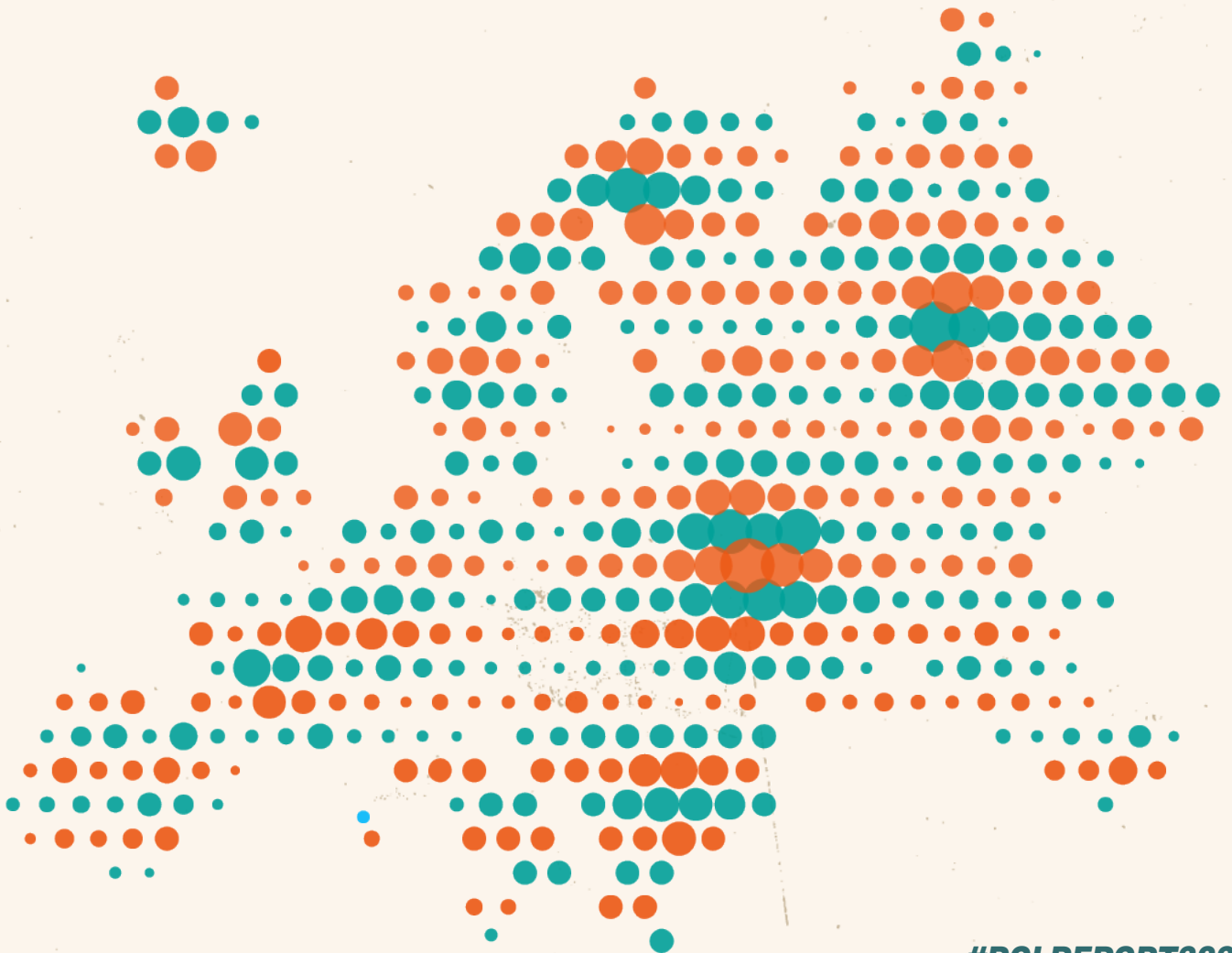


# LIBERTIES

# RULE OF LAW REPORT

# 2023

# ITALY



#ROLREPORT2023



CIVIL  
LIBERTIES  
UNION FOR  
EUROPE



ANTIGONE



## **FOREWORD**

This country report is part of the Liberties Rule of Law Report 2023, which is the fourth 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 gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2023 Report was drafted by Liberties and its member and partner organisations, it and covers the situation during 2022. 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 2023 Report includes 18 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. Forty-five member and partner organisations across the EU contributed to the compilation of these country reports.

**[Download the full Liberties Rule of Law Report 2023 here](#)**

# ***TABLE OF CONTENTS***

About the authors .....	4
Key concerns .....	5
Justice system .....	7
Anti-corruption framework .....	10
Media environment and freedom of expression and of information .....	13
Checks and balances .....	20
Enabling framework for civil society .....	21
Disregard of human rights obligations and other systemic issues affecting the rule of law framework .....	24
Fostering a rule of law culture .....	30
Contacts .....	31

# ITALY

## About the authors

This report has been coordinated and authored by Antigone Association and Italian Coalition for Civil Liberties and Rights (CILD). Buon Diritto Onlus, Association for Juridical Studies on Immigration (Associazione per gli Studi Giuridici sull'Immigrazione or ASGI) and Osservatorio Balcani e Caucaso (OBCT) participated in the report as authors. 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 and publications. It conducts studies and research and it cooperates in writing normative texts. Thanks to its Observatory on Italian prisons for adults and minors, it monitors conditions in all prisons in Italy and publishes a report on the Italian penitentiary system. Antigone also has an Ombudsman and legal clinics around Italy that collect complaints from prisoners. Antigone also carries out investigations about ill-treatment 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 organisations that protect and expand the rights and liberties of all, through a combination of advocacy, public education and legal action.



A Buon Diritto Onlus, since its establishment, has been carrying out activities of rights promotion, legal assistance, social guidance, monitoring, research and advocacy, with a focus on migration. The organisation works to safeguard fundamental rights, offering qualified assistance to those who are deprived of their liberty, those who are trying to integrate in our country, those who are victims of discrimination or racist episodes, and those who have suffered abuse and torture.



The Association for Juridical Studies on Immigration (ASGI) is a membership-based association focusing on all legal aspects of immigration. As a pool of lawyers, academics, consultants and civil society representatives, ASGI's expertise relates to various areas of immigration and migrants' rights, including

but not limited to anti-discrimination and xenophobia, children's and unaccompanied minors' rights, asylum and refugee seekers, statelessness and citizenship. ASGI's members provide their contributions at various levels: administrative, policy-making and legal, both in national and European contexts.



Established in 2000, OBCT is a think tank focused on Southeast Europe, Turkey and the Caucasus that explores and reports on the socio-political and cultural developments of Italy and six other EU Member States, namely those taking part in the EU enlargement process and those included in the European Neighborhood Policy. As an operational unit of the Center for International Cooperation, OBCT is committed to strengthening the European project by supporting transnational relations and raising public awareness on areas at the heart of many European challenges, thanks to a participatory and multi-sectoral approach that weaves together online journalism, research, training, outreach, and policy advice.

## Key concerns

In the area of justice, there have been some improvements regarding the backlog in civil and penal courts. However, the issue of excessive length of proceedings persists. There are also problems with the implementation of fair trial rights of the Stockholm Roadmap. There have been reforms regarding the execution of

judgements and life imprisonment, the latter of which does not live up to the standards set by international human rights bodies. A positive development can be found regarding the issue of "liberi sospesi", i.e. those who are waiting for alternatives to incarceration.

