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An Italian Judicial Overhaul?
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to the Judiciary Face a
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March 10, 2026



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A high-stakes government-sponsored constitutional revision

Italy will hold its fifth constitutional referendum under the 1948 Constitution on 22–23 March 2026. Voters will be asked whether they approve or reject a proposal to amend several constitutional provisions concerning the judiciary. The reform has proved highly controversial, **raising concerns** that it could undermine judicial independence in Italy, in ways comparable to developments observed in other countries, such as Poland, Israel, and Mexico. The referendum has been called because the constitutional reform did not obtain the required two-thirds majority in Parliament. **Under Article 138 of the Constitution**, when a constitutional bill is approved by an absolute majority in both Chambers but fails to secure a two-thirds majority, a constitutional referendum may be requested by one-fifth of the members of either Chamber, five Regional Councils, or 500,000 voters.

The **current proposal** originates from the government, an aspect that has been repeatedly criticized on previous occasions by **scholars**, who argue that constitutional revisions should be consensual and originate in parliament. In this case, the governmental origin of the proposal is even more pronounced than previous revisions, as it **forms part of the governing coalition’s political platform**. Its distinctive feature, however, is unprecedented in Italian constitutional history: during the four parliamentary readings required under Article 138, **the text was not amended in any respect**. Consequently, the version submitted to the electorate – by the ruling majority itself, as the referendum was requested by

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several groups of members of parliament, including the ruling majority, and **only later by 500,000 voters** – is exactly the one introduced by the government, signed by Prime Minister Meloni and Minister of Justice Nordio.

The first constitutional revision affecting the judiciary

For the first time, the proposed constitutional revision directly concerns the institutional architecture of judicial guarantees, and in particular the judiciary itself. Previous revisions submitted to referendum targeted broader dimensions of the political decision-making process: comprehensive institutional restructurings affecting Parliament, the Government, and the Regions in **2006** and **2016**, both rejected by voters; an extensive revision of regionalism in **2001** and the reduction in the number of Members of Parliament in **2020**, both approved in referendums.

The Italian judiciary is widely **regarded as one of the most independent** in the world. This is largely due to a constitutional framework that provides for a Judicial Council composed of two-thirds of members elected by magistrates themselves; for a public prosecution service fully integrated within the judiciary; and for the principle of mandatory criminal prosecution.

Over the decades since the establishment of the Republic, the Italian judiciary has progressively developed a **heightened sensitivity to constitutional values**, in **a continuous and close dialogue** with the Constitutional Court, the European Court of Human Rights and the Court of Justice of the European Union. This trajectory has periodically generated tensions with political power, which have been amplified by the fragility of the political decision-making system, especially since the early 1990s and the collapse of the so-called **“First Republic,”** following the **“Mani Pulite”** (Clean Hands) corruption investigations. This conflict intensified under the governments led by **Berlusconi** and has become even more pronounced under the right-wing coalition headed by **Meloni**.

Political intolerance toward judicial action has developed in parallel with **structural weaknesses within the judicial system itself**. The organisation of judicial services falls under the responsibility of the Minister of Justice, and the system has long struggled with

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excessive caseloads, staff shortages, and significant delays in proceedings. These problems are further compounded in criminal justice by the [transition toward an adversarial model](#), which began in the late 1980s, in a context of persistently [high litigation rates](#). However, public trust in the judicial system – although it has declined from the heights it reached in the 1990s – remains [higher than trust in political institutions](#) and [above the European average](#), and it [has increased](#) in recent years.

The content of the revisions: the so-called “separation of careers”, the modification of the composition of the Judicial Council, and the introduction of the High Disciplinary Court

This is where the proposed amendment to a series of articles contained in Title IV of Part II of the Constitution comes in. [It revolves around two principal axes](#). First, it introduces the so-called “[separation of careers](#)” between judges and public prosecutors (Article 102). Currently, Italy maintains a single judicial career, although, [after a 2022 legislative reform](#), magistrates may transfer between adjudicative and prosecutorial functions once during their professional life. [Only fewer than 1% of serving magistrates have switched career paths](#). This system is presented by the government as incompatible with the principles of impartiality and justice, and with the “equality of arms” in criminal proceedings, related to the “[adversarial](#)” [model of criminal process](#) introduced in Italy after 1989.

