

LIBERTIES RULE OF LAW REPORT 2022

ITALY



Italian Coalition
for Civil Liberties and Rights



CIVIL
LIBERTIES
UNION FOR
EUROPE

Foreword

This country report is part of the Liberties Rule of Law Report 2022, which is the third annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and to gather public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2022 Report was drafted by Liberties and its member and partner organisations and covers the situation in 2021. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2022 Report includes 17 country reports that follow a common structure mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Thirty-two member and partner organisations across the EU contributed to the compilation of these country reports.

Building on the country findings, the 2022 Report offers an overview of general trends on the rule of law in the EU and compiles a series of recommendations to national and EU policy makers, which suggest concrete actions the EU institutions and national governments need to take to address identified shortcomings.

[Download the full Liberties Rule of Law Report 2022 here](#)

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Italy

About the authors

This report has been coordinated and authored by Antigone Association and Italian Coalition for Civil Liberties and Rights (CILD). This submission represents a compilation of a wide array of material and expertise from the aforementioned organisations in their areas of concern.



Antigone is an Italian NGO founded in 1991, which deals with human rights protection in the penal and penitentiary system. Antigone carries out cultural work on public opinion through campaigns, education, media, publications and the academic journal “Antigone”. The NGO conducts many studies and research on penal and penitentiary issues, and it cooperates in writing normative texts on relevant topics. Antigone is committed to monitoring prisons. Its Observatory on Italian prisons for adults and minors involves around 100 people and has been active since 1998, when Antigone received from the Ministry of Justice special authorizations to visit prisons with the same power that the law gives to parliamentarians. Every year, Antigone’s Observatory publishes a Report on the Italian penitentiary system. Antigone’s prison Ombudsman collects

complaints from prisons and deals with dozens of individual cases per week. Antigone’s lawyers and physicians also operate in some Italian prisons through legal clinics in some cases, established in cooperation with universities. Antigone also carries out investigations about ill-treatments and is at times formally involved in the related trials.



Founded in 2014, the Italian Coalition for Civil Liberties and Rights (CILD) is a network of civil society organizations that protect and expand the rights and liberties of all, through a combination of advocacy, public education and legal action.

Key concerns

In the area of justice, the Next GenerationEu is a driving factor for the improvement of the justice system. Comprehensive reforms of civil and penal justice have been delegated from the Parliament to the Government, who is expected to shortly elaborate on the implementing decrees that will concretise the proposed reforms. The decrees are expected to make concrete progress in limiting case backlog and the length of proceedings, enhancing digitalisation and reducing prison sentencing. Despite some positive efforts to improve the

penitentiary system, prison overcrowding remains a serious concern.

As regards the anti-corruption framework a number of positive developments in this area took place in 2021, but the proposed legislative changes needed to strengthen the anti-corruption framework in Italy are not yet in force, thus no actual improvement can be noted so far.

In 2021 threats, attacks and intimidation targeting journalists reporting on protests and demonstrations organised by anti-vaccine and anti-lockdown groups posed one of the biggest concerns for media freedom in Italy. These attacks, perpetrated by the public but also law enforcement officials, reflect a worrying growing anti-press sentiment of some segments of Italian society. In some parts of the country journalists are especially at risk of extra-legal reprisals by organised crime groups, while courts issue some problematic decisions threatening the already weak protection of the confidentiality of journalistic sources. Lawsuits and prosecutions against journalists, including those based on defamation provisions, also remain common and can entail serious financial costs for defendants. The long-standing issue of criminalization of defamation has not been solved to date, despite a new ruling by the Constitutional Court. In 2021 journalists also faced disproportionate obstructions during court reporting due to the Covid-19 pandemic. As regards the overall media environment, concentration of ownership remains a major concern and transparency of media ownership is particularly low in the online environment. Interference in and pressures on

public service media are mainly related to the politically-motivated nomination of members of governing bodies, as shown by choices made in 2021 by government and parliament for the renovation of RAI board members. The COVID-19 pandemic reportedly exacerbated some of the historical weaknesses of the Italian media sector, contributing to the decline of overall revenues, a fall in newspaper readership, and the lowering of the editorial standards adopted in news reporting (further exacerbated by the wide dissemination of manipulated online content). Access to media for women scored as being a high risk, with none of the leading news media companies in Italy having a female editor-in-chief.






In response to the continued spreading of the COVID-19 virus the Italian government prolonged the state of emergency until 31 March 2022. In response to concerns raised by legal experts over the legality of restrictions adopted in 2020 through Presidential decrees, under the current regime emergency-related measures are mostly introduced through decree-laws. Draft laws to establish a National Human Rights Institution are being examined.

Failure to properly address systemic human rights issues also negatively impacts the national rule of law environment, in particular regarding hate crime and hate speech, violence against women and homophobic and transphobic attacks – where no progress was made on proposals to strengthen the legal framework. Italy's record of implementation of judgments of the European Court of Human Rights remains poor, with no progress made to implement leading decisions in important




areas such as police ill-treatment, violence against women and justice. Pushbacks of migrants at sea also remain a serious concern.

While relevant authorities have organised conferences and high-level meetings on the rule of law in 2021, all those initiatives did not foresee the participation of civil society or stakeholders other than members of parliament and other institutional stakeholders. A lack of resources stands in the way of activities to foster a rule of law culture by civil society organisations, despite an interest in promoting such initiatives.

State of play

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
- N/A Enabling framework for civil society
-  Systemic human rights issues

Legend (versus 2020)

- Regression: 
- No progress: 
- Progress: 

Justice system

Key recommendations

- The Government, in the execution of the delegation to reform criminal justice, should give more space to community sanctions that aim towards the reintegration of the inmate into society, marginalizing home detention (an alternative to detention that does not prescribe the creation of an individualized plan for the inmate) to the last resort
- The Legislator should reform the regime of semi-liberty to eliminate the incarceration component of the penal sanction
- The Ministry of Justice - Department of Juvenile Justice and Community measures - should increase the number of staff employed in the Offices for the execution of non-custodial sanctions in view of a wider use of community sanctions instead of detention

Fairness and efficiency of the justice system

In the area of justice, the Next GenerationEu is certainly a driving factor for the improvement of the justice system. The most recent

developments concern the reforms of civil and penal justice. In both cases, the Parliament has delegated to the Government, through a delegating law, the responsibility to elaborate the decrees in such a manner that will fulfil the requirements of the delegating law.