In 2022, no progress was made on lobbying regulation. A draft law on lobbying, approved on 12 January 2022, was about to be discussed in the Senate when the government of Mario Draghi fell. The new Parliament has yet to schedule new hearings to discuss the introduction of a regulation on lobbying activities. The debated issue of the exclusion of Confindustria - Italy's largest employers' union - and trade unions from the transparency obligations, which should be foreseen by all stakeholders, has slowed down the proceedings in the past.

Media freedom and media pluralism are guaranteed by a solid legislative framework, but some issues remain unsolved, including the passing of a law on the right remuneration of freelancers and the long-standing issue of criminalisation of defamation. Lawsuits and prosecutions against journalists, including SLAPPs, also remain common and can entail serious financial costs for the defendants. Attacks and threats against journalists also remain an issue of concern. The Mapping Media Freedom Platform recorded 45 alerts, representing 11 percent of all alerts in the EU in 2022, out of a population which corresponds to about 13 percent of the EU population.

Regarding checks and balances, no progress has been made since last year. In its 2022 report, the European Commission urged Italy to

establish a National Human Rights Institution in line with the UN Paris Principles. However, little has been done. On a parliamentary initiative, a new bill on the establishment of a Data Protection and Human Rights Authority was proposed in November 2022. According to the proposed bill, the Data Protection Authority will also serve as the body responsible for the protection of human rights in a broad sense. The discussion of the draft bill began in early January in the Italian Senate.

Verbal attacks by members of the government raise fears of the beginning of a new phase of criminalisation and defamation of civil society, while the introduction of restrictive regulations hamper the on-field activities of humanitarian NGOs. Particularly worrying is the approval of the so-called Rave Decree, which introduces a new article into the Criminal Code, 633-bis, so vague in the first version presented to Parliament (which referred generically to “gatherings of more than 50 persons” invading a field or a public or private building) that it was feared it could be applied not only to punish participants in rave parties but to dangerously restrict civic space, the right to protest, and freedom of assembly as provided for in Article 17 of the Constitution.

The rule of law environment has suffered from a failure to properly address systemic human rights issues, in particular regarding hate speech, violence against women and homophobic and transphobic attacks. 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 advancement

on the implementation of leading decisions in important areas.

Also the conversion into law of Decree No. 1 of 2/1/2023 containing urgent provisions for the management of migration flows is worrying as it is indicative of a new attempt to criminalise NGOs that carry out rescue operations at sea and of the continuing desire to associate migration with the issue of respect for public order and security.

The European Commission’s Rule of Law Report has received very little attention in Italy over the course of 2022; only two articles related to the report have been published in the three most read mainstream media.

### **State of play**

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

### **Legend (versus 2022)**

- ↓ Regression
- No progress
- ↑ Progress

## Justice system 🟡

### Key recommendations

- Bring the regulation of life sentences into compliance with international standards.
- Ensure the application of fair trial rights within the criminal justice system.

## Quality of justice

### **Training of justice professionals**

The European Commission's anti-SLAPP recommendations, adopted in April 2022, called for the promotion of anti-SLAPP training courses for legal practitioners.<sup>1</sup> This need has not been met. In addition, while in Italy a limited number of journalists' associations offer this kind of training to media professionals, more efforts should be undertaken to widen the scope of recipients. Beyond journalists, anti-SLAPP training courses should be directed towards legal professionals, such as judges and lawyers, as well as university law students, as there is an evident need to raise awareness and equip them with the relevant

legal knowledge to identify and counter abusive lawsuits.

### **Fairness and efficiency of the justice system**

#### **Length of proceedings**

Compared to the end of 2021, in November 2022 the total number of pending civil justice cases decreased by 5.4 percent.<sup>2</sup> The overall number of pending cases is for the first time since 2003 below 3 million. In criminal justice, the reduction in pending cases is 9 percent, or 4.9 percent if excluding proceedings before the justices of the peace, i.e. ordinary courts.

The length of proceedings, particularly in civil justice, represents a threat for journalists and other media workers who are victims of SLAPPs.<sup>3</sup> Although the situation is improving thanks to the reform of the justice system, the problem of lengthy proceedings cannot be considered solved. This is why in September 2022 OBCT called for the introduction of a procedure for the timely dismissal of legal actions classifiable as SLAPPs.<sup>4</sup>

1 <https://www.rcmediafreedom.eu/OBCT-Dossiers/Focus-on-SLAPP/Focus-on-SLAPP/Synergies-and-training-are-needed-against-SLAPP-or-gag-complaints>

2 [https://www.giustizia.it/giustizia/it/mg\\_2\\_9\\_13.page#](https://www.giustizia.it/giustizia/it/mg_2_9_13.page#)

3 <https://www.balcanicaucaso.org/eng/Occasional-papers/Who-is-afraid-of-journalists-The-MFRR-Italy-Mission-Report>

4 <https://www.balcanicaucaso.org/eng/Occasional-papers/Who-is-afraid-of-journalists-The-MFRR-Italy-Mission-Report>

### **Execution of judgments**

Law Decree 162/2022, which entered into force on 31 October 2022, modified the sentence of life imprisonment without parole (*ergastolo ostativo*). It is a direct response to Constitutional Court Sentence 253/2019, which imposed a deadline to the Parliament to modify Art 4-bis of the Penitentiary Law, which was found to be unconstitutional by the Court. The judgement of the Constitutional Court came after the 2019 ECtHR judgement in *Viola v. Italy*, which urged Italian authorities to review the legislation on life imprisonment without parole.

However, the new law does not seem to live up to its expectations, as it poses significant problems under many points of view.

First of all, the crimes that rule out perpetrators from filing a request for penitentiary “benefits” (such as special leave or alternative measures to detention) are not limited anymore to those listed in Art 4-bis of the Penitentiary Law, but are widened to any intentionally committed crime. This means that now any crime could theoretically fall under Art 4-bis.

A second problem is represented by the issue of “cooperation.” Under the new Art 4-bis, the main way to gain access to penitentiary benefits remains that of cooperating with judicial authorities. Before the amendments, it was possible to gain access to penitentiary benefits if the cooperation was impossible or irrelevant (e.g. the information known by the inmate is irrelevant or already known). Now, this possibility does not exist anymore. Instead, the

article now contains a procedure that establishes whether the non-cooperating person has carried out all civil obligations and pecuniary reparations connected with the crime, as well as restorative justice activities. Furthermore, the person has to show good behaviour in prison and must have participated in penitentiary activities, so that it is possible to exclude that they still have ties with the criminal world.

Another issue is represented by the a priori exclusion of detainees subjected to the 41-bis regime (the regime for mafia-related crimes) to penitentiary benefits.

Furthermore, the new law changes the minimum timeframe for the possibility to file a request of conditional release: those with a definite sentence have to serve three quarters of their sentence to have the possibility to access conditional release (same regulation as before the new law), while those with a life sentence have to serve 30 years to have the possibility to access conditional release (instead of the previous 26 years). Those who cooperate with judicial authorities “only” have to serve 10 years in order to ask for a conditional release.

Because of all these elements, unfortunately the new regulation on penitentiary benefits does not improve the situation of those with a life sentence.

### **Respect for fair trial standards including in the context of pre-trial detention**

The situation of the implementation of the European Directives of the Stockholm Roadmap on procedural rights of arrested



people and fair trial rights has not improved. For example, people under investigation or on trial whose mother tongue is not Italian continue to face difficulties in participating in trial hearings, as there is a shortage of qualified interpreters.