Secondly, the proposed revision aims to profoundly reshape the composition and functions of the Superior Council of the Judiciary (Consiglio Superiore della Magistratura, hereinafter CSM). The Italian Constituent Assembly, in a decision almost unprecedented at the time (except for the almost contemporaneous French Constitution of 1946), [entrusted the autonomy and independence of the judiciary to a special body](#), the CSM. Later, the Italian CSM became [a model for the establishment of judicial councils](#) during the constitutional transitions in Greece, Portugal, and Spain, and, after 1989, in many countries of [Central and Eastern Europe](#).

Although the term “[judicial council](#)” has come to serve as a general label for independent institutions designed to protect judicial independence, it encompasses a wide range of bodies that [differ](#)

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significantly in nature, particularly in terms of their composition and powers. The Italian CSM is both a self-governing body, reflecting the internal pluralism within the judiciary, and a body representing the pluralism of society.

Under the current Article 104, two-thirds of the CSM members are magistrates elected by their peers, and one-third are lay members elected by Parliament in joint session from among university professors of law and lawyers with at least fifteen years of practice. The President of the Court of Cassation and the Prosecutor General at the Court of Cassation are ex officio members. The President of the Republic presides over it. Article 105 assigns to the CSM highly sensitive powers, previously exercised by the government, including recruitment, assignments, transfers, promotions, and disciplinary measures concerning magistrates.

The revision provides for the creation of two separate councils: one for the judges, one for the prosecutors. Each council would be chaired by the President of the Republic and would include one ex officio member (respectively, the President of the Court of Cassation and the Prosecutor General at the same court). Two-thirds of the members of each council would be selected by lot from among judges (approximately 8,000) and public prosecutors (approximately 2,000), respectively. The remaining one-third – the lay members – would also be chosen by lot, but from a list compiled by Parliament within the first six months of the legislature through elections among full professors and lawyers with at least fifteen years of professional experience.

The revision further envisages the institution of a new “High Disciplinary Court,” a wholly novel body in which judges and prosecutors would sit together. It would be composed of fifteen members: three appointed by the President of the Republic from among full professors and lawyers with at least twenty years of practice; three selected by lot from a list drawn up by Parliament in joint session through elections; six judges and three prosecutors, chosen by lot from among magistrates with at least twenty years of service who are or have been members of the Court of Cassation. The decision taken by this body may be appealed only before the High Disciplinary Court itself, sitting in a different composition and excluding those who participated in the initial ruling.

Les biais linguistiques (notamment anglophones) : un angle mort de la recherche en droit constitutionnel comparé

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The misleading narrative of the referendum campaign

Although narrower in scope than the reforms proposed in 2006 and 2016, the present revision once again reveals the structural difficulties of the Italian constitutional amendment process. The provisions amended are relatively limited in number, yet they address heterogeneous and unrelated issues. Voters are thus compelled to cast a single “yes” or “no” vote on a composite set of changes.

This complexity is reflected in the referendum campaign, which has developed along parallel and often disconnected lines, with no room for dialogue between supporters of the “yes” and “no” votes beyond the inevitable political polarisation that accompanies any government-sponsored constitutional reform.

Supporters – which, beyond the government coalition parties, are mainly lawyers’ associations, particularly **criminal lawyers** – primarily emphasize the separation of careers, presenting it as a procedural guarantee in criminal proceedings. To them, the separation of careers is the necessary completion of the “adversarial” criminal trial, and the 1999 constitutional amendment that introduced fair trial guarantees into Article 111. They argue that splitting the CSM is a logical consequence of separating careers and that altering its composition by introducing the lottery to select judicial members would curb the influence of internal factions, reducing corporatism and thereby strengthening the internal independence of magistrates. More broadly, they contend that the reform would enhance accountability and reduce the alleged influence of prosecutors over judges.

Critics – which, beyond opposition parties, include **the National Association of Magistrates**, to which approximately 96% of Italian magistrates belong, the **majority of constitutional scholars**, and civil society organizations – argue that the separation of careers does not require a constitutional amendment. The Constitutional Court, in judgments no. 37/2000 and 58/2022, admitted abrogative referendums aimed at achieving that objective, recognising in this way that **the matter falls within legislative discretion**. The Constitution neither mandates nor prohibits such separation, including in Article 111, **often invoked without a textual basis**.