In particular, civil justice will be reformed by delegating law n. 206 of 26 November 2021¹ titled, “Delegation to the Government for the efficiency of the civil process and for the revision of the discipline of the alternative settlement of disputes and urgent measures for the rationalization of the civil proceedings regarding the rights of individuals and families as well as regarding forced execution” (*“Delega al Governo per l’efficienza del processo civile e per la revisione della disciplina degli strumenti di risoluzione alternativa delle controversie e misure urgenti di razionalizzazione dei procedimenti in materia di diritti delle persone e delle famiglie nonché in materia di esecuzione forzata”*). One of the aims of the reform is to tackle the longstanding issue of the length of civil proceedings and the simplification or abolition of some less useful mechanisms. Notably, hearings carried out in writing (i.e. when the hearing takes place with parties submitting written memoirs instead of in-person) and remote hearings (i.e. hearings taking place online) are intended to become the rule instead of the exception.

Also, penal justice will be reformed by delegating law n. 134 of 27 September 2021² titled, “Delegation to the Government for

the efficiency of the criminal trial as well as on restorative justice and provisions for the speedy definition of judicial proceedings” (*“Delega al Governo per l’efficienza del processo penale nonché in materia di giustizia riparativa e disposizioni per la celere definizione dei procedimenti giudiziari”*). The reforms primarily seek to reduce the speed of the criminal trial and increase the efficiency of the system.

Length of proceedings

In the reform of the criminal trial there are several modifications that aim to reduce the length of criminal proceedings, accelerate their resolution, and reduce the number of pending cases.

The primary modifications are aimed at shortening the duration of proceedings, including the shortening of the time limit for preliminary investigations, the introduction of a form of judicial control on the public prosecutor in case of inactivity after being notified of the crime, and a better organisation of the debarment phase to reduce its length.

Included amongst the proposed modifications to reduce the number of cases is the dismissal of the case where the judge finds elements “that don’t reasonably allow to foresee a guilty verdict”, a further reduction of the penalty if the accused chooses the abbreviated trial and does not file an appeal against the outcome of

1 <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2021-11-26;206>

2 <https://www.gazzettaufficiale.it/eli/id/2021/10/04/21G00146/sg>

the decision, and the widening of the possibility to use parole.

One critical aspect of the proposed reform is the idea to introduce criteria to identify crimes that should be given priority by prosecutors' offices. This has been included with the aim of shortening the length of proceedings. Although emphasis is put on the objectivity and transparency of such criteria, this could contrast with the principle of equality of criminal offenses and the principle that makes it obligatory to initiate the criminal proceeding by the public prosecutor. Finally, this could be an interference in the separation of powers.

Other proposed modifications concern the impossibility to proceed with the offence upon reaching the time limit for the reasonable duration of proceedings in the case of first instance appeal (two years), and second instance appeal at the Court of Cassation (one year). This means that when these time limitations are reached, the case is dismissed. In the case of crimes punished with a life sentence or if the accused wishes for the trial to continue, this does not apply. In the case of particularly grave crimes, the judge can extend these time limitations.

Digitalisation

The digitization of the criminal trial is also part of the delegating law for the reform of criminal trials. The digitization process will concern the submission of documents and acts and official notifications, that now are not submitted digitally. Another aspect of the digitalization will concern the modality of documentation of the

interrogation of a suspect, and the possibility to participate in hearings remotely.

Criminal justice and alternatives to detention

From the point of view of the execution of criminal sentences, the reform of the criminal trial is expected to widen the access to alternatives to detention and community measures.

In particular, the reform will abolish the regime of semi-detention and of controlled liberty (which were very residual in the criminal justice system in numerical terms), and widen the access to semi-liberty, home detention, social work and fines in substitution of the deprivation of liberty in prison. This represents a positive development leading towards the overcoming of the prison sentence as the main punishment for a crime; however, more could be done. While access to these alternatives to detention has been widened, they still represent an alternative to detention instead of being elevated to self-standing punishments; this means that the judge still must give a prison sentence and only afterwards can the sentence be substituted by one of these alternatives. Finally, widening access to semi-liberty has been preferred instead of widening access to probation.

Furthermore, another important provision of the reform is the right to be forgotten that will be in line with the EU data protection legislation in cases of dismissal of the case, acquittal, and verdict of innocence.

Penitentiary system

The recent creation of the Committee for the innovation of the penitentiary system³ is another important development. The Committee was created by the Ministry of Justice in September 2021, with the aim of proposing solutions to improve the quality of life in the execution of criminal sentences through normative or administrative changes both for the penitentiary administration and the administration of juvenile and community justice. The Committee has written a report with their proposals that include normative changes to the Penitentiary Law, in addition to interventions on the Regulation that gives Execution to the Law as well as administrative changes.

The main focus of the Committee has been on the following aspects: the management of order and security (e.g. searches, transfer as a disciplinary measure, the regulation of the use of force), a wider use of technology (e.g. strengthening the use of technological means to favour relationships of detainees with their family members, introducing technological means for detainees to file requests to the administration instead of filing paper requests), health (e.g. digitalising the personal health information of the detainee, strengthening access to mental health services and health care for detained people), work and vocational training (e.g. changes in the organisation of detainees' work, greater involvement of regional, local authorities and the territory), protection of rights (e.g.

revision of complaint mechanisms to make them more effective), training of personnel (e.g. strengthening and updating the training of professionals that work in prisons especially regarding the management of critical and delicate situations).

Prison overcrowding

The Italian prison system is ruled by the penitentiary law issued in 1975 (L. 354/1975), which has since then been modified many times, and the penitentiary regulation, which is dated 2000 (D.P.R. 230/2000). According to the Ministry of Justice, as of 31 December 2021, there are 54,134 detainees for 50,835 available places in 189 prisons. The prison population rate is 106.5% according to the Ministry of Justice, but this number does take into account the number of places that are unavailable (e.g. because of maintenance work) and that can amount to several thousands.

In 2021 Antigone's Observatory on detention conditions visited 99 prisons for adults, more than half of those present in Italy. The visits showed that in one third of the institutions visited, there were cells where inmates had less than 3 square meters per detainee, thus below the limit for which detention is considered inhuman and degrading. But square meters are not the only cause for concern. In 40% of the prisons monitored there were cells without hot water and 54% without showers, as is required by prison regulations in force since 2000. In 15 prisons there was no heating and in 5

3 https://www.giustizia.it/giustizia/it/mg_1_36_0.page?contentId=COS360093&previousPage=mg_1_36

prisons the toilet was not in a separate room from where people sleep and live. Another important issue is that 34% of the institutes do not have green areas for family visits in the summer months.

There are also some problems in terms of staffing. Only 44% of the prisons had a director in charge solely of that institution, and only 21% of the institutions had some kind of linguistic and cultural mediation service. On average, in the visited facilities, foreign detainees were 32.6%. For every 100 inmates there were on average 8 hours of psychiatric service and 17 hours of psychological service, even if, always on average, 7% of the inmates had a serious psychiatric diagnosis and 26% used mood stabilisers, antipsychotics or antidepressants. All things considered, these are signs that prisons today are a container of poverty and social exclusion. Finally, as far as work is concerned, on average 43.7% of prisoners were working in 2021. Most of them are employed by the Prison Administration and their tasks often have no potential outside the prison. Moreover, in order to get as many inmates as possible to work the number of hours worked is very low, as evidenced by the average gross salary received which is € 560 per month.

