

EU 2020: DEMANDING ON DEMOCRACY

*Country & Trend Reports on Democratic
Records by Civil Liberties Organisations
Across the European Union*

ITALY



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Italy // Associazione Antigone & Italian Coalition for Civil Liberties and Rights (CILD)



Key concerns

- Inadequate resources for the judiciary still affect length of proceedings, although efforts are made to reduce the backlog
- Progress is made on digitalisation of the justice system, but criticalities arise especially in the criminal justice process
- Journalists suffer frequent intimidation, including through SLAPPs and online threats
- Increase in disinformation, especially linked to COVID-19, is not met with effective fact-checking and quality reporting, while access to information is restricted during the state of emergency
- COVID-19 exacerbates inequality and discrimination against certain groups including women and migrants

Justice system

Quality of justice

Resources of the judiciary

There is a significant difference between the justice system personnel in Italy compared to the rest of Europe. According to the 2018 data of the Council of Europe European commission for the evaluation of justice (CEPEJ)¹, in 2018, in Italy there were 11.6 judges per 100,000 inhabitants (compared to 17 European median), 3.7 prosecutors (compared to 11.2 European median) and 37.1 non-judicial staff (compared to 59.7 European median). The two areas that do not seem to be affected by the lack of personnel are non-prosecutorial staff (14.1 in Italy compared to an European median of 14.9) and lawyers (388.3 compared to 120.4 European median).

The Ministry of Justice is currently investing to hire new human resources in order to tackle the issue of case backlogs, as a means to reduce the length of trials (see the section “length of proceedings”). Article 255 of the Decree-law

¹ Available here: https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Overviewv20201_0EN/Overview

n. 34 of 19 May 2020² converted into Law n. 77 of 17 July 2020 (so called Decreto Rilancio) in order to address the issue of the length and digitalization of proceedings allowed hiring 1,000 members of personnel to work in the “Ufficio per il processo” (UPP).³ The UPP is an office present in all Tribunals and Courts of Appeal in order to carry out research on doctrine and jurisprudence, drafting of reports, maximisation of judgments, direct collaboration with the magistrate for the preparation of the hearing, collection of statistical data flows. The competition was carried out and with a Decree of 11 February 2021 950 people were hired.⁴

Also, the annual Report on the administration of justice⁵ (pp. 2-3) reports that in the Italian draft of the Recovery and Resilience Plan, 2.3 billions will be used in order to hire new human resources with temporary contracts for the UPP. The new human resources will be hired to reduce the case backlog: 16,000 people will be hired for 2.5 years (2 slots of 8,000 people) by the UPP and they will support judges in the study of the case, jurisprudence and doctrine and in the civil trial will cooperate in the collection of proofs. Also, 2,000

honorary judges will be hired (2 slots of 1,000 people) to cooperate with judges in civil cases in tribunals that have very heavy backlogs by writing draft sentences. 4,200 other people will be hired by the registries in order to speed up the registries’ work in the tribunals where higher case backlog is being cleared. If the draft Recovery and Resilience Plan will be approved, the Ministry of Justice foresees that already in 2021 it will be possible to hire new resources. The aim is to clear the case backlog by 2026 so to diminish the length of trials.

Digitalisation of the justice system

Regarding the digitalization of the criminal justice system, it is possible to observe a two-faced problem: the telematic criminal trial (“processo penale telematico”) and remote hearings. Regarding the problems posed by remote hearings during the Covid-19 pandemic, please refer to section “Lack of access to the courts/impact on the justice system” under the section “Impact of Covid-19”.

Before the pandemic, there were already several problems with the state of telematic justice. In its 2019 report on the state of telematic

2 Text available here: <https://www.gazzettaufficiale.it/eli/id/2020/05/19/20G00052/sg>

3 See https://www.giustizia.it/giustizia/it/mg_2_9_2.page

4 See https://www.giustizia.it/giustizia/it/mg_1_8_1.page?contentId=SDC320922&previousPage=mg_1_6_1

5 Available here: https://www.giustizia.it/cmsresources/cms/documents/anno_giudiziario_2021_relazione.pdf

justice⁶, the self-government body of Italian magistrature (CSM) had pointed out several technical and organizational issues along with the lack of training on the use of the IT systems.

