

Kuwait Times
THE LEADING INDEPENDENT
DAILY IN THE ARABIAN GULF
ESTABLISHED 1961

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Focus

HEADSTRONG RENZI STRUGGLES TO FIND POLITICAL TOUCH

Matteo Renzi is struggling to regain the political initiative after a disastrous spell during which he lost his job as prime minister and his party fractured. His approval ratings are in slow decline, his attempts to reassert control over the ruling Democratic Party (PD) are flailing and his efforts to control the coalition government from outside parliament have foundered. Unless he manages to revive his fortunes quickly, he will surely lose national elections expected in early 2018, and possibly open the door for groups that are hostile to the single euro currency and likely to spook financial markets.

Italy has the highest outstanding sovereign debt in the European Union and investors fear a populist-led government in Rome could yet lead to the breakup of the euro zone. "Renzi keeps on saying that everything is going well, but it clearly isn't," said parliamentarian Giuseppe Civati, a one-time friend of the centre-left leader who walked out of the PD two years ago in disaccord over policy priorities. "He seems disconnected from reality. He is getting into fights with everyone and turning people off," he told Reuters.

Civati was one of many people criticised in Renzi's new book called "Avanti" (Forward), which was published this month and was meant to focus on future plans, but instead set off fierce rows over his reading of recent history. While rallying to Renzi's side, party chiefs are exasperated by constant public feuding as they fear it is exasperating voters worn down by years of economic underperformance, stagnant wages, high unemployment and falling living standards. "Something isn't working and we have six months to sort it out. All these controversies will be reduced to zero. We will adopt an institutional, upright attitude," said lawmaker Matteo Richetti, who is head of communications for the PD. One PD source, who declined to be named, said that to help calm frayed tempers, the 42-year-old Renzi would adopt a very low profile in August and only return to television screens in the middle of September.

Fragmentation

The general election must be held by May, with February or March seen as the most likely. An electoral milestone will come in November, however, via a ballot in Sicily which could see the anti-system 5-Star Movement chalk up its first regional victory. "This vote will have a major impact and set the tone for the subsequent general election," Richetti said. Unfortunately for Renzi, Sicily, blighted by a jobless rate of some 22 percent, has little love for him. More than 70 percent of islanders voted against him in a December referendum, his worst showing in the country besides Sardinia.

The PD won more than 40 percent of the vote across Italy in European elections in 2014 shortly after Renzi took office in an internal party coup, but it has been downhill ever since. He was forced to resign as prime minister in December after losing the referendum on his plans to streamline parliament. Two months later, a group of senior PD members broke away, saying the party had shifted too far to the centre.

Although Renzi comfortably won a party leadership contest in May, the PD fared badly in June's local elections, and a poll on Sunday for Corriere della Sera newspaper put the PD on 26.9 percent, behind 5-Star on 27.6 percent. The survey also showed a trio of loosely allied rightist parties, including Silvio Berlusconi's Forza Italia, taking some 35 percent of the combined vote. None of these scores would be enough to let any group govern alone under the terms of a new electoral law, which Renzi has tried but failed to change. The system restores proportional representation (PR) to Italy and looks certain to produce highly fragmented legislatures in both the upper and lower chambers.

This means the PD could still be at the heart of the next government even if it comes second at the ballot box, but this will depend on Renzi's ability to forge coalition alliances. The return to PR will give smaller parties greater negotiating power, which helps to explain the schisms and fomentation rattling Italian politics. "This electoral law is to blame for a lot of the agitation we are seeing," European Affairs Minister Sandro Gozi told Reuters. "People are looking where best to position themselves for votes and that is causing tensions."

Manifesto

The breakaway PD dissidents see gains to be made following the path of Britain's Jeremy Corbyn, a diehard socialist who galvanised the youth vote in Britain's June election. Renzi is drawn instead to the recipe that helped centrist Emmanuel Macron win this year's French presidential election. "Don't forget, Corbyn lost. He is a nice guy, but he lost. This is not the model we want to follow," said Gozi, a close Renzi supporter. "Macron's success shows you can bring together different ideas and win... this is what Renzi wants." — AFP

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WOULD TRUMP SELF-PARDON END RUSSIA PROBES?

By Alison Frankel

The Washington Post reported Thursday that President Donald Trump is talking to advisers about issuing pardons to aides, family members and even himself in order to undermine Special Counsel Robert Mueller's widening Russia investigation. Trump outside counsel John Dowd told my Reuters colleague Karen Freifeld that the Post's "stuff on pardons is nonsense," Dowd said. "It's just a smear job on the president. It's not true."