During the Covid-19 emergency the prison system reacted by releasing over 8,000 inmates who were given alternatives to detention; however, the prison population rate was not lowered to less than 100% of the available places. The penitentiary administration also had to limit contacts between inmates and their families, but also took the chance to introduce

a wider use of technologies. Currently, the penitentiary system has attempted to return to normality, but this has not taken place in all institutions with the necessary promptness.

Anti-corruption framework –

Key recommendations

- The Italian Senate should approve the draft law on lobbying n. 196-721-1827 by the end of the current legislative term
- The Italian Parliament should proceed rapidly with the examination of the draft law on conflict of interest n. C. 702 so as to approve it as soon as possible
- The Italian Government should transpose EU Directive 2019/1937 on whistleblowing in order to guarantee protection to whistleblowers and to avoid undergoing any infringement procedure

Levels of corruption

According to the Global Corruption Index (GCI) Italy, ranked 36th out of 196 countries and territories, faces relatively low

risks of corruption and other white-collar crime.⁴ In particular, the country has strong corporate and ownership transparency and Italian authorities can cooperate effectively at international level to combat money laundering. However, its GCI score (30.1/100) is just below the average of the G20 countries (32.2/100). As far as the EU is concerned the country also lags behind, ranking 19th out of 27 countries.

Framework to prevent corruption

New national plan to prevent corruption

In March 2021 the Italian Data Protection Authority adopted a three-year plan to prevent corruption for the years 2021–2023.⁵ The plan includes all the measures that are mandatory by law, as well as the specific measures adopted according to the specific features of each administration.

It aims at pursuing the following objectives:

- a. identifying the activities with higher corruption risk;
- b. providing mechanisms for the training, implementation and control of decisions that are suitable for preventing the risk of corruption;

c. providing information obligations towards the Prevention of Corruption and Transparency Officer called upon to supervise the operation of and compliance with the plan;

d. defining the methods for monitoring compliance in adherence to deadlines laid down by law or regulations for the conclusion of proceedings;

e. defining the procedures for monitoring relations between the administrations and the individuals who enter into contracts with them, including by verifying any relationships of kinship or affinity existing between the owners, administrators, partners and employees of those entities and the administration's managers and employees;

f. identifying specific obligations of transparency in addition to those provided for by the law.

Integrity framework

As of January 2022, discussion is still ongoing regarding a reform proposed by the Ministry of Justice Ms Marta Cartabia⁶ concerning the Superior Council of the Judiciary (*Consiglio Superiore della Magistratura*), i.e., the body

4 <https://risk-indexes.com/global-corruption-index/>

5 <https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/9569421>

6 <https://www.dire.it/09-12-2021/691725-stop-alle-porte-girevoli-nella-giustizia-le-proposte-di-cartabia-per-la-riforma-del-csm/>

that allocates jurisdiction and guarantees the autonomy and independence of ordinary magistrates. The reform is aimed, inter alia, at preventing magistrates from holding a political office, thus putting an end to the so-called “revolving doors” mechanism. If approved, the reform will include the prohibition for magistrates to run as political candidates in the constituency in which they have served in the last three years. In addition, if elected, upon acceptance of their candidacy, magistrates must be placed on unpaid leave, which is mandatory for the entire period of their mandate. Although the approval process of the reform has been delayed with respect to the original plans, this initiative is to be welcomed as it will provide obligations to prevent the recurrence of cases of magistrates holding simultaneously elected and/or political offices.

General transparency of public decision-making

As of January 2022, Italy still lacks a legislative framework on lobbying of members of the government. However, on 12 January 2022 the Chamber of Deputies eventually approved a draft law on lobbying⁷ proposed by the #Lobbying4change Coalition.⁸

The draft law provides for the following:

- a mandatory public register for lobbyists. Anyone wishing to engage in this activity must join the register and comply with an ethical code of conduct
- a public agenda for meetings between politicians, public officials and lobbyists, in which both parties are required to communicate the date of the meeting, the topics under discussion and what documentation has been filed
- serious sanctions to punish unlawful behaviour by both lobbyists and public decision-makers
- public consultations to ensure that members of the register are given the opportunity to be heard on their issues and that all contributions deemed useful for the debate reach the decision-making bodies
- a cooling-off period of two years during which public decision-makers, once they have ceased to hold office, may not carry out lobbying activities.

In order to enter into force, the draft law will have to be approved by the Senate before the beginning of 2023 (i.e., before the end of the

7 *Proposta di legge 196-721-1827, Disciplina dell'attività di rappresentanza degli interessi particolari e istituzione del registro pubblico dei rappresentanti di interessi.* See <https://www.thegoodlobby.it/qui-si-fa-la-storia-ok-della-camera-alla-legge-sul-lobbying-ora-il-senato-deve-migliorarla/>

8 <https://www.thegoodlobby.it/campagne/lobbying-italia/>

current legislative term). The approval of the draft law by the Chamber of Deputies represents a significant step forward, after 96 draft laws on lobbying have been rejected by the Italian Parliament over the last 50 years.

Rules on preventing conflict of interests in the public sector

Italy still lacks a law concerning conflict of interest.⁹ While the text of a draft law (n. C-702) on this matter¹⁰ has been adopted in October 2020 by the Constitutional Affairs Committee of the Chamber of Deputies, the legislative process has not proceeded further since then.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

As of January 2022, Italy has failed to transpose EU Directive 2019/1937 on whistleblowers protection.¹¹ Mr Giuseppe Busia, President of the ANAC (*Autorità Nazionale Anticorruzione, National Anti-Corruption Authority*)¹² has stressed that, given the importance of the role of whistleblowers, the fight against corruption must be unrelenting.¹³

The deadline for the Italian government to transpose the Directive upon delegation of the Parliament expired in August 2021. The National Anti-Corruption Authority has supported the Ministry of Justice to draft a transposition text for the Directive, but no formal transposition process has started yet. Mr Giuseppe Busia has stressed that it would be useful and appropriate to include the transposition of the Directive in one of the next government measures, also to avoid the infringement procedure against Italy.

