



<b>Title</b>	Direct democracy in Italy
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<b>Publication date</b>	2004
<b>Publication information</b>	Erne, Roland. "Direct Democracy in Italy." Carolina Academic Press, 2004.
<b>Publisher</b>	Carolina Academic Press
<b>Item record/more information</b>	<a href="http://hdl.handle.net/10197/3887">http://hdl.handle.net/10197/3887</a>
<b>Publisher's statement</b>	This is a different version than the final published work.

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# Direct Democracy in Italy

by Roland Erne

with comments by Bruno Kaufmann

Italy has, after Switzerland and Liechtenstein, the most extensive I&R experience in Europe\*. After the delayed legal implementation of the citizen-initiated "abrogative referendum" in 1970, the Italian people were frequently called to the ballot box. Several of these referendums have played a significant role in the democratization of Italian society and party politics. However, the particular Italian I&R procedures and the almost complete monopoly which Prime Minister and media magnate Silvio Berlusconi has over TV channels raise some doubts about the quality of Italian I&R practice.

\* Some country statistics are at the end of this paper.

## Types of Initiative and Referendum

In the 1990s, the functioning of the Italian political system changed considerably. The center-right Christian Democratic Party, which had governed the country without interruption since 1946, and most of its smaller coalition partners collapsed as prosecutors discovered the involvement of several leading politicians in a dense web of political corruption.

Subsequently, several abrogative referendums led to a new electoral system based on majoritarian representation, which compelled the Italian political classes to organize themselves into two new major political alliances: the conservative "house of freedom," led by the media magnate Silvio Berlusconi, and the "olive tree" alliance, a coalition of socialists, centre-left Christian democrats, liberals, Greens, and Italian communists. The "olive tree" coalition governed the country from 1996 to 2001, but Silvio Berlusconi became Prime Minister in May 2001. Berlusconi's victorious coalition includes his own "political club," *Forza Italia*; the *National Alliance*, a party with political roots in fascism; the *Northern League*, a xenophobic regional party of Northern Italy; and two small centre-right Christian democratic parties.

## I. National/Federal Level

On June 2, 1946, the Italian people voted in an ad-hoc institutional referendum, which was initiated by the anti-fascist provisional government, against monarchy and in favor of a new Italian republic. Subsequently, the constituent assembly approved a new Constitution that includes two types of national referendums and two articles on regional referendums.

Moreover, in 1989, the Italian Parliament adopted an ad-hoc "constitutional law" (a constitutional amendment that is not formally incorporated in the body of the Constitution) in order to enable an ad-hoc referendum on a European Constitution-making mandate for the European Parliament.

Finally, Italian legal dictionaries also mention the "trade union referendum" as a noteworthy feature of Italian I&R practice.

**a. The "abrogative referendum" (*referendum abrogativo*) to repeal a law (or parts of it) at the national level**

Article 75 of the Italian Constitution states that a popular referendum shall be held to decide on the total or partial repeal of a law or of an act having force of law whenever it is requested by 500,000 voters or by five regional councils.

This means that only 1% of the electorate is able to initiate a popular vote about the complete or partial abrogation of a particular law.

The electorate does not only play a negative role, because it can change the meaning of a law by repealing some of its articles. This use of the "abrogative referendum" compensates for the lack of a law proposing popular initiatives,

but only partially, since issues that are not already covered by existing laws cannot be made the subject of a popular vote.

Some matters are constitutionally excluded from the scope of abrogative referendums, namely tax or budget laws, amnesties or pardons, or laws authorizing the ratification of international treaties.

Finally, the result of an Italian "abrogative referendum" is valid only if it fulfils the following participation quorum: to be legally binding, a particular proposition must receive not only a majority of the valid votes cast, but a majority of those eligible to vote (i.e. more than 50% of the total electorate).

Law No. 352 of May 25, 1970 practically implements Article 75 of the Constitution. It states that the 500,000 signatures can be collected freely on the streets and must be gathered within a period of 90 days before September 30 each year. Moreover, it regulates the procedure of judicial review and defines the rather marginal roles of the Italian executives (president and government) and the parliament in the referendum process.

The constitutional court reviews the legal conformity of the abrogative referendum before the actual vote takes place. Since the procedural provisions concerning Law No. 352 are open to conflicting interpretations, the constitutional court has acquired wide discretionary powers in this matter.

Finally, Law No. 352 indicates that abrogative referendums must normally take place on a Sunday between April 15 and June 15 in the year following the collection of signatures.

Despite its constitutional recognition, the first abrogative referendum took place many years after the adoption of the Constitution in 1948. Parliament did not transform the constitutional principle into practice until the adoption of Law

No. 352 of May 25, 1970, since the governing political parties never displayed any great interest in enabling the "abrogative referendum." This is hardly surprising, since this instrument might counterbalance and limit the power of the government.

In 1969/70 this situation accidentally changed, when the major governmental party, the Christian democrats, made a deal with its coalition partners whereby they would support the adoption of Law No. 352 in exchange for Christian democrat support for a law that allowed civic divorce.