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Disguised behind the separation of careers, critics argue, is **the dangerous** “denaturing” (literally: change in nature) of the CSM. **This is the core of the revision.** The proposed Article 104 introduces, for the nomination of members of a constitutional body, a principle **foreign to constitutionalism**: the drawing of lots. This solution was **firstly proposed** for the selection of judicial members of CSM in 1971 by Giorgio Almirante, the then leader of an extreme right-wing post-fascist party, **MSI**. Furthermore, the selection procedures for elected members result in an unbalanced composition, weakening the judicial component while strengthening the political one. Indeed, the lottery system is asymmetrical. While it establishes a lottery for judicial members, for lay members, the lottery is filtered through parliamentary election procedures, although this is not specified in the constitutional text. Therefore, on one hand, the proposal fully abolishes the election of judicial members by their peers, putting an end to the self-government of the judiciary. On the other hand, as no qualified majority is required for the election of the group of lay members among whom the lottery will be applied, there is a concrete risk that **selection could occur by a simple majority**.

But that’s not all. The disciplinary function (one method for undermining the judiciary in countries with democratic backsliding, such as **Poland**) is being removed from the CSM and entrusted to a completely new body, the “High Disciplinary Court.” This Court would be a “special” judge, whose judicial members are chosen by lot and where the weight of politics increases, while that of the judiciary decreases, compared to the current situation (in which the disciplinary power is entrusted to a **disciplinary section of the CSM**). In addition, the argument put forward to justify the revision – namely, that the actual disciplinary system does not function because judges protect one another – appears to be unsupported by evidence, **based on the data** concerning the disciplinary decisions of the CSM.

Some scholars have warned that the combined effect of separating careers and dividing the CSM could generate what has been termed a “**heterogenesis of ends**”: isolating public prosecutors from the culture of jurisdiction, giving rise to a sort of “**Prokuratura**,” completely devoid of accountability, and destined, in the long or

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short term, to inevitably fall under the purview of the Minister of Justice, who at least bears some political responsibility.

The slippery slope of the rule of law in Italy

With the proposed revision, Italy joins a growing number of countries where judicial independence is under attack. Certain patterns are common. For instance, “arguments from failure,” based on real problems often existing in judicial systems, are used to push through reforms that actually aim to limit judicial independence. Failure can serve as a cheap justification for curbing the judiciary’s autonomy by ruling political majorities. These arguments may point to pathologies such as judges’ corruption, as in Mexico; interpretative activism, as in Israel; or judicial corporatism, as in Italy.

“Reforms” of judicial councils have been identified in comparative experience – most notably in Poland – as a central instrument of democratic backsliding. The importance of judicial councils for maintaining an independent judiciary is also evident from the case of Spain, in which a politicized General Council of the Judiciary is considered to undermine the independence of the judiciary itself. For this reason, European institutions that defend democracy, starting with the Venice Commission, have placed judicial independence and the composition of judicial councils at the center of their concerns. The principle that, in countries with judicial councils, at least half of the members must be “judges elected by their peers” is an integral part of the rule of law, both according to the soft law of the Council of Europe and the case law of the Strasbourg Court.

To better understand the Italian context, it should also be noted that the constitutional revision submitted to the 22–23 March 2026 referendum is part of the government’s strategy of institutional changes, which also includes the direct election of the prime minister and the enhancement of asymmetric regional autonomy. Moreover, it reflects significant instances of disengagement from the fundamental values enshrined in the Italian Constitution, such as the abandonment of the principle of solidarity in immigration policy, the adoption of security measures aimed at restricting the right to protest, Italy’s participation (as observer) in Trump’s Board of Peace,

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and the proposal to [limit the primacy of international and European law](#) presented in the previous legislature by Ms. Meloni.

As often occurs in cases of [democratic backsliding](#), the process begins with changes that, at first glance, seem minor and non-disruptive, and then proceed incrementally. Very often, [it starts](#) by targeting the “[weakest of the three departments of power](#),” the judiciary, which has minimal influence in the decision-making process driving the revision. In conclusion, this constitutional amendment goes far beyond what its supporters present as a procedural innovation on fair trial: in constitutional terms, if approved, [it could represent a critical turning point](#) in the [ongoing erosion](#) of the rule of law in Italy.

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Suggested Citation: Tania Groppi, ‘An Italian Judicial Overhaul? Key Constitutional Revisions to the Judiciary Face a Constitutional Referendum’ IACL-AIDC Blog (10 March 2026) [An Italian Judicial Overhaul? Key Constitutional Revisions to the Judiciary Face a Crucial Referendum — IACL-IADC Blog](#)

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