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

Although the National Recovery and Resilience Plan envisaged a draft delegated law to amend the anti-corruption and transparency rules to be presented by June 2021, this deadline was then postponed to September 2021 and eventually disregarded. This is concerning because 10 years since Law 190/2012 (i.e., the anti-corruption law) was passed, changes to the current legislative framework seem more necessary than ever to eliminate the

9 <https://www.thegoodlobby.it/campagne/conflitto-di-interessi/>

10 <https://www.camera.it/leg18/126?tab=1&leg=18&idDocumento=702&sede=&tipo=>

11 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937>

12 <https://www.anticorruzione.it/>

13 <https://www.ilfattoquotidiano.it/2022/01/01/whistleblowing-anac-italia-inadempiente-sulla-direttiva-ue-a-tutela-di-chi-segnala-illeciti-sul-lavoro-testo-pronto-ma-e-tutto-fermo/6442841/>

criticalities that affect the legislation coming into force. For example, a more robust set of restrictions concerning donations, gifts, hospitality, favours and other benefits for members of public institutions should be put in place; and stronger efforts should be made in order to prevent corruption (e.g., by strengthening and/or introducing mandatory training on anti-corruption and Ethical Codes in relevant public and private institutions).

Media environment and freedom of expression and of information 🟡

Key recommendations

- The Italian Government should act to improve the safety of journalists covering protests and demonstrations. Episodes of violence and harassment - including any acts of police brutality - must be adequately investigated and prosecuted. To that end, capacity-building among law enforcement personnel in coordination with representatives of the journalists should be improved
- The Italian Legislator should urgently reform both criminal and civil defamation laws in order to

stop SLAPPs against journalists (which often leads to self-censorship). In particular, such reform should: (i) focus on the decriminalisation of defamation; and (ii) set limits within civil law on the amount in damages that can be sought

- The Italian Legislator should adopt the same approach both in the FOIA and in the Law n. 241/1990 (which regulates access to public documents) by excluding journalistic material from their scope of application and ensuring that the two regimes comply with the ECtHR case-law and European standards

Pluralism and concentration

Rules governing and safeguarding the pluralistic media market, and their application

According to the latest report by Freedom House, although concentration of ownership remains a major concern, many media viewpoints are available, and the internet access is normally unrestricted.¹⁴

In 2021, the Italian Regulatory Authority for Communications (AGCOM)¹⁵ adopted

14 <https://freedomhouse.org/country/italy/freedom-world/2021>

15 <https://www.agcom.it/>

a recommendation on the compliance with the principles protecting the correctness, completeness, impartiality and pluralism of the information.¹⁶ Despite this, the two new board members of RAI, Italy's public television broadcasting company, appointed in 2021 by the government and Parliament all belong to the parties that are part of the majority in the government. No candidate proposed by the opposition parties was appointed. In this regard, on 15 July 2021, Raffaele Fitto (ECR) and Ryszard Antoni Legutko (ECR) presented two questions to the European Commission highlighting that, "this is a serious precedent and violation, considering that pluralism, which is the basis of the functioning of the democratic system, is now in no way guaranteed in the organisation of public television. Not only does the opposition not have a position on the board, but it also does not even hold the chairpersonship of the RAI parliamentary supervisory committee".¹⁷

Transparency of media ownership

According to MPM2021,¹⁸ transparency of media ownership in the online environment scores a higher risk when compared to the overall score for this indicator. The assessment reflects the fact that not all the digital news

media are obliged to register in the Register of Communications Operators (ROC) - the smaller ones being exempted; for the digital media that must register, transparency has several limits on effectiveness. In this regard, a development took place on 1st January 2021, when Law no. 178/2020 ("2021 budget law") entered into force in Italy. With such law, AGCOM provided that online intermediation service providers and search engines will be required to:¹⁹

1. enrol in the Register of Communications Operators managed by AGCOM ("ROC"): ROC is a public registry that has the purpose of guaranteeing the transparency and publicity of ownership structures, allowing the application of the rules concerning anti-concentration, the protection of information pluralism, and compliance with the limits set for the shareholdings of foreign companies. Currently, several companies are enrolled in this registry such as audiovisual media services providers, call centre operators, advertising agencies (including online advertising agencies), newspaper publishers, and companies providing telecommunication services.

16 <https://www.agcom.it/documents/10179/22130725/Delibera+92-21-CONS/ac07cf8b-57de-438e-9e34-e48a4ae51966?version=1.2>

17 https://www.europarl.europa.eu/doceo/document/E-9-2021-003608_EN.html

18 https://cadmus.eui.eu/bitstream/handle/1814/71951/italy_results_mpm_2021_cmpf.pdf?sequence=

19 *Italy extends its reach into intermediation service providers and search engines: what you need to know*, Ughi e Nunziante Studio Legale, 4 February 2021.

2. pay an annual fee to AGCOM: the 2021 Budget Law sets the rate at 0.15% of revenues generated in Italy by the online intermediation services and search engines. Companies based abroad are also caught by the scope of the 2021 Budget Law, in reference to the Italian sourced revenue accounted for in financial statements generated abroad. For companies not obliged to draft financial statements, the percentage must be calculated with the same items in other accounting records that certify the total value of production.

The applicable law also provides for an administrative sanction for failure to comply with the above-mentioned obligations.

Finally, MPM2021 also reports that the indicator concerning access to media for women scores a high risk. In this regard, as noted above, in 2021 none of the leading news media companies in Italy had a female editor-in-chief.

Public service media

Independence of public service media from governmental interference

In Italy, interference in and pressures on public service media are mainly related to politically motivated criteria for nominating governing bodies (for instance, reference is made to the

above-mentioned 2021 renovation of the positions on the board of RAI).

Editorial standards

According to a recent report by the Reuters Institute,²⁰ the COVID-19 pandemic has exacerbated some of the historical weaknesses of the Italian media sector, contributing to the decline of overall revenues, the fall in newspaper readership, and the lowering of the editorial standards adopted in news reporting. The consequences of the pandemic seem to have been less severe for major online platforms.

Online media

Impact on media of online content regulation rules

Italy does not typically block or filter content of a political, social, or religious nature; all major websites and communication platforms are freely available (Freedom House).²¹ According to data gathered by OONI,²² Italy's blocking and filtering of the internet is limited and is primarily implemented by means of domain name system (DNS) tampering. Yet, websites are frequently blocked for hosting copyright-violating content and, in March 2021, the Customs and Monopolies Agency (ADM), an administrative body under the Ministry of Finance,²³ blocked the popular

20 https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2021/italy#_ftn1

21 https://freedomhouse.org/country/italy/freedom-net/2021#footnote1_bskrmwd

22 <https://explorer.ooni.org/country/IT>

23 <https://www.adm.gov.it/portale/>

content sharing platform *Medium* in Italy because of posts that allegedly shared illegal gambling links. Following inquiries from the press, the block was lifted later the same day.

Competence and powers of bodies or authorities supervising the online ecosystem

According to the cited MPM2021, Italy does not filter/remove content in an arbitrary way. Other than for violations that are punishable by the criminal law, websites can be blocked or fined for violating copyright. A specific content or website can be blocked or removed in cases when an order is given from AGCOM (following for instance AGCOM's regulation on copyright) or by a judge.