Whereas enabling civic divorce was a high priority of the secular coalition partners, most Christian democrats were, in principle, against the legalization of divorce, but at the same time feared that a veto could alienate their coalition partners. Given this dilemma, many Christian democrats mistakenly hoped that the introduction of the "abrogative referendum" would eventually enable the abrogation of the civic divorce law without risking the ruling coalition.

However, its attempted abrogation failed when almost 60% of the votes backed civic divorce in the first Italian abrogative referendum on May 12, 1974. Hence, the introduction of the citizen-initiated "abrogative referendum" is not merely a result of a democratization of Italian society in the late 1960s, but the unintended consequence of an instrumental miscalculation of the major governmental party.

### **b. The "constitutional referendum" (*referendum costituzionale or referendum*) over a constitutional amendment which has been passed but not yet implemented**

Article 138 of the Constitution states that a constitutional amendment must be approved by an absolute majority of both chambers of parliament and submitted to a popular vote when, within three months of their publication, a request is made by one fifth of the members of either chamber, by 500,000 electors, or by five regional councils. A law thus submitted to vote may not be promulgated unless approved by a majority of the valid votes cast. The result of the vote is legally binding regardless of the turnout, in contrast to the vote on "abrogative referendums." However, no vote will be held if the amendment has been approved by both chambers, with a two-thirds majority in each.

The first constitutional referendum took place on October 7, 2001, when more than one fifth of the Italian parliament had called for a constitutional referendum on the spring 2001 "federalism reform" of the "Olive tree" majority. This constitutional amendment was endorsed by referendum (64.2% "yes" votes), despite its low turnout of 35.8%.

Given the commitment of the current Berlusconi government to fundamental modification of the Italian constitution, in particular of its federal structure and functioning and Italy's judicial system, it is likely that additional "constitutional referendums" will take place in the near future.

### **c. The 1989 ad-hoc Referendum on a European Constitution**

Article 71 of the Italian Constitution states that the legislative initiative belongs not only to the Government and to each Member of Parliament, but also to 50,000 voters. Generally such "popular law initiatives" are not successful, because parliament is not obliged to put them either on its own agenda or to a popular vote. In one case, however, such an initiative was very successful. In June 1988, the Italian section of the European federalist movement sent a proposition with 114,000 signatures to the Italian Parliament. The proposition called for a

referendum on conferring a mandate on the European Parliament to create a European Constitution. In November 1989 the two chambers of Parliament backed this proposition by means of an ad-hoc constitutional amendment. The referendum took place in parallel with the European elections on June 18, 1989, and attained a high turnout (81%) and an 88% yesvote.

#### **d. The Labour Union's Referendum (*referendum sindacale*)**

In Italy, political decision-making does not only take place in Parliament. In contrast to the Anglo-Saxon liberal-democratic tradition of "territorial democracy," economic and social policy can also be made through collective bargaining and "social pacts" between the trade unions, the employers' organizations, and the government. Therefore, it is helpful to refer also to the I&R procedures in this arena of so-called "functional democracy."

On May 20, 1970, the Italian Parliament adopted Law No. 300, the so-called "workers statute," whose Article 21 introduced the "trade union referendum." According to this provision, the unions can initiate referendums on "trade union questions" involving the workforce of a single enterprise, an economic sector, or even the whole national economy.

After an initially negligible use of the instrument, this expression of direct democracy gained importance in 1988, when the three Italian metalworkers' unions began to jointly submit their bargaining agendas and demands to a workers' referendum. In 1995, the three Italian trade union confederations even initiated a national inter-professional "trade union referendum" in which Italian workers approved an essential pension of the Dini-government.

Conversely, in autumn 2001, a trade union referendum over a national wage agreement in the metal industry was successfully barred by the two smaller, centrist unions—the Catholic CISL and the secular UIL—even though the largest, left-wing CGIL union had collected 350,000 signatures of metal industry employees (approximately 50% of the whole constituency) in favor of it. This situation reflects the failure of Italian labour law to regulate the right of Initiative for the "trade union referendum" in cases where the three representative unions disagree among themselves.

## **II. Regional and Local Levels**

### **a. The Regional Referendum (*referendum regionale*)**

Article 123 of the Italian Constitution states that every region shall have a statute which determines its form of government and the fundamental principles of its organization and function, in accordance with the Constitution. This statute shall also regulate the exercise of "consultative" or "abrogative referendums" on regional laws and regional administrative decisions, and the publication of regional laws and regulations.

Despite these constitutional provisions, the regional referendum still does not have practical significance. It is likely that this will change because of the increased competence and importance that the Italian regions gained with the adoption of the 2001 federalism reform.

### **b. The Territorial Referendum on Regional Boundaries (*referendum territoriale*)**

Article 132 of the Italian Constitution states that existing regions may be merged or new regions created, provided that the population of any new region is at least one million, the

change is requested by municipal Councils which represent at least one third of the population involved, and the proposal has been approved by the majority of the involved population in a referendum.

By means of a referendum, provinces and municipalities that request it may also be detached from one region and attached to another. Territorial boundaries have never been a political issue in modern Italy.