Here below are two practical examples of the repercussions of this problem. The first one<sup>5</sup> relates to a German defendant arrested in Italy because of a European Arrest Warrant issued by the United Kingdom and for which a proceeding was already open in Germany. The UK refused to revoke the EAW despite assurances by the German court that the case was being prosecuted (note that the German courts stopped extraditions to the UK since they are not part of the EU anymore). The defendant was arrested in Italy, where he was spending his holidays, unaware of the EAW. The defendant spent two weeks in prison in Italy and 74 days under house arrest while the authorities were deciding how to resolve his situation. While he was in prison, there was no interpreter or translator available to help him understand why he was being detained. During the court hearings, the assistance given by the interpreter was of very poor quality; a five-minute hearing was summarised into one sentence. However, aside from the issue of interpretation, this is also an example of the lack of guarantees for defendants involved in a European Arrest Warrant procedure and

the uneven application of rules by different Member States.

A second case<sup>6</sup> concerns one of the defendants of the *Iuventa* case, the NGO ship that in 2016 rescued more than 14,000 people<sup>7</sup> in the Mediterranean Sea. The defendant, who risks twenty years in prison for criminal association aimed at aiding illegal immigration, is German and lives in Germany, while the trial is held in the court of Trapani, in Sicily. Within the span of three months, the defendant travelled three times to be interrogated by the judge – with little success. The last time, the interpreter was a former police officer, who was not on the Court’s list of experts. After thirty minutes, the questioning of the defendant was stopped. After the hearing it was discovered that the report of the questioning did not properly represent the defendant’s statements. Therefore, both the defence lawyer and the defendant decided not to sign the report to authenticate its content.

Among the problems that hinder the participation of qualified interpreters in hearings is the lack of an official national list of interpreters and the possibility for each judge to appoint any person as an interpreter regardless of their qualifications. Also, the hourly pay rate for interpreters and translators is much lower than the market price and payments are made with much delay. Therefore, despite the presence of

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5 <https://www.fairtrials.org/articles/case-studies/arrested-abroad-stefans-story/#timeline-of-events-28>

6 <https://www.breakinglatest.news/news/migrants-the-impossible-trial-of-the-german-ngo-there-are-no-interpreters/>

7 <https://iuventa-crew.org/en/case>

interpreters being guaranteed at hearings, the quality of their service and their effectiveness is questionable.

### **Other**

The so-called Cartabia reform (law n. 199/2022) entered into force on 30 December 2022, bringing many changes into the criminal justice system.

One novelty regards the so-called *liberi sospesi*: those people who have been sentenced to less than four years of prison and who request an alternative measure to detention. This request must be granted by a Surveillance Judge. However, because of the high workload of Surveillance Judges, the requests of the people who remain free but in limbo, waiting for the judge's decision, fall behind the prioritised requests of detained people. The reform tackles this problem by giving the judge the power to immediately grant the alternative measure to detention, thus shortening the list of *liberi sospesi*.

The reform also incentivises the use of restorative justice. The indicted person and the victim, if they are willing to do so, under the guidance of mediators can participate in meetings to take stock of the crime that was committed. If the proceeding concerns a crime where the investigation is opened "ex officio", the sentence can be reduced by up to one third and detainees, after the meetings with the victims, can access penitentiary benefits (e.g. special leave, alternative measures to detention and even conditional release). If the proceeding concerns a crime where the investigation

is opened only if the victim files a complaint with the police, the participation in the restorative justice programme extinguishes the proceeding.

## **Anti-corruption framework** 🟡

### **Key recommendations**

- Lobbying regulation should not excuse business associations, unions, and religious bodies from the obligation to join the transparency register. All decision-makers (and not only former members of the government), should wait a period of no less than two years before joining the lobbying profession.
- Italy must align itself with EU Directive 2019/1937 on the protection of persons who report breaches of Union law. Laws, regulations and administrative provisions necessary to comply with the Directive should be brought into force in the shortest time possible. The transposition process should be transparent and public. External stakeholders should be consulted and audited.

### **Levels of corruption**

According to the Global Corruption Index (GCI), Italy ranks 18th out of 196 countries

and territories, meaning it faces relatively low risks of corruption and other white-collar crime.<sup>8</sup> In particular, the country has strong corporate and ownership transparency and Italian authorities can cooperate effectively at international level to combat money laundering.

### **Framework to prevent corruption**

In January 2022 the Italian Anti-Corruption Authority (ANAC) adopted a three-year plan to prevent corruption for the years 2022-2024.<sup>9</sup> 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 to pursue the following objectives:

- identifying activities with high corruption risk;
- providing mechanisms for the training, implementation and controlling of decisions that are suitable for preventing the risk of corruption;
- providing information about obligations of the Prevention of Corruption and Transparency Officer called upon to supervise the operation of and compliance with the plan;

- defining the methods for monitoring compliance in adherence to deadlines laid down by law or regulations for the conclusion of proceedings;
- defining the procedures for monitoring relations between administrators 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;
- identifying specific obligations of transparency in addition to those provided for by law.

### **Integrity framework including incompatibility rules**

As of January 2023, the discussion regarding a reform proposed by the former Minister of Justice Marta Cartabia<sup>10</sup> concerning the Superior Council of the Judiciary (Consiglio Superiore della Magistratura), i.e. the body that allocates jurisdiction and guarantees the autonomy and independence of ordinary magistrates, is still ongoing. The reform is aimed, inter alia, at preventing magistrates from holding a political office, thus putting an end to the so-called revolving door mechanism. If

8 <https://risk-indexes.com/esg-index/>

9 <https://www.anticorruzione.it/amministrazione-trasparente/altri-contenuti-prevenzione-della-corruzione/piano-triennale-di-prevenzione-della-corruzione/anno-2022/2024>

10 <https://temi.camera.it/leg18/temi/riforma-dell-ordinamento-giudiziario-e-del-csm.html>

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, magistrates must, upon acceptance of their candidacy, be placed on unpaid leave for the entire duration of their mandate. If they are not elected, on the other hand, they may not be placed back in tenure for the next three years. Although the approval process of the reform has been delayed, the initiative is to be welcomed as it will provide obligations that will prevent the recurrence of cases of magistrates holding simultaneously elected and/or political offices.

***General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)***

As of January 2023, Italy still lacks a legislative framework on lobbying<sup>11</sup> of members of the government. On 12 January 2022, the Chamber of Deputies finally approved a draft law on lobbying, as proposed by the Lobbying4change Coalition.<sup>12</sup> This draft law was about to be discussed in the Senate

when the government of Mario Draghi fell. The new Parliament has yet to schedule new hearings discussing the introduction of a regulation of lobbying activities. The debated issue of the exclusion of Confindustria (Italy's largest employers' union) and trade unions from the transparency obligations, which should be foreseen by all stakeholders, has slowed down proceedings in the past. It is among the key issues the civil society coalition Lobbying4change keeps advocating for.

***Rules on preventing conflict of interests in the public sector***

Italy still lacks a law concerning conflict of interest.<sup>13</sup> While the text of a draft law (n. C-702) on this matter was adopted in October 2020 by the Constitutional Affairs Committee of the Chamber of Deputies,<sup>14</sup> with the end of the last legislature, the draft has not been approved.

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

Italy has not yet transposed EU Directive 2019/1937 on the protection of persons who

11 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/>

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

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

14 <https://www.camera.it/leg18/126?tab=&leg=18&idDocumento=0702>

report breaches of Union law.<sup>15</sup> This shortcoming was pointed out in the European Commission's 2022 Rule of Law Report. The new European Delegation Law (127/2022)<sup>16</sup> led to the presentation on 12 December 2022 of a draft legislative decree implementing the EU Whistleblower Directive. The Chamber of Deputies began consideration of the draft decree on 21 December 2022 and should conclude deliberations by 19 January 2023.<sup>17</sup> ANAC (the National Anti-Corruption Authority) gave a positive opinion of the text.<sup>18</sup>

Whistleblowers play a fundamental role in exposing corruption and illegal acts that undermine the rule of law, but in Italy the lack of socialisation about what whistleblowing means is confirmed by the lack of an accurate Italian translation of the word.