Financing framework

According to the cited report by the Reuters Institute and to AGCOM,²⁴ the Italian media environment has traditionally been characterised by a particularly strong television sector and a weak and declining newspaper sector. However, online advertising revenues overtook television advertising revenues for the first time in 2019, and now represent almost half of overall advertising revenues in the Italian media sector. The pandemic has produced a sharp drop in advertising revenues, which are the main funding source for many Italian outlets, and exacerbated the decline in newspaper circulation. Consequently, Italian news media has responded in various ways: (i) several major

news outlets have increased the number of ads on their websites, as well as their invasiveness; (ii) the trend towards pay models for online news is developing further; and (iii) some sites have recently introduced membership schemes. Yet, the Reuters Institute reports that the proportion of people paying for online news is still low.

Public trust in media

Because of the severity of the COVID-19 pandemic, Italian media increased the space given to the news, and both television and online news outlets have seen a significant increase in audience reach.

According to the cited report by the Reuters Institute the 2020 11-percentage point drop in public trust in the media was recovered in 2021, however the score still remains relatively low. In particular, it appears that the most trusted brands are generally those that are known for lower levels of political partisanship, while least trusted are outlets with a pronounced partisan bias and the popular digital-born outlet Fanpage.

In any case, in 2021 the safety of journalists reporting on protests and demonstrations organised by anti-vaccine and anti-lockdown groups posed one of the biggest concerns for media freedom in Italy. According to Mapping Media Freedom, hostility against the press including threats, intimidation and anti-media

24 <https://www.agcom.it/documents/10179/23560628/Documento+generico+26-07-2021/32d25996-0a6b-4e0b-a303-0c1e9152e4cc?version=1.1>

chants were a common phenomenon at such events, some of which were organised by far-right groups: these attacks reflected a worrying rise in anti-press sentiment in some segments of Italian society.²⁵

In this regard, Reuters Institute reports that coverage of the COVID-19 pandemic has highlighted the shortage of specialist science journalists in Italy, as well as a tendency to focus news coverage on speculation and leaks about possible changes to Coronavirus-related restrictions, rather than on the actual decisions, together with sensationalist and often contradictory coverage of facts related to the pandemic and vaccines. This, together with the spread of disinformation, might have contributed to the audience's dissatisfaction and lack of trust in news.

Safety and protection of journalists and other media activists

Frequency of verbal and physical attacks

Violence against journalists in Italy is far from being an isolated accident. In 2021, this trend is confirmed by:

- The Coordination Centre on the Phenomenon of Intimidating Acts Against Journalists²⁶ (for the period of January to September 2021): According

to this report, while organized crime is still responsible for a significant number of threats, socio-political issues remain one of the main motivations for acts of violence against journalists (especially during anti-lockdown and anti-masks protests in several cities). Such attacks range from online intimidations to verbal threats, physical aggression, threatening letters, episodes of damage, and insulting/threatening graffiti. Regarding some of these intimidating acts, it appears that the victim has not filed any complaint.

- Ossigeno per l'informazione (for the period of January to December 2021):²⁷ According to such report, as of 17 December 2021, 301 intimidations and threats in Italy against journalists, bloggers and other information operators have taken place, with 24% of all threats made against female journalists.
- As for the nature of such intimidations, the Observatory reports: 48% of specious complaints; 25% of warnings (including death threats), 16% of physical aggression, 10 % of initiatives not subject to prosecution (which have hampered the access to information in a discriminatory and arbitrary manner); 1% of damages.

25 https://www.mappingmediafreedom.org/wp-content/uploads/2022/01/MFRR-Monitoring-Report_04.pdf

26 https://www.interno.gov.it/sites/default/files/2022-01/elaborato_giornalisti_30_settembre_2021.pdf

27 <https://www.ossigeno.info/giornalisti-301-minacciati-in-italia-nel-2021-il-24-donne-nuovo-record-in-lazio/>

It must be pointed out that in 2021 journalists were facing all sorts of threats related to reporting on COVID. Indeed, 69 out of 301 total cases of attacks and threats against journalists have occurred during Covid-19-related protests and manifestations. Regions of Lazio, Campania and Sicily recorded the highest number of incidents.

More detailed information on the above-mentioned episodes of violence against journalists in 2021 can be found at Mapping Media Freedom's online website.

Rules and practices guaranteeing journalist's independence and safety

Rules and practices guaranteeing journalist's independence and safety still need to be implemented in Italy: in this regard, judges and prosecutors have a crucial role to play.

In November 2021, journalists and prosecutors discussed how to end impunity and agreed that (i) the lack of intermediaries to assist journalists when they are faced with threats, (ii) the multiplicity of attacks against journalists which may happen both online and offline, (iii) the impact of libel crimes and (iv) strategic lawsuits against public participation (SLAPP) are all existing tools to silence journalists, who are often forced to pay for their own defence.²⁸

Consequently, there is both a need to prosecute threats and attacks against journalists on the one hand, while protecting freedom of expression and press freedom as a value for democracy and the rule of law on the other.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

In 2021, incidents of verbal and physical attack against Italian journalists didn't come only from members of the public but also from members of the police. For instance:

- On 9 October 2021, the photojournalist Francesco Cocco, a contributor to daily newspaper *Il Foglio*, said he was attacked by a police officer while covering an anti-vaccine pass protest in Rome.²⁹
- On 9 October 2021, Flavia Amabile, a journalist with the daily newspaper *La Stampa*, was hit with police batons while covering an anti-vaccine pass protest in Rome.³⁰
- On 31 October 2021, journalists trying to question the Brazilian president Jair Bolsonaro during the G20 summit in Rome were pushed, assaulted and had their phones forcibly taken by security guards who were escorting the politician.³¹

28 <https://en.unesco.org/news/prosecutors-and-journalists-discuss-how-end-impunity-syracuse-italy>

29 <https://www.mapmf.org/alert/24292>

30 <https://www.mapmf.org/alert/24293>

31 <https://www.mapmf.org/alert/24345>

Lawsuits and prosecutions against journalists (including) SLAPPs and safeguards against abuse

According to IPI, while the Italian Civil Procedural Code includes some provisions aimed at countering SLAPPs (for instance Article 96 provides that those plaintiffs who filed a lawsuit in “bad faith” must compensate the defendant), judges rarely recur to these provisions in practice.³²

Lawsuits and prosecutions against journalists, including defamation cases, remain common and they can entail serious financial costs for defendants. According to Ossigeno per l’informazione, in 2021 the most common types of threats were abuse of complaints and of lawsuits (equal to 48%). This macro category mainly includes defamation charges (which in 2021 have been 32) and claims for damages. For instance:

