companies, and retail store chains. There is substantial evidence suggesting that Berlusconi entered politics as a means of solving the economic and judicial problems confronting his network of companies. At the beginning of the 1990s, he was around 1.3 billion euros in debt and faced a host of court cases. At the same time, his existing political protection was threatened by the *Mani Pulite* campaign. His entry into politics enabled him to alter completely the judicial and economic framework for himself and other members of the Italian financial elite.

Since taking office, he has worked systematically to change the laws governing corporate corruption. As a result, for example, cooking the books is no longer recognised as a serious crime and the statute of limitations for white-collar crime was severely cut. In addition, the law governing international judicial cooperation was altered to restrict the use of cross-border evidence. The transparent aim of this change was to block an investigation into allegations that Berlusconi and his business associates used a $20 million slush fund illegally deposited in secret Swiss accounts to bribe judges. Many of the legal changes made to benefit Berlusconi were subsequently exploited by the head of Parmalat.

Additional changes to the law enable defendants to demand a change of venue on the grounds that judges are biased. This allows the accused to shift cases to more sympathetic judges and to tie up proceedings almost indefinitely. Finally, the inheritance tax was abolished; laws against money laundering eased; and existing regulations barring members of parliament from holding substantial commercial interests lifted.

Berlusconi was able to push through these changes because of the political impotence of the opposition. During its own five years in power, the Olive-Tree alliance had discredited itself with a series of measures directed against working people and had nothing to offer in the way of a political alternative to Berlusconi.

Nevertheless, there has been no let-up in the series of popular protests against the government's policies. There were further strikes and boycott campaigns in local and national public transport in December and January. A 24-hour railway strike took place on December 13, and bus drivers undertook spontaneous strike action in Milan. The strike was supported by the rank-and-file Cobas trade unions—resulting in numerous legal actions being taken against strikers.

As a result of this pressure from below, considerable divisions have emerged inside the government alliance of Forza Italia, the neo-fascist National Alliance (lead by Gianfranco Fini), the separatist Northern League (lead by Umberto Bossi) and a wing of the Christian Democrats. Just a few days ago, Bossi openly threatened to leave the coalition if there was no progress toward the decentralisation of the Italian government—a measure favoured by the Northern League, which seeks increasing independence for the rich northern province of the country. On a host of issues—the recent Parmalat scandal, the law governing the media, the privatisation of the main Italian air company Alitalia, and pension reform plans—Berlusconi can no longer fully rely upon his right-wing coalition partners.

Berlusconi, however, is not one to give up without a fight. He still has the backing of powerful Italian and European capitalist concerns. As the British *Financial Times* commented on January 14: "It raises the question of whether the ruling four-party coalition, often divided over important policies, can summon the willpower to fight back, or whether the accumulating problems will bury the premiership on which Mr Berlusconi set out with such high hopes in the summer of 2001."

And the Swiss *Berner Zeitung* wrote: "After the judgement by the constitutional court must Berlusconi even contemplate going to prison? No, the duel between the judiciary and the head of government has not been put to a stop by the withdrawal of immunity, instead it merely ushers in a new even more bitter round in this struggle for power."

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