According to a report<sup>19</sup> issued by Transparency International Italia, there are at least 1,500 entities that have joined Transparency International Italia's alert platform that allows them to report breaches of the law, and over half of them are municipalities. However, it should be highlighted that the sanctions to

entities which are not compliant with the current regulation about whistleblowing are very few and far between: only three in one year, according to the report.

Transparency International Italia and The Good Lobby asked the government to ensure greater publicity for the transposition process and full stakeholder involvement. The two organisations are advocating for a public update on the progress of the transposition process and for the possibility for external stakeholders to provide their observations and comments, in order to take into account multiple points of view.

## **Media environment and freedom of expression and of information** –

### **Key recommendations**

- The Freedom of Information Act (FOIA), which is applied to all public institutions including public broad-

15 <https://www.transparency.it/informati/news/direttiva-ue-sul-whistleblowing-30-giorni-al-termine-previsto-per-la-trasposizione>

16 [https://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2022-08-26&atto.codiceRedazionale=22G00136&elenco30giorni=false](https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2022-08-26&atto.codiceRedazionale=22G00136&elenco30giorni=false)

17 <https://www.camera.it/leg19/824?tipo=C&anno=2022&mese=12&giorno=21&view=&commis-sione=0211&pagina=data.20221221.com0211.bollettino.sede00010.tit00010#data.20221221.com0211.bollettino.sede00010.tit00010>

18 [http://documenti.camera.it/apps/nuovosito/attigoverno/Schedalavori/getTesto.ashx?file=0010\\_F002.pdf&leg=X-IX#pagemode=none](http://documenti.camera.it/apps/nuovosito/attigoverno/Schedalavori/getTesto.ashx?file=0010_F002.pdf&leg=X-IX#pagemode=none)

19 [https://www.transparency.it/images/pdf\\_pubblicazioni/report-whistleblowing-2021.pdf](https://www.transparency.it/images/pdf_pubblicazioni/report-whistleblowing-2021.pdf)

casters, should be amended to prevent any attempt to obtain documents from a journalist or disclose a source's identity.

- Support the work of journalistic unions and organisations in fostering solidarity with local journalists, who are often left alone in their newsroom and in the field. The work of support centres and unions is needed to ensure their connection with national and international organisations, in order to build a network of solidarity.
- Italian institutions should address the severe gender gap in the media sector including in holding top management positions, editorial decision-making and equal salaries. Current defamation laws should be amended to prevent abusive lawsuits and excessive claims for damages aimed at silencing journalists and human rights defenders. This should encompass both criminal and civil proceedings, allowing judges to dismiss lawsuits in early proceedings and assess when public interest issues are at stake.
- The Parliament should respond to the repeated calls of the Constitutional Court that invited Italian lawmakers to reform defamation laws in accordance with freedom of speech and protection of one's reputation.

- The Italian Federation of Publishers and the Italian Federation of Journalists, together with the Chamber of Journalists, should come to an agreement concerning the application of Law 233 of 2012, which plans to introduce a mandatory minimum wage for freelancers.

## ***Pluralism and concentration***

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

According to the latest report by Freedom House, ownership concentration remains a major concern in Italy. On the other hand, media pluralism is ensured, with citizens enjoying many different opinions and viewpoints, and access to the internet is unrestricted.<sup>20</sup>

### ***Fairness and transparency of licencing procedures***

During a meeting organised within the Media Freedom Rapid Response (MFRR) mission in Italy, the discussion with the Order of Journalists representatives showed the limits of having only one professional disciplinary body. The stakeholders agreed that Italy would benefit from a journalistic self-regulatory body that would bring together journalists, media owners and civil society following the model of "Press Councils." Such a body could increase the level of trust in the Italian media.

20 <https://freedomhouse.org/country/italy/freedom-world/2022>

Italian stakeholders, including the National Council of the Order of Journalists, are highlighting the need for a reform of the legislation that regulates the provision of the title of “professional journalist.” A set of guidelines for the reform curated by the National Council in 2018 never got to Parliament for approval.

In January 2022 the National Council appointed a Special Commission for the reform.<sup>21</sup> This was the first step in a process that should lead to a new proposal being submitted to the Parliament to revise the rules of the profession. The reform will open the profession to new categories of media workers, acknowledging the numerous transformations of the media market, including the digital one.

Among the most recent changes is the decision to update the procedures to become a professional journalist with a valid accreditation. On 8 November 2022, the National Council of the Order approved<sup>22</sup> a rule allowing, exceptionally and in specific cases, the start of the apprenticeship period even in the absence of a registered media outlet and editor-in-chief. According to the President of the Order, Carlo Bartoli, this is a way to support freelance journalists and precarious workers.

According to the Vice-President of the Order, there is a possibility that starting from January 2023 social media managers who work in the information sector will be able to enrol in the register of practitioners as well.<sup>23</sup>

### **Other**

The decision of progressively abolishing direct state funding to not-for-profit print media and journalistic cooperatives has been delayed by Law Decree 183/2020 and Law Decree 73/2021. It is now foreseen that the reduction of direct state funding will start in 2024, building to a complete abolition in 2027. According to the same decrees, funding for private radio stations that carry out information activities in the public interest will be abolished from 31 January 2025.<sup>24</sup>

However, overall subsidies more than doubled (+120 percent) between 2020 and 2021 compared to 2019.<sup>25</sup> Direct state funding increased as well, but the amount has not been criticised per se.

What emerges as a negative trend is that resources that should be aimed at promoting media pluralism – through support for not-for-profit, small and local media outlets – are

21 <https://www.odg.it/il-cnog-nomina-la-commissione-speciale-riforma/43249>

22 <https://odg.mi.it/notizie/giornalismo-accesso-al-praticantato-anche-senza-testate/>

23 <https://www.editorialedomani.it/idee/cultura/social-media-manager-potranno-isciversi-ordine-giornalisti-ttrp9931>

24 [https://temi.camera.it/leg18/temi/tl18\\_interventi\\_editoria.html](https://temi.camera.it/leg18/temi/tl18_interventi_editoria.html)

25 <http://www.datamediahub.it/2021/12/27/i-due-anni-piu-che-raddoppiati-i-contributi-alleditoria/#axzz7ZxiOD-ke2>

essentially assigned to large or medium-sized media outlets that define themselves as journalistic cooperatives. Concentration of funding is identified as a serious problem by Italian journalists.

### ***Transparency of media ownership***

According to the Media Pluralism Monitor 2022,<sup>26</sup> media ownership transparency in the online environment in Italy scores a higher risk when compared to the overall score for this indicator. As in the past, the main risks in this sector stem from the high concentration of horizontal and cross-media ownership, a concentration that is also increasing due to the defensive strategies implemented by media companies to cope with their economic difficulties. Also according to MPM2022, high concentration also characterises the online advertising market, where a few platforms dominate.

Finally, MPM2022 reports that the indicator concerning access to media for women reflects a high risk. In this regard, in 2022 there was just one woman among the editors-in-chief of the leading media companies, and in 2021 no woman held that position.

## ***Safety and protection of journalists and other media activists***

### ***Rules and practices guaranteeing journalist's independence and safety***

Media freedom and media pluralism are guaranteed by a solid legislative framework, but some issues remain unsolved, including the passing of a law on fair remuneration of freelancers and the reform of defamation laws.