- On 28 July 2021, the Italian newspaper Domani informed its online readers that they received a letter by ENI, the partly state-owned oil company, that alleged reputational damages arising from the publication of an article. According to this official letter sent by the lawyers of the company, the newspaper had to pay €100,000 within 10 days, otherwise ENI would have sued the newspaper and

claimed for damages to its reputation in court. Media freedom groups expressed concern that the threat of legal action was aimed at pressuring and threatening the independent news outlet over its coverage. A member of the Parliament filed a written question to the ministers of Economy and Finance, and Economic Development, which have a majority share in ENI, asking the company to behave “fully in line with the respect for media freedom”.³³

- On 18 October 2021, Italian journalist Lorenzo Tondo, correspondent for The Guardian, received notification of the official start of his trial (first hearing scheduled on 2 February 2022), following a mediation attempt on two civil lawsuits for defamation brought against him by Italian prosecutor Calogero Ferrara. As a result, the journalist was prevented from covering a trial on a case he was following and – according to his supporters – this does not appear to be a mere coincidence but a strategic choice to intimidate and prevent him from reporting and writing on such a trial.³⁴

32 <https://ipi.media/italy-urged-to-reform-defamation-laws/>

33 <https://www.mapmf.org/alert/24264>

34 <https://www.mapmf.org/alert/24347>

Confidentiality and protection of journalistic sources

Under Italian law journalistic sources are poorly protected. Moreover, as IPI highlights,³⁵ there is currently a conflict between the protection of journalist sources under the Italian FOIA, and the protection granted under regional standards and the data protection law. In addition, the right/duty of journalists to protect their confidential sources³⁶ applies only to the source's identity (name and surname) and – contrary to other professionals – the judge may order a journalist to indicate the source of the information in his/her possession where the information is essential for an investigation and where it is necessary to ascertain the identity of the source.³⁷ In addition, the 2016 Decree n. 97 on Transparency (FOIA), which regulates the right of access to information, and Law n.241/1990, which regulates access to public documents, applies to all public institutions including public broadcasters.

Furthermore, in 2021, the confidentiality of journalistic sources was threatened by Italian courts. More precisely:

- Surveillance of journalists emerged as a serious issue when in March 2021, it was revealed that numerous Italian journalists had their phones wiretapped by Sicilian prosecutors in Trapani as part of their investigation into sea rescue NGOs and charities. Prosecutors recorded dozens of conversations between journalists and NGO workers, breaching source anonymity. Media freedom groups said the move was one of the most serious attacks on the press in recent Italian history.
- Concerns over source protection increased further on 18 June 2021, after the Administrative Court of Lazio (TAR Lazio) ordered the Italian Media Public Broadcaster (RAI) to release documents held by TV program Report on the management of public funds in the Lombardy region, following a FOI request.³⁸ The Italian Federation of Journalists (FNSI) and the RAI Journalists' Union (Usigrai) denounced a blatant violation of the confidentiality of journalistic sources. The journalists' representative organisations denounced a court decision that threatens any journalistic investigation of public affairs.

35 <https://ipi.media/italy-access-to-information-law-should-not-be-used-to-override-journalistic-source-protection/>

36 Such right/duty is respectively provided for in Law 69/1963 on the Organisation of the journalistic profession and in the Consolidated text of the duties of the journalist, but it is also ensured by other provisions (see, for instance, Paragraph 2 of Article 271 and Article 256 of the Code of Criminal Procedure).

37 See Paragraph 3 of Article 200 of the Code of Criminal Procedure. According to the same provision, the judge may order the journalist to indicate the source of the information in his or her possession where such information is essential for the investigation and where it is necessary to ascertain the identity of the source.

38 https://www.articolo21.org/2021/06/caso-report-riportiamo-la-sentenza-integrale-solidarieta-da-articolo-21/?fbclid=IwAR0izS7XM5KLROtGPss5uZgf4AA6iCBuGq0XIipd_h70aISx1Pu6LwWQRo0

Freedom of expression and of information

Abuse of criminalisation of speech

Article 21 of the Italian Constitution protects freedom of expression and restrictive measures (to protect dignity, honour, privacy, national security and public order) are prescribed by the law, in line with the Constitution. Although freedom of expression is generally respected, some provisions of the Criminal Code do not fully comply with international standards and Article 10 of the European Convention on Human Rights (MPM2021).³⁹

As it was already pointed out in the 2021 Rule of Law report by the European Commission,⁴⁰ the long-standing issue of criminalization of defamation came to a turning point in June 2020 when the Italian Constitutional Court invited the Italian Parliament to remove specific provisions deemed unconstitutional and to promote a wider reform of the defamation framework. In this regard, IPI reports that the lack of parliamentary initiative in pushing for comprehensive reform of the defamation framework in Italy is a long-standing issue

that contributes to the erosion of a free and independent press and an increase in SLAPPs against journalists.⁴¹

A further development occurred in 2021: since the legislative power took no step in amending the provisions on criminal defamation in the terms prescribed by the 2020 ruling, the Italian Constitutional Court ruled on 22 June 2021 the unconstitutionality of prison sentences in cases of defamation through the press, except for cases of “exceptional severity”.⁴²

Censorship and self-censorship, including online

According to the cited report by Freedom House, in Italy content creators and hosts may exercise some self-censorship regarding content that could prove controversial or create friction with powerful entities or individuals. Online writers also exercise caution to avoid libel suits by public officials, whose litigation - even when unsuccessful - can take a significant financial toll. Individuals writing about the activities of organized crime in some parts of the country may be especially at risk of extra-legal reprisals. For instance:

39 <https://cmpf.eui.eu/mpm2021-results/>

40 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0716&from=EN>

41 <https://ipi.media/italy-urged-to-reform-defamation-laws/>

42 More precisely, Art. 13 of Law 47/1948 (Press Law) –providing for automatic provision of detention penalties in case of defamation through the press attributing a precise fact-was declared not compliant with the Constitution; Art. 595 (3) of the Italian Criminal Code providing detention penalties between 6 months and 3 years for public defamation was not declared unconstitutional, but it was specified it should be used only in case of “exceptional severity”. See <https://www.article19.org/resources/italy-constitutional-court-refers-decision-on-abolishing-prison-sentences-for-criminal-defamation-to-parliament/>

- On 23 September 2021, the online Italian newspaper Fanpage.it received a legal notice from a court in Rome that ordered the media outlet to remove from its website videos of an investigation it conducted into the well-known case of embezzlement involving the political party *Lega*.⁴³ After outrage by the journalistic community including the Rome Press Association, parliamentary questions were asked to the Minister of Justice, Marta Cartabia, about on what grounds the seizure had been permitted. Days later, the preventive seizure was then revoked by the Rome prosecutor's office.

