

## Justice in Italy today by Salvini

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*Mariarosaria Guglielmi is currently deputy prosecutor in Roma (Italy) and general secretary of Magistratura Democratica. She is the vice president of "MEDEL", Magistrats européens pour la Démocratie (European Judges for Democracy).*

The elections on March 2018 brought a radical change in the Italian political scenario, opening a new - extremely complex - phase in the life of our democracy. We have now a government which openly labels itself as “populist”, with the prime Minister, a professor of private law without any previous political profile, declaring to be the “lawyer of the people”.

The two Deputy Prime Ministers, who are respectively the political leaders of the Lega and of the Five Star Movement, were able to make a major political gain linking themselves to the two different forms of radical thinking that dominated the March elections: one obsessed by an oversimplified idea of national sovereignty, exploiting fears and angers, and feeding xenophobia, and the other based on a vague egalitarian manifesto where the only stable thing seems the loud reject of traditional politics.

This new multifaceted radical thinking is altogether the expression of a broader project of “genetic mutation” aimed at the reversal of the allegedly old tools of our representative democracy, and at their replacement with the illusions and tricks of direct democracy. Italy therefore followed with no hesitation the growing European and global political trend, where the European construction, the values that were insofar leading our community, and any continuity with our historical roots are rejected *en bloc*.

In both language and content, the new radical thinking risks to bring us out of the previously shared field of values on which democracy was based, undermining our feeling to be part of a community where solidarity and equality of rights are part of a common heritage.

This background easily explains how Italy is going adrift along racist and xenophobic lines focusing on immigration issues.

The Minister of Interior (and Deputy Prime Minister) Mr. Salvini has decided to close Italy’s borders for good and to keep strengthening Libya’s coast guard, providing it with technical and financial support, and banning NGOs from the activity of rescue at sea.

With the closure of ports and the ban on NGOs Italy witnessed an unprecedented violation of legal and moral obligations traditionally taken for granted in our legal system. The closure of Italian ports

and the almost daily statements of the Minister of Interior against migrants built altogether a picture where fundamental rights matter increasingly less. Together with the constant emphasizing of the alleged risks for Italian society deriving from migrants, all this builds a frightening political perspective. The well-known *Diciotti* case represented a serious suspension of constitutional guarantees and an infringement of key rule of law principles, starting from the *habeas corpus*. The migrants rescued at sea by a ship of the Italian Coast Guard were deprived of their freedom by the executive power - by forcing them to remain on board - in the absence of any legal basis, and without access to a judge for a time superior to that foreseen by the Italian constitution. An investigation was launched against the Minister of Interior, but prosecution was halted by a vote of the Italian senate, where the position of the representatives of the Five Stars group was based on the results of an online consultation among supporters.

The immigration and hard policing policy advanced by our Minister of Interior has been built on increasingly harsher legislative initiatives under the “security” label, with two decrees in sequence named “security decrees”. The two decrees practically cancelled the protection granted to asylum applicants on humanitarian grounds, reduced the powers of the judge, and created thus the preconditions not only to throw into illegality a huge number of persons with humanitarian protection status but to eventually terminate a system based on inclusion. The decrees moreover reintroduced a criminalization of begging, harsher sentences for illegal acts during political protests, and financial sanctions against NGOs operating rescue at sea.

All this while the Minister of Interior raised the level of the conflict against the judiciary, that - he claims - is pursuing political priorities in the investigation opened against him for the *Diciotti* case, and in a case concerning a fraud against the state for which some members of his party were sentenced, and the court accordingly decided to seize assets for an amount equivalent to the revenues of the fraud.

The policy of the government in the field of criminal justice adds a further line of friction, with a number of reforms of criminal procedure strongly opposed by the bar, introducing harsher punishments and a weakening of due process standards.

The recent scenario of our country is therefore increasingly worrying, and the same signs of a step back in democracy similar to that intervened elsewhere are evident: the attacks on the freedom of the press and to the European institutions, the reject of solidarity and of the primacy of rights.

After his success in the European elections (the Lega is now the largest party), Salvini is increasing his attacks against the judiciary. His mantra is: “choices are up to politicians; if judges want to make different choices they must run for an election to a post in Parliament.” We reached here a full delegitimation of the judicial function: any decision, initiative or investigation that is not welcome by the government is branded as a political act, aiming at subverting the results of the election, and the popular will. Increasingly often our general Association of judges and prosecutors (all our different

associations are members of the umbrella association ANM) is forced to release statements to reject the attacks against the judiciary as a whole or individual judges or prosecutors.

As Medel highlighted in the last statement, one of the recent attacks concerned the judges which are seconded to the specialized sections dealing with asylum and migration matters, alleging that they are unbalanced in favour of migrants and, once these judges made an interpretation in line with the Constitution of certain new provisions of the recent migration reform adopted by Salvini, he said that they should apply the law without any interpretation efforts. One of the effects of these judgments was to recognize some rights to migrants, such as the registration of asylum seekers in the population registry of the municipalities (that is a precondition for the access to a whole range of benefits), something that in the opinion of the government should have been denied following the legislative amendments. After the attack on individual judges, Salvini announced that he will collect data on the participation of judges to conferences or publications considered to be in favour of migrants, alleging that they should refrain from deciding due to their bias against his reforms.

The attack to the judiciary could take a systemic and structural feature in a very short time, since the government is likely to exploit the crisis following the criminal and disciplinary proceedings that are involving some members and former members of the High Council of the Judiciary, who are accused of negotiating the appointments to key prosecutor positions with politicians (who are not among those sitting as lay members of the Council), including one who was actually indicted for a crime by the same prosecution office for which the new chief prosecutor has to be appointed.

This situation has greatly weakened our High Council, deeply upsetting the citizens as well as the magistrates.

According to recent statements of the minister of justice, the government by the end of the year will introduce a reform of the election system of the High Council, where election will be combined with a random selection system, together with the introduction of a harsher disciplinary sanction system for mistakes by judges and other changes in the field of criminal procedure.

This context could easily give new strength to other proposals that never obtained in the past sufficient political support, like one that aims at modifying the Constitution, with the “separation of the careers” of judges from that of prosecutors (now they both belong to the judiciary and are merged in the same system of guarantees), with separate High Councils with a different composition, and with an equal number of lay members and members coming from the judiciary, while now two thirds of the members are judges or prosecutors elected by their colleagues, and only one third are lay members, jointly elected by the houses of the Parliament.

The proposal of constitutional reform is also aiming at introducing a measure of discretion in the decision whether to prosecute or not a crime: a further specific trait of the Italian model derives indeed from the Constitutional provision stating that the Prosecutor has the formal obligation to prosecute

crimes. This implies that the choice whether to start a criminal investigation cannot be based on political criteria or specific directives coming from government or parliament: the *mandatory system* remains entirely within the jurisdiction and must be carried out according to the criteria established by law.

In our system this is considered as an outcome of the equality principle (art. 3 Cost: “all citizens are equal before the law”), and of the described principles of prosecutorial autonomy.

All these elements together are likely to bring to the disappearance of the specific feature of the Italian system represented by the autonomy and independence of the prosecution service, and particularly by its independence from political pressure, with a constitutional framework that removes the public prosecutor from the area of influence of the executive power and reflects the vision of the judiciary *as a single entity* encompassing both judges and prosecutors.

The combination of pressure on judges, submission of prosecution to the government and a system of values rooted in xenophobia, reject of pluralism and intolerance against diversity and freedom of expression could represent a real U-turn in what we believed to be the development of a solid rule of law tradition.

Mariarosaria Guglielmi  
General Secretary of Magistratura Democratica