Regular employment in the media sector has been steadily decreasing in recent years. Active workers with a regular employee contract in 2021 decreased by 550 units in comparison to 2020, while the number of journalists without a regular contract is increasing.

Attacks and threats against journalists remain issues of concern. The Mapping Media Freedom Platform recorded 45 alerts (11 percent of the EU27 total, out of a population which corresponds to about 13 percent of the EU population) in 2022.<sup>27</sup> However, many cases remain unreported.

Gender inequalities in the media sector include different degrees of freedom to choose what to report about, wage gaps, and an imbalance in representation at the management level.

Sexual harassment is the most worrisome category of threat for women journalists, and

26 <https://cadmus.eui.eu/bitstream/handle/1814/74694/MPM2022-Italy-EN.pdf?sequence=1&isAllowed=y>

27 <https://www.mapmf.org/explorer>



the newsroom is often the first place where harassment takes place.

A big share of online attacks target women journalists who cover politics, organised crime, court reporting, and migration issues.

The vulnerability of local journalists is intertwined with the decline of the local news industry.<sup>28</sup> Local reporters are increasingly working as freelancers or independent bloggers. Some of these reporters should be included in the category of human rights defenders for their commitment to exposing political wrongdoings and criminal activities.

Support centres and organisations are particularly needed at the local level, where journalists are more vulnerable.

There is also a need to ensure journalistic sources are protected and to reform the legal framework on professional secrecy of journalists. Only professional journalists, meaning those who are registered in the Order of Journalists,<sup>29</sup> have a right to journalistic confidentiality. In spite of the fact that some court decisions have granted the right to professional secrecy also to publicists, this is a serious “legal gap” which needs to be addressed.

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

The Italian Coordination Centre on Intimidation Acts against Journalists is a body established within the Ministry of Interior which publishes data on harassment, intimidation and attacks against journalists collected by the police.<sup>30</sup> In the first nine months of 2022, 84 intimidation acts were reported (-48 percent compared to the same period in 2021). Nine episodes were related to organised crime. Of all the acts, 29 percent happened online. Lazio, Lombardia and Toscana are still the regions with the highest number of threats recorded.

The setting up in 2017 of the Coordination Centre has improved the relationship between journalists and Italian authorities. However, several aspects of the body could be improved. First, the data used is based on police reports. This might not be comprehensive, considering that not all journalists file police reports in cases of threats or attacks. Another worrying element is that basing the monitoring on police reports means that no case of violence or harassment coming from the police itself is taken into account. The MFRR delegation concluded that its self-regulatory nature hampers the independence of the monitoring system.

28 <https://www.rcmediafreedom.eu/OBCT-Dossiers/Analysis-of-support-mechanisms/Analysis-of-support-mechanisms/Interviewing-Journalism-II.-Needs-and-gaps-in-support-for-women-and-local-journalists>

29 <http://www.inpgi.it/sites/default/files/Inpgi%20-%20Bilancio%20preventivo%202022%20AGO.pdf>

30 [https://www.interno.gov.it/sites/default/files/2022-12/report\\_9\\_mesi\\_2022.pdf](https://www.interno.gov.it/sites/default/files/2022-12/report_9_mesi_2022.pdf)

Second, the data collected does not take into account all types of threats: legal threats and SLAPPs are not monitored, although they are prevalent issues in Italy.

Third, the independence of the Coordination Centre from any political influence should be better guaranteed. Its decoupling from politics should be seen as a step in this direction, considering that the Coordination Centre itself is chaired by the Ministry of the Interior.

Alongside the Coordination Centre, the recognition of the importance of journalistic work passes through two other institutional entities: The Parliamentary Anti-Mafia Commission and its subcommittee on mafia, journalists and world of information, as well as the parliamentary intergroup focused on matters related to media and journalism set up during the previous legislature. They are proof of the long-standing recognition by the legislature of the role played by journalists.<sup>31</sup> However, both represent little more than good intentions while - according to the MFRR delegation - it would be vital to move beyond monitoring and analysis towards more concrete actions.

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

The calls formulated by the Italian Constitutional Court in 2020 and 2021 stated, respectively: 1) prison sentences for defamation to be unconstitutional, except in cases of exceptional gravity; and 2) the need for the Parliament to promote a comprehensive reform of defamation laws. Both calls went unheard by Italian lawmakers.

We have noticed a worrisome trend characterised by an increasing number of SLAPPs instigated by politicians targeting media professionals. In some cases, these proceedings have been initiated in recent years and had their hearings scheduled over the past semester or in the first months of 2023. Others have only been recently formalised. Targets of SLAPPs have ranged from freelance journalists targeted by local politicians (*Sara Manisera vs local administration Abbiategrasso*)<sup>32</sup> to editors-in-chief and renowned journalists and writers sued or threatened to be sued for defamation by high-level government officials (formalised lawsuits: *Roberto Saviano vs Giorgia Meloni*,<sup>33</sup> *Roberto Saviano vs Matteo Salvini*; *Roberto Saviano vs Gennaro Sangiuliano*; *Stefano Feltri*

31 <https://www.rcmediafreedom.eu/Tools/Stakeholders/Parliamentary-inquiry-commission-into-mafias-and-other-criminal-organisations-including-foreign-ones>

32 <https://www.mapmf.org/alert/25172>

33 <https://www.rcmediafreedom.eu/OBCT-Dossiers/Focus-on-SLAPP/Focus-on-SLAPP/Italy-a-call-in-support-of-Roberto-Saviano-defendant-in-a-defamation-trial>

and *Emiliano Fittipaldi vs Giorgia Meloni*,<sup>34</sup> threatened lawsuits: *Editoriale Domani vs Guido Crosetto*,<sup>35</sup> *Il mattino and Il Messaggero vs Roberto Calderoli*<sup>36</sup>). Furthermore, large companies and businessmen connected to public funding allocation have also been relying on SLAPPs to silence media professionals and human rights defenders (*Irpi Media & The Good Lobby Italia vs private company*,<sup>37</sup> *Gad Lerner vs Ilva*<sup>38</sup>).

Finally, the recent case of a prosecutor's demand for a six-month prison sentence for three journalists in response to their factual reporting in a case involving a former minister (*Mary Tota, Danilo Lupo and Francesca Pizzolante vs Teresa Bellanova*),<sup>39</sup> once more draws attention to the dangers that SLAPPs pose to the public debate. Firstly, the length of the proceeding, initiated in 2014, has delivered a chilling effect for each of the journalists involved, who have refrained from any reporting on the plaintiff throughout the past years. Secondly, while eventually dismissed by the judge, the prison sentence request for the three journalists advances a dangerous signal to

media professionals, alongside the reluctance of Italian policymakers to respond to the calls of the Constitutional Court.

The fact that the highest governmental officials consistently resort to SLAPPs to silence critics signals the urgent need for a comprehensive reform of defamation laws encompassing both civil and criminal proceedings.

### **Access to information and public documents**

Generalised civic access to information held by the public administration (FOIA) was introduced in the Italian legislative system in 2016, whereas access to public documents for requesters who have a specific interest is regulated by Law 241/1990.