That said, the Post story raises a couple of interesting questions. Can a US president pardon himself prospectively? And if constitutional law allows a prospective self-pardon, what are the implications for ongoing investigations of the president's conduct? Mueller is investigating possible collusion between the Trump campaign and Russia during the 2016 presidential election. Moscow has denied interference in the US election, and President Trump has said his campaign did not collude.

The US Constitution does not specifically prohibit presidents from pardoning themselves before they're formally accused of wrongdoing (a person need not be charged to be pardoned). So if President Trump, who has not been implicated in wrongdoing, were to decide to grant himself a pass from any prospective prosecution, he would not be violating the letter of the Constitution. But he would be stretching the bounds of presidential power as they've never been tested before - and, more importantly, legal experts told me, Trump probably would not be able to halt Justice Department and congressional investigations simply by pardoning himself and any allies known to be under scrutiny.

In fact, attempting to use pardons to obviate the special counsel investigation could backfire, said Walter Dellinger, who wrote about prospective presidential pardons as a top official in the Clinton Justice Department in 1995. Pardons themselves might raise questions about obstructing justice, Dellinger said. Prospective pardons would also remove Fifth Amendment obstacles to congressional testimony from those who received them, since you can't assert a right against self-incrimination if you aren't facing criminal consequences. No court in the US has ever had to decide whether a president has the authority to pardon himself because no president has ever done so.

The Nixon Memo

Before Trump, the only previous president known to have contemplated a pardon for himself was Richard Nixon as he faced possible obstruction of justice charges from the Watergate special prosecutor. Nixon asked his Justice Department whether a self-pardon was legal. Justice lawyers issued a memo opinion in 1974 advising that it was not. The DOJ memo said that under the age-old legal maxim that no one can be the judge of his own case, even the president of the United States cannot pardon himself.

The 1974 Justice Department memo is the first, last and only official word on a US president's power to pardon himself, according to Michigan State law professor Brian Kalt, who has been thinking and writing about presidential self-pardons since he was a Yale Law student in the 1990s. The issue has simply never come before a US court, even tangentially.

In fact, the mere discussion of the legality of presidential self-pardons leads to a rabbit hole of unanswered hypotheticals, such as whether a sitting president can be indicted or prosecuted, said law professor Sanford Levinson of the University of Texas. It's not clear, Levinson said, whether a special counsel could go to court to challenge a presidential self-pardon if the special counsel can't prosecute the president while he's in office. "It's just a conundrum," Levinson said. Kalt, who has become a mini-celebrity since the Trump self-pardon news broke, told me that in the vacuum of precedent, both proponents and opponents of self-pardons have legitimate arguments. He said he believes the stronger argument is against the legality of presidents pardoning themselves. According to Kalt, the primary argument that presidents can pardon themselves is that the Constitution doesn't say they can't.

But three factors, he said, weigh against legality: The traditional meaning of the word pardon, which implies one person giving and another receiving; the legal principle against serving as one's own judge, as cited in the Nixon memo; and the text of the US Constitution. Here's why. Article II of the Constitution authorizes the president to "grant reprieves and pardons for offences against the United States, except in cases of impeachment".

That language, Kalt said, gives presidents immense power. We've seen presidents, for instance, issue pardons

to people who haven't been charged with any crime, most famously when President Gerald Ford pardoned Richard Nixon before Nixon was charged with obstructing justice. Presidents can also pardon people whose identities are unknown, as when President Jimmy Carter granted amnesty to all Vietnam draft evaders.

But the words of the Constitution do not give the president unlimited pardon powers. Kalt looked back to James Madison's notes from the 1787 Constitutional Convention and found that the framers discussed whether treason ought to be excluded from the president's pardon powers in case the president were a traitor. The drafters, according to Kalt, concluded that if the president were a traitor, "he can be impeached and prosecuted" under the language they adopted. Outside of that context, Kalt said in a May 2017 Foreign Policy analysis, self-pardons "never came up, which is a very telling omission in a discussion about criminal presidents abusing the pardon power," he wrote. "It apparently went without saying - literally - that self-pardons are not possible."

'Unbearable' Pressure

Constitutional language brings me to my second point. The pardons clause, as you probably noticed, explicitly says that presidents cannot grant pardons from "cases of impeachment". That clause, said former Clinton Justice official Dellinger, could give special counsel Mueller a mandate to continue investigating the Trump campaign even if the president were legally entitled prospectively to pardon himself and everyone else under Mueller's scrutiny for possible violations of federal criminal laws.