- In May 2021, the Italian Supreme Court ruled that the popular television show "*Le Lene*" must remove a segment allegedly defaming Roberto Burioni, a scientist and public figure.⁴⁴ Burioni had sued Mediaset, which airs "*Le Lene*", for defamation, claiming reputational damages from a segment of an episode that alleged that Burioni had promoted pharmaceutical products for his own financial benefit. The May 2021 ruling upheld an earlier decision in which a court ruled in favour of Burioni and imposed the restriction of the allegedly defamatory segment on *Le Lene*'s website. The Supreme Court's ruling also confirmed that a court can order the restriction of an entire journalistic piece in a defamation

suit, rather than only the parts of the piece considered "defamatory." Various observers have warned of the negative impact the case could have on free expression.

Restrictions on access to information

In 2021, journalists also faced disproportionate obstructions during court reporting due to the COVID-19 pandemic. For instance:

- In January 2021, Italy's largest mafia trial in three decades began, but journalists were banned from taking video or audio within the courtroom.⁴⁵ The restriction came after a decision by a judge in the trial, with Covid-19 restrictions cited as the main reason for the decision. Italian journalists and press freedom groups criticised the ban, arguing it would significantly limit the media's ability to cover one of the biggest crime and corruption stories in many years. They added that it would limit the right to know of citizens across the EU. Only on 11 March 2021 the Court of Vibo Valentia rescinded the ban: the measure was notified to all the newspapers and television stations that in January had asked to be able to film the trial.

- On 3 April 2021, a journalist from the Sicilian city of Enna was barred by the president of the court from entering the

43 <https://www.mapmf.org/alert/24263>

44 <https://www.agendadigitale.eu/cultura-digitale/burioni-vince-su-mediasset-la-cassazione-apre-a-sequestri-di-siti-giornalistici/>

45 <https://www.mapmf.org/alert/23824>

Palace of Justice under COVID-19 rules to report on case involving a priest accused of aggravated sexual violence against minors.⁴⁶ The refusal to allow her access was condemned by the Sicilian Order of Journalists, the Sicilian Press Association, and the Enna provincial secretariat of the journalists' union, which said her right to work had been wrongfully impeded. In a statement made by Order and Union they said: "It is unacceptable that anti-Covid regulations are brought up to forbid the entrance to a courthouse to a single professional, with a mask, who certainly would not have created any kind of gathering" and called on the president of the court to review the decision.

- On 16 November 2021, journalists were left unable to report on the proceedings of a court case in which a lawyer under investigation for shooting a man dead was participating, due to the poor quality of the video link.⁴⁷ Multiple media outlets including the public broadcaster RAI had tried to attend the court in Voghera, a town in Lombardy, to report on events. However, they were informed that media were barred from the courtroom due to Covid-19 restrictions. A live stream of the court was provided, although several connection issues were not fixed by court officials, undermining the principle of open

justice and leaving the journalists unable to report on the proceedings. The National Federation of the Italian Press and the Lombard Association of Journalists issued a statement criticising the lack of proper access for journalists to cover the court case, which they said limited the ability of the media to cover a court case in the public interest.

Legislation and practices on fighting disinformation

Manipulated online content was prevalent in Italy during the last years, including material related to the COVID-19 pandemic.

GDI research in January and February 2021 highlights that the majority of ad tech companies in Italy do not have specific COVID-19 disinformation content policies or that those policies are violated and continue to fund news sites flagged publicly as purveyors of disinformation.⁴⁸ Furthermore, Newsguard's Coronavirus Disinformation monitoring centre found that 41 websites - including conspiratorial blogs, alternative websites, and popular news outlets - published COVID-19 disinformation in Italy as of September 2021.⁴⁹

In order to fight disinformation, on 20 September 2021 Italy launched its national anti-disinformation hub - the Italian Digital

46 <https://www.mapmf.org/alert/23994>

47 <https://www.mapmf.org/alert/24399>

48 <https://disinformationindex.org/2021/02/ad-funded-covid-19-conspiracy-sites-a-look-at-the-eu/>

49 <https://www.newsguardtech.com/it/special-reports/coronavirus-misinformation-tracking-center/>

Media Observatory – at the LUISS University in Rome, as part of a European network of eight national hubs.⁵⁰ The network is part of the European Digital Media Observatory, an EU-funded project that promotes scientific knowledge about online disinformation, advances the development of fact-checking services, and supports media literacy programs. The Italian observatory will bring together fact-checkers, media professionals and researchers to fight online disinformation. The national centres have the task of monitoring and reporting disinformation campaigns using artificial intelligence, helping the media and public authorities to denounce them. Each pole will be responsible for organizing media education activities at national or multinational level. The Italian hub is formed by a consortium that includes the universities of LUISS and Tor Vergata, the national telecommunications provider TIM and major media such as the public broadcaster RAI, the editorial group GEDI and the daily Corriere della Sera.

Furthermore, AGCOM has joined the 2020-2021 Safer Internet Center Italy (SIC-Italy) project and now promotes educational video broadcasting in schools⁵¹ so that young people

can learn how to recognise fake news and online illegal content.⁵²

Online content regulation

In Italy, the internet access is generally free and unrestricted. According to MPM2021, limits to freedom of expression online are consistent with offline media.⁵³

In practice, Italians do not face special economic or regulatory obstacles to publishing content online. Italy became the first European country to adopt a Declaration of Internet Rights in July 2015, which includes provisions that promote net neutrality and establish internet access as a fundamental right.⁵⁴ However, such Declaration is nonbinding, and net neutrality is not enshrined in national law, though a 2015 EU-level regulation empowers AGCOM to supervise and enforce the principle.⁵⁵

50 <https://www.euractiv.com/section/digital/news/italy-launches-national-hub-to-fight-disinformation/>

51 Through the site www.generazioniconnesse.it

52 <https://www.agcom.it/documents/10179/23560628/Documento+generico+26-07-2021/32d25996-0a6b-4e0b-a303-0c1e9152e4cc?version=1.1>

53 https://cadmus.eui.eu/bitstream/handle/1814/71951/italy_results_mpm_2021_cmpf.pdf?sequence=4

54 https://www.camera.it/application/xmanager/projects/leg17/commissione_internet/testo_definitivo_inglese.pdf

55 https://www.agcom.it/internet-aperta_net-neutrality

Checks and balances –

Process for preparing and enacting laws

Rules and use of fast-track procedures and emergency procedures

In response to the continued spreading of the COVID-19 virus, the Italian government has prolonged the state of emergency until 31 March 2022.⁵⁶ However, unlike 2020, in 2021 the Government decided to adopt emergency-related measures mostly through decree-laws instead of Presidential decrees. This shift followed the concerns raised by legal experts about the legitimacy of the Presidential decrees adopted in 2020 to impose severe restrictions to fundamental freedoms. However, in September 2021 the Constitutional Court ruled that resorting to Presidential decrees to impose the aforementioned restrictions does not imply any breach to the Italian Constitution, with particular regard to articles 76, 77 and 78.⁵⁷