The MFRR mission in Italy was an opportunity to highlight the difficulties experienced by journalists who cover the legal system following the transposition into Italian law (with Italian decree 188/2021 which entered into force on 14 December 2021) of Directive

34 <https://www.rcmediafreedom.eu/News/Italy-Newspaper-Domani-sued-for-defamation-by-Prime-Minister-Giorgia-Meloni>

35 <https://www.fnsi.it/conflitto-di-interessi-il-ministro-crosetto-minaccia-querela-il-domani-non-ci-faremo-intimidire>

36 <https://www.articolo21.org/2023/01/i-ministri-e-quel-vizietto-delle-querela-bavaglio-ora-tocca-a-il-mattino-e-il-messaggero/>

37 <https://mappingmediafreedom.usahidi.io/posts/25479>

38 <https://www.ilfattoquotidiano.it/2023/01/10/quella-a-gad-lerner-e-una-querela-bavaglio-non-lasciamolo-so-lo-articolo-21-non-lo-fara/6930901/>

39 <https://www.rcmediafreedom.eu/News/Italy-Concern-about-prosecutor-s-demand-for-prison-sentence-for-three-journalists-in-response-to-their-factual-reporting>

2016/343 on the protection of the presumption of innocence.<sup>40</sup> Although the Directive does not deal with journalistic activities, the Italian legislature has focused its attention on the relationship between the public prosecutor and the press.<sup>41</sup> Despite the necessity to respect the right to the presumption of innocence, some public prosecutors interpret the text in a very restrictive way, claiming that they can no longer deliver any information to journalists about ongoing judicial investigations. Academics, unions and organisations have raised concerns on the compatibility of this transposition with the Charter of Fundamental Rights of the EU and the European Convention on Human Rights, particularly regarding the notion of news of public interest.

The implementation of such provisions often leads to denial of access to information, creating significant obstacles to professionals dealing with court reporting. In fact, the General Data Protection Regulation (GDPR) is used instrumentally in these cases to prevent journalists from having access to data. Finally, the GDPR can be used to invoke the right to be forgotten even when court cases are still ongoing.

The FNSI (National Federation of Journalists' Unions) sent a formal protest<sup>42</sup> to the European Commission on 22 February 2022. The letter

called on the EU “to monitor the Italian legislation transposing the Directive and to draw the Italian legislature’s attention to the need to remove from the transposition decree the provisions restricting press freedom.”

The publication of decree 188/2021 led to difficulties in verifying news, accessing sources and ultimately ensuring that citizens’ right to be informed is guaranteed.

The main challenge remains striking a balance between the right to access information, to protect personal data, and to protect journalistic sources.

## Checks and balances

### Key recommendations

- The Italian government should urgently enhance its efforts to establish a sustainable, functional and independent institutional body for human rights protection. Compared to last year, no progress has been made and serious shortcomings remain both concerning the independence of the Italian equality body (UNAR) implementing Directive 2000/43 and the establishment of a National Authority

40 <https://www.ilfattoquotidiano.it/2023/01/10/quella-a-gad-lerner-e-una-querela-bavaglio-non-lasciamolo-so-lo-articolo-21-non-lo-fara/6930901/>

41 <https://www.rcmediafreedom.eu/News/Italy-Concern-about-prosecutor-s-demand-for-prison-sentence-for-three-journalists-in-response-to-their-factual-reporting>

42 <https://www.rcmediafreedom.eu/Dossiers/Italy-journalism-and-the-rule-of-law>

complying with UN Resolution No. 48/134 of 1993.

### ***Independent authorities***

Thirty years after the adoption of UN Resolution 48/134 and countless recommendations from European and international bodies – most recently the European Commission in its Rule of Law Report 2022 and the UN Committee on Economic, Social and Cultural Rights in its report<sup>43</sup> on Respect for the Rule of Law in Italy 2022 – Italy has yet to establish a national human rights institution in line with the Paris Principles.

Over the last year, little progress has been made on the normative level. In November 2022, a member of the Italian Senate proposed a draft bill<sup>44</sup> for the establishment of a Data Protection and Human Rights Authority. According to the proposed bill – which was discussed in the Italian Senate in early January<sup>45</sup> – the body would be responsible for ensuring the respect and protection of human rights, including online, in a broad sense, going beyond the mere protection of personal data.

With regard to the Italian equality and anti-discrimination body (UNAR), in August 2022 the Minister for Equal Opportunities

of the former government appointed through ministerial decree a new Director General.<sup>46</sup> The appointment appeared to be a rather political choice, as the new Director – who was the personal secretary of Minister Elena Bonetti – had no experience nor competence on anti-discrimination or human rights protection. Such an appointment shows yet again the lack of independence from the government, which ultimately undermines its legitimacy and function.

## ***Enabling framework for civil society*** ↓

### ***Key recommendations***

Italian political parties should abandon the aggressive rhetoric against civil society, which seriously risks weakening a sector that is fundamental for the functioning of a liberal democracy. We recommend yet again that the Italian government set up transparent and accountable funding mechanisms to empower CSOs and allow them to work in an independent and effective way and be a reliable partner in the promotion of a culture based on fundamental rights and the rule of law.

43 <https://www.ohchr.org/en/news/2022/09/experts-committee-economic-social-and-cultural-rights-welcome-it-aly-guaranteed>

44 <https://www.senato.it/service/PDF/PDFServer/BGT/01361649.pdf>

45 <https://www.senato.it/attualita/archivio-notizie?nid=68724>

46 <https://www.ilfoglio.it/politica/2022/08/10/news/il-segretario-di-bonetti-a-capo-dell-unar-lo-ha-nominato-il-ministero-di-bonetti-4318301/>

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## **Regulatory framework**

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On 30 December 2022, the Parliament approved the conversion into law of the so-called Rave Decree, which introduces a new Article in the Penal Code, 633-bis, under which “anyone who organises or promotes the arbitrary invasion of other people’s land or buildings, public or private, for the purpose of carrying out a musical gathering or having other entertainment purposes, shall be punished by imprisonment from three to six years and a fine from 1,000 to 10,000 EUR, when the invasion results in a concrete danger to public health or public safety due to non-compliance with the regulations on narcotic substances or on the safety or hygiene of shows and public entertainment events, including by reason of the number of participants or the state of the places. The confiscation of the things that served or were intended to commit the crime referred to in the first paragraph, as well as those used to carry out the purposes of the occupation or those that are the product or profit thereof shall always be ordered.”<sup>47</sup>

The introduction of this criminal offence is particularly worrying. An earlier draft was much more vague, as it referred generically to “gatherings with more than 50 people” who invaded a public or private field or building. This could have been applied to many other cases, such as workers on strike occupying or

picketing a factory to protest layoffs, or high school or college students occupying schools or universities to draw attention to problems in the education system. Therefore, it would have been a dangerous restriction on civic space, the right to protest and freedom of assembly as provided for in Article 17 of the Constitution. Many CSOs were audited on this first draft of the decree and had the opportunity to express their concerns on the necessity of the introduction of a specific “anti-rave” crime and on other specific issues posed by the text. The decree was reformulated and passed by the Parliament despite the attempts of filibustering by opposition parties, which were cut short by the President of the Chamber of Deputies to allow the vote to take place. This could be a warning signal of the way the new government wants to act on human rights issues; therefore, CSOs will remain vigilant and act against any restrictions of civic space.

