

Berlusconi at the Crossroads, Italy on Edge

Judith Harris (September 12, 2013)



Silvio Berlusconi's problems continue to overshadow the other problems the country faces, from unemployment to its monster debt and taxes which industrialists say are crippling. This week a Senate commission began debate over whether or not the former Premier is to be stripped of his senatorial status on grounds of his tax fraud conviction in August. An anti-Berlusconi vote by the commission could bring down the government, as Berlusconi's Freedom party (PdL) has threatened, but with passing days the threat of imminent new elections recedes.

ROME - What is stunning, some here say, is the extent to which former Premier Silvio Berlusconi's problems continue to overshadow the other problems the country faces, from unemployment to education, a monster public debt, taxation that industrialists here call crippling, and a semi-



functional bureaucracy. But such is the case, particularly this week when a Senate commission began discussion of whether or not he is to be stripped of his senatorial status on grounds of his conviction in August of tax fraud on the grand scale.

An anti-Berlusconi vote by the commission could bring down the government, as Berlusconi's Freedom party (PdL) has threatened, but with passing days the threat of imminent new elections recedes. Many in that party had promoted early elections, six months after the last national general elections, on grounds that Berlusconi remains the single most popular politician in Italy.

The commission vote is the result of Berlusconi's conviction August 1 by the Cassations court, Italy's highest, which sentenced him to four years in prison. Berlusconi will not have to spend those four years in prison, but, on the basis of the Severino Law Decree, which was passed by Berlusconi's own Freedom Party (PdL) in 2012, parliamentarians are prohibited from serving if convicted of a serious crime. On Monday therefore his case went before the Senate committee charged with determining whether or not he is to be stripped of his senatorial status on the basis of that law.

The committee has not rushed into a vote, and no one can be sure exactly when it will, or how it will vote, but the majority of committee members are tendentially to the left of the PdL. If the Senate votes against Berlusconi, the question passes for a vote by the Senate as a whole.

Here is the legal background: with the aid of British corporate lawyer and international tax expert David Mills, the real costs of media products which Berlusconi's company, Mediaset, purchased abroad in the 1990s were inflated through the creation of overseas shell companies. This did not escape official notice, and in February 2009 an Italian Appeals Court convicted Mills of having accepted a bribe from Berlusconi and for having given false evidence in Berlusconi's favor in corruption trials in 1997 and 1998. The sentence was appealed, sending the Mills case to Italy's highest court, the Cassations. But time had passed, and the statute of limitations had expired so the Mills conviction was voided. In Senator Berlusconi's case, the statute of limitations did not expire--hence his conviction.

To avoid the embarrassment of this vote, should it go against Berlusconi, pundits and, reportedly, family members and his financial advisors are advising Berlusconi to avoid this brutal confrontation by resigning beforehand, but so far to no avail. "He has never lost a battle," one of his friends explained. "Psychologically he cannot face failure." The risk is, therefore, that, unless some outside force intervenes on Berlusconi's behalf, his vendetta could be to bring down the government headed by his own party's coalition partner, Premier Enrico Letta's Partito Democratico (PD). If this happens, Berlusconi is betting that the Italian voter will place no blame on him for creating electoral havoc at a time of a deep economic crisis that is now causing a cash scarcity in the banks as homeowners default on mortgages.

Until now his (and his team of lawyers') strategy has been just that: a bet, excogitated by endless days of nervous meetings in Rome and at Berlusconi's home at Arcora near Milan. The latest ploy of the top guns among the 80-some lawyers in his employ was to initiate an appeal to the European Court of Human Rights at Strasbourg, France. This attempt to gain time, which may well be in the interest of the broader Italian community, has a shortcoming: from Strasbourg comes the news that it would take months before they may decide to consider his case--that is, possibly well after he is ousted from his senate seat.

Other arguments the Berlusconi legal team has advanced similarly run into a logical counter-argument that contributes to the uncertainty. His lawyers argue, for example, that the tax dodge events (and not the alleged tax dodging, according to the Cassations court sentence) took place before passage in 2012 of the Severino Decree. By that reasoning the statute of limitations has run out. In fact, however, the Severino decree does not refer to illicit activities of the 1990s, but to the time of his conviction August 1, 2013. Berlusconi's legal team also claims that the Severino Decree was unconstitutional, but it was passed by Parliament, including with the PdL votes.

Another argument advanced by Berlusconi's legal eagles is that he has the right to defend himself. True--but in the course of three trials over ten years, he was amply defended. The Senate commission convened for Monday, moreover, is not a trial.



Finally, there has been muttering about a possible retrial, but, again, in a decade of three trials, that appears as unlikely as the prospect of new evidence being produced. Even should a new trial be ordered, jurists here say, under Italian law it would not block execution of the existing sentence at any rate.

Given the legal subtleties, perhaps the cartoonist Ellekappa (in real life the brilliant Laura Pellegrini) has it right when she depicts an old lady saying to her friend: "Only a crazy crook could decide to bring down the government." The reply: "Yeah, that's why everyone is so worried." Nevertheless, a few here are not worried for the immediate future. They are convinced that President Giorgio Napolitano is unlikely to convoke new elections--and only he has the right to do so--until and unless there is a revised election law and a pending budget bill is passed. This would put new elections at an earliest in February 2014. With luck, it is already late for elections to be called for November

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