Independent authorities

Italy still lacks a National Human Rights Institution (NHRI). However, three draft laws aimed at establishing such Institution are being examined by a Commission of the Chamber of Deputies with a view to setting the ground to create a “National Commission for the Promotion and Protection of Human Rights and the Fight against Discrimination”.⁵⁸ During the session of 3 November 2021, the Italian Government intervened to reiterate its full support for the establishment of the Commission.⁵⁹

In January 2021, the EU network of National Human Rights institutions (ENNHRI) intervened in a conference organised by the EU’s Fundamental Rights Agency and a group of leading academics on the establishment of an Italian NHRI. ENNHRI highlighted that an Italian NHRI, in compliance with the UN Paris Principles, will contribute to greater promotion and protection of human rights in Italy. ENNHRI is closely monitoring developments in the country and stands ready to provide its expertise on the establishment and accreditation of NHRIs to relevant stakeholders in Italy, including the legislature, government, academics and civil society organisations.⁶⁰

56 <https://www.gazzettaufficiale.it/eli/id/2021/12/24/21G00244/sg>

57 <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2021&numero=198>

58 <https://www.camera.it/leg18/824?tipo=A&anno=2020&mese=10&giorno=29&view=filtered&commissione=01#data.20201029.com01.allegati.all00010>

59 https://www.camera.it/leg18/824?tipo=C&anno=2021&mese=11&giorno=03&view=filtered_scheda&commissione=01&pagina=#data.20211103.com01.bollettino.sede00040.tit00030

60 <http://ennhri.org/wp-content/uploads/2021/07/Regional-Rule-of-Law-Report-2021.pdf>

Disregard of human rights obligations and other systemic issues affecting the rule of law framework –

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

With regard to migration management in Italy the situation is still concerning, especially as far as the so-called “pushbacks at sea” are considered. Even though the situation in Libya continues to be highly unstable politically and socially, and despite the serious atrocities carried out by the self-styled Libyan coastguard and the ongoing violation of human rights, according to data from the International Rescue Committee (IRC) some 23,000 migrants have been intercepted at sea and then returned to Libya in the first eight months of 2021.⁶¹ This is an appalling figure - the highest since 2017 - which almost double the 2020 figure.⁶²

In addition, violence against women (especially domestic violence), hate crimes, racism and discriminations (including against LGBTI+ people) have been a serious problem and need legislation that has yet to be adopted.

As for violence against women, data released on November 2021 by the Italian central anti-crime directorate revealed that on average 89 women in Italy are victims of gender-based violence every day; in 62% of cases the perpetrator is the person with whom they have or had a relationship. Furthermore, as of December 2021, ANSA reported that since the start of 2021, 109 women have been murdered in Italy (8 % more than the same time period last year) with 63 of them killed at the hands of their partner or ex-partner.

In addition, Italy’s largest LGBTI+ rights group, Arcigay, records more than 100 hate crime and discrimination cases each year, but numerous attempts over the last 25 years to create a law to punish acts of homophobia and transphobia have failed. In this regard, after months of debates, on 27 October 2021 a centre-right majority in the Italian Senate voted to block the parliamentary process on the so-called ‘ddl Zan’, sought to expand current anti-discrimination laws to protect women, disabled people and members of the LGBTI+ community.

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

Italy has a particularly poor record of implementing the judgments of European Court of Human Rights. Statistics indicate a very

61 <https://www.rescue.org/>

62 <https://www.meltingpot.org/2021/09/nel-2021-piu-di-23-mila-persone-respinte-in-mare-e-riportate-in-libia/>

high number of leading judgments pending implementation, as well as a high percentage of leading cases which are still pending implementation.

As of 17 January 2022, relevant data from the European Implementation Network⁶³ include the following information:

- Number of leading cases pending: 54
- Average time leading judgments have been pending: 6 years, 3 months
- Proportion of leading cases pending from the last ten years: 56%

The pending cases against Italy show that relevant human rights problems are still unresolved in our country, including the following:

- Criminal convictions for acts of free speech on matters of the public interest (*Belpietro v. Italy*), pending implementation since 2013.
- Failures to enforce court judgments (*Therapic Center S.r.l. and Others v. Italy*), pending implementation since 2018.
- Extremely long court proceedings across the Italian justice system (*Abenavoli v. Italy*, *Ledonne v. Italy* (no.1), *Barletta and Farnetano v. Italy*), with the first case dating from 1997.

- Failures to address domestic violence (*Talpis v. Italy*), pending implementation since 2017.
- Police brutality not properly criminalised (*Cestaro v. Italy*), pending implementation since 2015.

The above-mentioned judgments have been pending implementation for a long period of time. The oldest pending leading judgments against Italy are *Ledonne* (no .1) and *Abenavoli*, which have been pending implementation since 1999 and 1997. They concern the excessive length of criminal and administrative proceedings. The delayed implementation of these judgments creates an ongoing risk that similar violations will continue to occur.

While civil society organisations (including CILD) have been trying to push for the implementation of the above-mentioned judgments by submitting Communications ex Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments, the Italian government has not responded adequately to these calls so far. In addition, the supervision of one of the previously pending cases, *Khlaifia v. Italy*,⁶⁴ has eventually been closed by the Committee of Ministers of the Council of Europe, although several civil society organisations had stressed that Italy had not yet adopted adequate measures to implement the judgement and prevent similar violations from happening.

63 <https://www.einnetwork.org/>

64 <https://hudoc.exec.coe.int/eng?i=004-45851>

Fostering a rule of law culture

While relevant authorities have organised conferences and high-level meetings on the rule of law in 2021, it seems that all those initiatives were only reserved to members of parliament and/or other institutional stakeholders. We could find no record concerning public initiatives on the issue.

While there is an interest on the side of civil society organisations to promote initiatives to foster a rule of law culture in Italy, these have not been implemented widely to date mainly because of a lack of resources.

Contacts

Association Antigone *Association Antigone*

Associazione Antigone is an Italian NGO working to protect human rights in Italy, with a focus on the penal system. Antigone carries on cultural work on public opinion through campaigns, education, media, publications and the academic review “Antigone”.

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Coalizione Italiana Libertà e Diritti Civili (CILD) *Italian Coalition for Civil Liberties and Rights*

The Italian Coalition for Civil Liberties and Rights (CILD) supports and empowers civil society groups working to address some of the most pressing human rights issues faced by the country today, through a combination of capacity building on policy analysis, advocacy, media strategy and public education.

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The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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