### ***Access and participation to decision-making processes, including rules and practices on civil dialogue, rules on access to and participation in consultations and decision-making***

With regard to the implementation of the National Recovery and Resilience Plan (NRRP), in 2022 the Civic Observatory<sup>48</sup> – a coalition of more than 30 CSOs created in 2021 to monitor the transparency and

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47 [https://www.gazzettaufficiale.it/atto/serie\\_generale/caricaArticolo?art.versione=1&art.idGruppo=66&art.flagTipoArticolo=1&art.codiceRedazionale=030U1398&art.idArticolo=633&art.idSottoArticolo=2&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=1930-10-26&art.progressivo=0](https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.versione=1&art.idGruppo=66&art.flagTipoArticolo=1&art.codiceRedazionale=030U1398&art.idArticolo=633&art.idSottoArticolo=2&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=1930-10-26&art.progressivo=0)

48 <https://osservatoriocivicopnrr.it/news/26-la-prima-relazione-del-tavolo-di-partenariato.html>

inclusiveness of the decision-making process – participated in all meetings of the NRRP advisory body with governmental, regional and local authorities, representatives of academia and of trade associations. Both during the meetings and in 12 official statements sent to the advisory body’s coordinator, the Civic Observatory has constantly stressed the need for more transparency of data regarding projects financed through the NRRP and more openness of the decision-making process to social actors. However, most of the requests advanced by the Observatory have gone unheeded so far, as information on the management of NRRP funds remain opaque and not easily accessible. For this reason, in November 2022 the Observatory mobilised to launch the campaign [datibenecomune.it](https://www.datibenecomune.it).<sup>49</sup> Within the campaign – which has been shared by over 60 civil society actors – they prepared a joint statement addressed to the Italian Prime Minister and the Minister for European Affairs responsible for the management of the NRRP asking that their demands finally be given due consideration.

### ***(Un)safe environment***

The appointment of the new government led by the far-right party Brothers of Italy marked the return of attacks on humanitarian non-governmental organisations (NGOs) working on migration issues: the introduction of restrictive regulations and verbal attacks

smearing the work of NGOs harks back to the difficult atmosphere suffered by the Italian civil society sector between 2016 and 2019, when the criminalisation of humanitarian NGOs ultimately led to the delegitimisation of the entire sector.

### ***Criminalisation of activities, including humanitarian or human rights work***

Between October and November 2022, the new Italian government introduced two ministerial decrees aimed at limiting search and rescue (SAR) activities of humanitarian ships of the NGOs SOS Humanity and Doctors Without Borders. In addition, at the beginning of January 2023, a new legislative decree introducing “urgent provisions for the management of migratory flows” entered into force.<sup>50</sup> The decree has been severely criticised not only by a number of established SAR NGOs, such as Emergency and Doctors Without Borders, but also by journalists and other CSOs, which have denounced its illegitimacy and contrast with key principles of international law. The decree, which introduces for the umpteenth time a code of conduct for NGOs involved in migrant rescue in the Mediterranean Sea (which are accused of posing a general threat to public security), limits once again the work of humanitarian NGOs and hinders SAR activities in Italian territorial waters.

49 <https://www.osservatoriocivicopnrr.it/news/28-datioggi-per-un-pnrr-bene-comune-non-possiamo-piu-attendere.html>

50 <https://www.gazzettaufficiale.it/eli/id/2023/01/02/23G00001/sg>

## Attacks and harassment

While the introduction of restrictive regulations hampers the field activities of humanitarian NGOs, verbal attacks by members of the government raise fears of the beginning of a new phase of criminalisation and defamation of civil society. For example, during an interview in October 2023, the Italian Minister of Defence referred to SAR NGOs as “floating social centres”<sup>51</sup> (meaning self-managed squat centres, as a derogatory expression for their non-legal status) and questioned NGOs’ good intentions, arguing that they seem to be more interested in criticising and going against governmental decisions rather than saving migrants’ lives. Because of such defamatory statements, the reputation of NGOs is yet again at stake, with potential negative repercussions on civil society as a whole.

Moreover, the great resonance at the national level of the so-called Qatargate, which involved Italian MEPs and two NGOs, also had a negative impact on the credibility and legitimacy of civil society. Many CSOs warn of a generalisation of misconduct and corruption of the entire civil sector risks, and the risk of a negative narrative on civil society as a whole, causing confusion and public distrust on the role and function of CSOs.<sup>52</sup>

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

### Key recommendations

- The government should stop delegitimising maritime arrivals and hindering the activity of SAR organisations rescuing people in the Mediterranean by either closing ports, delaying disembarkation, or enacting decrees (e.g., law decree 1/2023) that require NGOs to rapidly bring the shipwrecked to a disembarkation port, thus de facto disengaging themselves from further SAR operations at sea.<sup>53</sup> Ports must remain open to any private vessels providing relief to people in distress. Rather than allocating a “*place of destination*”, far from the area of distress, access should be given to the next place of safety as soon as reasonably practicable and in line with the UNCLOS as well as the SAR and SOLAS conventions.

51 <https://www.huffingtonpost.it/politica/2022/11/14/news/migranti-10631927/>

52 <https://www.panorama.it/news/cronaca/qatargate-ong-soldi-euro-panzeri>

53 For further discussion, see, ASGI, ‘Contro la Costituzione, le ONG e i diritti umani: l’insostenibile fragilità del decreto legge n.1/2023’ (5 January 2023), <https://www.asgi.it/primo-piano/contro-la-costituzione-le-ong-e-i-diritti-umani-linsostenibile-fragilita-del-decreto-legge-n-1-2023/>; and Giuffrè M (2022). ‘Le vent nous portera’: Rescue and Confinement at Sea under Human Rights Law, *Erasmus Law Review* 2023



- National courts should discharge members of NGOs accused of facilitating irregular migration and irregular border crossings. They should also dispose of their cases in accordance with the recent ruling of the Court of Justice of the European Union in joint Cases C-14/21 and C-15/21. In interpreting Directive 2009/16, the CJEU therein concludes that the port state does not have the power to demand proof that those rescuing ships hold certificates other than those issued by the flag state.
- Rather than imposing upon the shipwrecked the requirement to claim asylum onboard rescue boats, so as to engage the responsibility of the flag state for disembarkation, the Italian government should cooperate with other EU Member States to build up a concrete common European approach to SAR, with precise rescue and disembarkation arrangements. It must be clear that neither ministerial decrees or directives nor ordinary laws or policies can derogate from the international legal obligation to disembark the shipwrecked in the next place of safety in line with non-refoulement guarantees.
- The Italian Maritime Rescue Coordination Centre shall cooperate with other coastal states by intervening as soon as it receives a distress call, in line with the SAR Convention. “Distress” should be interpreted as a

situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance. There need not be immediate physical peril before a distress claim can be made.

- Resume the discussion on a law that can protect LGBTIQ+ people from all forms of discrimination.
- De-pathologise issues concerning transgender persons while maintaining adequate public health care.
- Equate same-sex civil unions with heterosexual marriage and protect children born and raised in homoparental and trans families through the approval of stepchild adoption.
- To ensure effective prosecution of crimes of alleged torture committed in prisons, each prison should be equipped with a video surveillance system that covers every room in the building and has long-term archiving arrangements. Another necessary measure is to ensure the identification of the officers at least when engaged in law and order restoration activities within prisons.
- It is recommended that health authorities provide training for doctors deployed within prison institutions, in order to underline the importance of recording any suspicious facts and

reporting to the authority if there is a need.

- People on trial for torture or violent acts should not remain in prison service (or at least not in sensitive roles) to avoid the potential risk of similar acts being repeated.

## ***Systemic human rights violations***

### ***Widespread human rights violations and/or persistent protection failures***

#### *Immigration and Search and Rescue*

The condition of migrants and refugees in Italy continues to be concerning, especially in relation to pushbacks by proxy at sea (conducted by Libyan and Tunisian authorities). In 2022, 24,684 people were intercepted and removed to Libya, while more than 30,600 were pulled back to Tunisia.<sup>54</sup> 2,011 people lost their lives in the Mediterranean Sea, of which 525 are confirmed to have died and 848 went missing on the Central Mediterranean route.<sup>55</sup>

Italy's new right-wing government attempted to close Italian ports to people rescued at sea

by NGO rescue vessels, and in some cases they tried to implement a selective disembarkation mechanism.