### **c. Local I&R (*instruments and requirements*)**

"Consultative referendums" can take place at a local level, according to the national "Bassanini" Law No. 142 on local government (June 8, 1990). However, the municipalities and provinces are not obliged to introduce the referendum into their local statutes. Moreover, the results of these popular consultations are not legally binding.

Similar provisions already existed in the Kingdom of Italy in 1903, but the increasing introduction of "consultative referendums" in many local statutes is a recent development.

The specific requirements governing local referendums differ considerably from place to place. In most municipalities, the mayor, a qualified or simple majority of the municipal council, or a qualified minority of the municipal council can initiate a "consultative referendum." However, in many municipalities, including Rome, Turin, Florence, and Genoa, popular consultations can also be initiated by a number of citizens; the number of required signatures varies.

In contrast to national I&R practice, citizens can not only abrogate but also propose bylaws. However, the instrument of local consultative referendums is not yet frequently used.

### **III. Trends**

Despite its institutional roots in party politics, the abrogative referendum became in the late 1970's an important tool of political forces that were closer to civil society than to the political system, such as civil liberty, women's, and environmental groups. Later, the major opposition parties also made increasing use of the abrogative referendum.

At the beginning of the 1990s, two referendums about the electoral system (1991 and 1993) played an important role in the transformation of Italy's "blocked democracy" into a new bipolar party system. Today, the abrogative referendum is an established institution in Italy.

Nevertheless, some of its limitations have also become visible. In 1995, Italians had to vote on 12 initiatives on the same day, which made a proper public debate about each subject impossible. Moreover, three of the 12 abrogative referendums were aimed at breaking up Berlusconi's almost complete private monopoly of TV channels in order to guarantee fair political and economic competition. These attempts were not successful, probably due precisely to Berlusconi's use of his private TV-channel monopoly: his TV commentators persistently "informed" the public that no good movies or TV shows could be broadcast any longer if the Italian people accepted the anti-trust propositions of the 1995 referendum.

Since the 2001 elections, the conflict of interest between Berlusconi's private role as media magnate and richest man in Italy and his public role as politician has become even more

evident. Fair political competition seems to be very much in danger, because he now also controls the public broadcasting system in addition to his own private media empire. Silvio Berlusconi has also used his immense political, media and economic power to gain control of the judicial system and to stop, in summer 2003, a "corruption" trial against himself by Italian attorneys and prosecutors. This could lead to a constitutional referendum in the near future that would put fundamental legal and democratic principles to a decisive test.

The turnout threshold of 50% is also a problem, at least from the point of view of a deliberative democracy. Since approximately 20% of the Italian electorate never votes, the opponents of an abrogative referendum can win even if they represent a minority of politically active citizens.

In 1990, the opponents of an anti-hunting proposition successfully used a boycott of the vote and of the prior public debate in place of a "no" campaign. Subsequently, boycotting the ballot has become a frequent strategy. This has led to the paradoxical result that referendums which secured more than 90% "yes" votes were rejected because they narrowly missed the 50% turnout threshold. Of 53 countrywide referendums, 18 have failed because they failed to meet the threshold requirements. The consequence has been a decline in political discussion favoring the use of the referendum process.

Finally, the manipulation of laws by abrogating particular articles has often led not only to a change in their meanings ? as desired by the initiators of the respective referendum ? but also to awkward laws that have made it necessary for parliament to subsequently revise them. The revisions, in turn, have caused heated discussion and disappointments, because parliamentarians have frequently interpreted the results of a popular consultation in a different way from its initiators.

Because of these weaknesses in the abrogative referendum, the idea of introducing the right of popular Initiative (*referendum propositivo*) has gained some exposure in constitutional debates, without becoming a major political issue so far.

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## **Constitutional Requirements for Legislation**

### **Section II Amendments to the Constitution. Constitutional Laws**

#### **Article 138 [Procedure for Constitutional Amendment]**

(1) Amendments to the Constitution and other constitutional acts shall be adopted by each of the two Chambers twice with an interval of not less than three months between the votes, and shall be approved by a majority of the members of each Chamber in the second voting.

(2) Such laws shall be submitted to popular referendum when, within three months of their publication, a request is made by one fifth of the members of either Chamber or by 500,000 electors or by five regional Councils. The law submitted to referendum shall not be promulgated unless approved by a majority of valid votes.

(3) No referendum may be held if the law has been approved by each Chamber, in the second vote, with a majority of two thirds of its members.

### **Article 139 [Limit to Constitutional Amendments]**

The Republican form of the State may not be changed by constitutional amendments.

#### ITALY

- Population: 57,646,000
- Area: 301,336 km<sup>2</sup>
- Capital: Rome (Roma)
- Official languages: Italian (90%), German, French, Slovenian.
- Religion: Roman Catholic (90%)
- Political System: Republic (referendum 2/6/1946), federal structure with 20 autonomous regions.
- Constitution: January 1, 1948 (without referendum)
- Membership: EU, NATO
- GNP/capita: \$24,670
- Human Development Rank: 21
- I&R Practice: 54 nationwide referendums (since 1929)

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