Dellinger drew an analogy to Whitewater independent counsel Kenneth Starr, who did not charge President Bill Clinton with crimes but prepared a report that served as the basis for articles of impeachment against the president. "The pardon clause expressly does not apply to impeachment," Dellinger said. "That's the same reason Starr kept going." (I can imagine the Trump team countering Dellinger's point with the argument that grand juries are convened to investigate crimes, not politics, and if the president has prospectively pardoned every potential target, the grand jury must be dismissed.) — Reuters

RISE AND FALL OF THAILAND'S TOP TRAFFICKER

An army 'Big Shot' whose influence seeped across the south, Lieutenant-General Manas Kongpan sat at the apex of Thailand's grisly trade in humans, raking in an untold fortune to keep prying eyes off the trafficking route. As the number of desperate Rohingya and Bangladeshis shuttled through the trafficking operation shot up, so did Manas' rank in the Thai military. But the silver-haired general was condemned to 27 years in prison on Wednesday for profiting from the trade, an extraordinarily rare conviction of a senior member of an army that dominates the kingdom.

The 61-year-old's downfall was hastened in 2015 after investigators uncovered secret jungle prisons in the south where traffickers starved and tortured migrants while holding them for ransom. The discovery exposed Thailand's horrifying role in a criminal operation that shifted victims from Myanmar to Malaysia, and forced the ruling junta to launch a belated crackdown.

Police followed a money trail that lead straight to Manas, an army hardliner with a passion for bullfighting. "He was involved in such an obvious way...at a time when the junta was really trying to show themselves to be clean," said Paul Chambers, an expert on Thailand's military. "He is going down because he was at the wrong place at the wrong time."

Money trail

Manas was first highlighted as a suspect in early 2015 after 98 famished Rohingya were found in trucks in Nakhon Si Thammarat, stopped by a random police checkpoint. Provincial police - aided by anti-trafficking NGO Freeland - used the drivers' cell phones to trace their regular route. The trail carved through Thailand's southern neck from coastal Ranong, where boatloads of migrants arrived from Myanmar, to malaria-infested camps near the Malaysian border, where they were held in appalling conditions.

Phone and e-banking records from the drivers led to key trafficker Sunan Saengthong, a Ranong politician and businessman who had deposited nearly \$600,000 in accounts belonging to Manas. In May 2015 police found more bank slips revealing that Sunan's nephew had also transferred huge sums to Manas, including some \$400,000 in just over a month. Sunan was jailed for 35 years in a sep-

arate trial but his nephew Nattaphat Saengthong and others remain at large.

Around the time of the money transfers, Manas served as a top commander of Thailand's southern security arm. His job was to enforce its controversial "push-back" policy - which meant turning around boats of stateless Rohingya who were trying to flee persecution in Myanmar. But he used this position to do just the opposite, according to last

week's verdict, which exposed a matrix of collusion between state officials and businessmen who profited from trafficking.

Witnesses said Manas instructed officers to force back a boat of 265 Rohingya in 2012 - only to covertly re-route the ship to shore and truck the human cargo south to the jungle prisons. Manas "had direct responsibility in the push-back mission and must have been part of this human trafficking network, otherwise the Rohingya would not have been able to return to Thailand so quickly," the verdict read.

Southern 'Big Shot'

The trafficking operation flourished until the 2015 crackdown, with tens of thousands of victims funnelled through a trade worth an estimated \$250 million dollars. Many were lured from the Myanmar-Bangladesh border by brokers who promised jobs, while others were violently kidnapped and forced onto the boats. The big money was made in Thailand, where jungle camp wardens phoned relatives of the weakest migrants and threatened to kill them if they didn't send more cash.

The young and strong were sold off as labor to Malaysian palm oil plantations or fishing boats, according to Freeland. All the while, Manas' seemingly inexorable rise up the army ranks continued, with his command stretching over increasingly large chunks of the south. Months before his arrest in 2015, he was promoted to Lt-General and given the sweeping role of "military advisor".

It wasn't the first time the hawkish officer had hurdled controversy. He was linked to a 2004 raid on a mosque that left more than 30 Muslim rebels dead in Thailand's far south, one of the early sparks of an insurgency still burning today. "He had a reputation for often going beyond the law," said Chambers, adding that he was known as a "big shot" in the region.

Manas was the only military man convicted in last week's trafficking trial, which saw more than 60 people sent to jail. Rights groups welcomed the verdict but warned that many perpetrators remain at large. "We know not everyone has been accounted for in this trial," said Amy Smith from Fortify Rights, which closely tracked the investigation. "More needs to be done to account for the horrific crimes that took place... and to ensure this never happens again." — AFP



General Manas Kongpan