#### *Rights of LGBTQIA+ people*

In 2022, Italy has not seen any significant legislative changes in terms of the rights of LGBTQIA+ people.

The few improvements that have been made are through individual court judgements, rather than thanks to politicians. For instance, the ruling issued on 7 March 2022 by the Court of Rome,<sup>56</sup> allowed for the first time the rectification of the gender and name of a transgender boy with a non-binary identity who did not want to undergo hormone replacement therapy and carried out only a mastectomy and no other surgeries.

In Italy, the subject is regulated by Law 164/1982. Originally, the rule provided for the need of a gender reassignment surgery in order to access the legal procedure for name change and gender update at the registry office. This application was then modified in 2015 with sentence no. 15138/2015 of the Court of Cassation and with sentence no. 221/2015 of the Constitutional Court, which established

54 Several media reported IOM statistics on sea interceptions, see in particular <https://libyaupdate.com/iom-over-1000-migrants-intercepted-and-returned-to-libya-between-1-7-january/> and <http://www.infomigrants.net/en/post/45890/iom-migrants-repatriated-to-libya-decreased-by-24-in-2022>; Statistics on Tunisia are collected by FTDES (Forum Tunisien de Droits Economiques et sociaux), see <https://ftdes.net/en/politiques-meurtrieres-en-mediterranee-pour-que-cessent-ces-naufrages-consciemment-provoques-au-large-de-la-tunisie/>

55 IOM (2022), Missing Migrants Project, available at <https://missingmigrants.iom.int/region/mediterranean>

56 See A. Caruso in the LGBTQI+ Chapter of the 'Report on the conditions of rights in Italy' (*Rapporto sullo stato dei diritti in Italia*) available in Italian at: <https://www.rapportodiritti.it/lgbtqi#capitolo>

that a transgender person, in order to ask the court to change gender in official identification documents, no longer needs to undergo compulsory genital surgery. However, access to the transition still requires psychological reports and a phase at the courts, which is often long and expensive, and activists remain concerned that the procedure remains excessively medicalised.

Therefore, even if the sentence of 7 March 2022 constitutes a judicial precedent, the hope of lawyers and activists is that Law 164/1982 will be amended and updated, and that the legal gender change will be made self-determined and feasible without going through the court but simply by going to the registry office with the chosen name and gender, as it happens in other European countries.

From a legal point of view, the rejection by the Parliament in the Autumn of 2021 of the DDL Zan bill, which provided “measures to prevent and combat discrimination and violence based on sex, gender, sexual orientation, gender identity and disability”, blocked any discussion of a law against homophobia, biphobia and transphobia.

The absence of a law of this kind is even more problematic when considering that the LGBTQIA+ population is among the main targets of hate speech in our country. This has been even worse during the pandemic, as shown in an Amnesty International report.<sup>57</sup> Especially in the attacks against individuals

through direct invectives, there was a clear predominance of comments against LGBTQIA+ people (see the chart from *Rapporto Diritti - Rights Report*).

Today, Italy still fails to recognise a series of rights for LGBTQIA+ people. Civil unions do not involve a true equivalence with heterosexual marriage in terms of rights, protections – especially towards minors – and obligations. Parenthood for same-sex couples is still legally impossible. The possibility of being able to adopt the partner’s children from previous heterosexual relationships is denied, not to mention the possibility of adoption or assisted reproduction or gestation techniques for others.

The hope for 2023 is that relevant political processes will fill these gaps as much as possible and move forward ensuring greater rights for all.

### ***Follow-up to recommendations of international and regional human rights monitoring bodies***

Almost 30 years after ratifying the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the Italian Parliament approved Law N. 110/2017, which introduced the crime of torture into the Criminal Code (Article 613bis).

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57 <https://www.amnesty.it/barometro-dellodio-intolleranza-pandemica/>

The definition of torture provided by the law diverges in several aspects from the one provided by the UNCAT. The first difference is that the offence is applicable to anyone and not only to public officials. Secondly, the text states that the offence occurs if there is “violence and threats” (plural, not singular) and if “the act is committed by more than one conduct.” The third difference is that the act must “cause acute physical suffering or verifiable psychological trauma.” The specification that the trauma must be verifiable can create difficulties in its ascertainment.

Even if the text of the law did not live up to expectations, the introduction of the new crime represented an important step forward. The first two convictions for torture, which came at the beginning of 2021, and the numerous proceedings that are still ongoing are proof of this. On 15 January 2021, for the first time, a prison officer was convicted of torture inflicted on a person detained in the prison of Ferrara. The trial also included a nurse among the defendants, accused of forgery and aiding and abetting.

On 17 February 2021, ten prison police officers at San Gimignano prison were convicted of torture and aggravated injury for the brutal beatings suffered by a detainee during transfer from one cell to another. At the same hearing, a prison doctor was also tried for refusing to perform official acts and for not having examined and reported the victim’s conditions. This was also an important decision, as it was the

first time that a doctor was convicted for refusing to document a prisoner’s statement.

To date, there are several open proceedings for torture allegations. The most important one, in terms of people involved and media coverage received, is undoubtedly the trial for the brutal violence committed by hundreds of prison officers against detainees at the Santa Maria Capua Vetere Prison in April 2020. Thanks to surveillance footage, it was possible to prosecute more than 100 people, including police officers, doctors and prison administration managers.

On the contrary, a case initiated for similar violence and ill-treatment that took place in March 2020 in the Melfi Prison, for which the NGO Antigone received many witness testimonies, was recently archived. In that case, due to the periodic backup of the video surveillance system, the court argued that it was not possible to certify the facts and recognise the persons involved. In addition to the lack of video evidence, a detriment to the establishment of the facts was that all the officers involved had their faces covered and were therefore not recognisable.<sup>58</sup>

### ***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 judgements of the European

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58 <https://www.open.online/2021/07/16/carcere-melfi-violenze-telecamere-non-registrano/>

Court of Human Rights. Statistics indicate a very high number of leading judgments pending implementation, as well as a high percentage of leading cases which are still pending.

As of 10 January 2023, relevant data from the European Implementation Network<sup>59</sup> include the following:

- Number of leading cases pending: 58 (+4 from beginning of 2022 total)
- Average time leading judgments have been pending: 5 years, 10 months (improving, last year it was 6 years, 3 months)
- Proportion of leading cases pending from the last 10 years: 58 percent (+2 percent from 2022)
- The pending cases against Italy show that relevant human rights problems are still unresolved, including the following:
  - Criminal convictions for acts of free speech on matters of 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, respectively. They concern the excessive length of criminal and administrative proceedings. The delayed implementation of these judgements creates an ongoing risk that similar violations will continue to occur.

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

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## **Fostering a rule of law culture**

### ***Contribution of civil society and other non-governmental actors***

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Too little attention is paid to the publication of the Rule of Law Report in EU Member States. In Italy, over the course of 2022, only two articles related to the report have been published in the three most read mainstream media.<sup>60</sup> Targeted efforts to increase the impact of the reports are necessary.

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60 The exam was carried out selecting the three most read mainstream media according to the October 2022 ranking published by Prima Comunicazione. The only articles identified with specific reference to the reports are: <https://www.ilsole24ore.com/art/contrasto-illeciti-l-allarme-corruzione-resta-alto-allerta-anche-pnrr-AEaXsYOB>; [https://www.repubblica.it/esteri/2022/07/13/news/raccomandazioni\\_ue\\_justizia-357671153/](https://www.repubblica.it/esteri/2022/07/13/news/raccomandazioni_ue_justizia-357671153/)

## **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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