It is no doubt that the pandemic has given a strong push to the digitalisation of the criminal justice system and its effects will last even after the end of this crisis. For instance, the Portale dei Servizi Telematici⁷ was strengthened and thanks to a function called Portale dei Depositi Penali (PDP) lawyers can now officially deposit some specific documents via the portal for which it is necessary to have a certified email and a digital signature. At first it was possible to use the PDP exclusively for the deposit of: the appointment of the lawyer, documents (memorie), and submissions/requests (istanze) addressed to the prosecution. Later on, a Decree of the Ministry of Justice dated 13 January 2021⁸ extended the use of the PDP to other acts that now can **only** be submitted via the PDP: opposition to the acquittal, the denunciation, the appointment of a lawyer, the change of lawyer, the renunciation of an appointment) and other documents. It is now possible to submit other

acts via certified email and for this reason, the Ministry of Justice activated more than 1,000 certified emails. This last measure is currently allowed because of the pandemic and it is not clear if it will remain active after the end of the emergency.

The president of the Camere Penali (criminal lawyers's union) recently wrote to the Ministry of Justice pointing out many of the criticalities encountered on the portal (e.g. crashing, malfunctioning, tardiness in the authorisation to lawyer to consult the case file in some cases) and pointing out that in many cases each Prosecution Office allows (or does not allow) the use of the portal in a different way. Therefore, he asked the Ministry that until such criticalities be solved, that the portal be not used as the **only** means to deposit legal acts as it is today.⁹

6 Consiglio Superiore della Magistratura, [Relazione sullo stato della giustizia penale telematica 2018](#) (January 2019).

7 <https://www.altalex.com/documents/news/2021/02/10/penalista-telematico-vademecum-breve>

8 Text available here: <https://www.gazzettaufficiale.it/eli/id/2021/01/21/21A00327/sg>

9 See https://www.camerepenali.it/cat/10795/portale_telematico_ed_esercizio_del_diritto_di_difesa_lunione_scrive_al_capo_dipartimento_dottssa_fabbrini.html

Fairness and efficiency of the justice system

Length of proceedings

As it was pointed out in the submission on Italy included in the 2020 Liberties' report on rule of law¹⁰ and the 2020 Rule of Law report by the European Commission¹¹, as well as by the Council of Europe European commission for the evaluation of justice (CEPEJ)¹², length of proceedings and case backlog are two major problems of the Italian justice system, both in civil and penal proceedings.

Data from the annual Report on the administration of justice (pp. 157-158) of the Ministry of Justice¹³ and the Statistics on civil justice¹⁴ show that, because of a lower amount of incoming cases (-18%), despite the partial closing of courts in 2020 (that led to a lower number of concluded cases, -20%) because of the Covid-19 pandemic, the amount of cases on 31 December 2020 is slightly lower than it was on 31 December 2019 (-1,742, -0.05%). The breakdown of the number of cases by

instance at the end of 2020 is indicated as “stable” compared to 2019 for the first instance, -4.8% for the second instance and +2.9% at the Court of Cassation. The Report indicates a clearance rate of 101% for 2020. However, the positive trend of the last few years of the reduction of cases at risk of breaching the time limits of the reasonable length of trial (at risk of Pinto compensation) was interrupted. At first instance, there are now +3.1% cases that have breached the three-year duration, at second instance +1.1% cases that have breached the two-year duration and at Court of Cassation +12.2% of cases that have breached the year duration.

Data from the Statistics on criminal justice¹⁵ on the website of the Ministry of Justice show that case backlog in the criminal justice system has worsened in 2020 because of the courts' shutdown during the first lockdown between March and May and despite the lower number of crimes committed in the same period. Numbers, updated on 30 September 2020, show +3.44% at first instance (1,193,329 cases), +4% at second instance (274,308 cases) and

10 Liberties, [A response to the European Commission Consultation on Rule of Law in the EU](#), cited, pp. 42-52.

11 European Commission, [2020 Rule of Law Report - The rule of law situation in the European Union](#), cited.

12 See https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Overviewv20201_0EN/Overview

13 https://www.giustizia.it/cmsresources/cms/documents/anno_giudiziario_2021_relazione.pdf

14 See https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST1287132&previousPage=mg_2_9_13

15 See https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST1288006&previousPage=mg_2_9_13

+19% at the Court of Cassation (29,166 cases). Unfortunately the statistics do not report how many cases are “at risk of Pinto compensation” for the criminal justice system.

Over the years, because of the diminishing number of cases that could fall under the Pinto law (that since 2001 allows compensations in cases where the reasonable length of proceedings is breached), less and less monetary resources have been allocated to the reparations to be granted pursuant to the Pinto law despite the fact that resources were deemed insufficient also in past years and that Pinto cases were equally taking an excessive time to be resolved. Indeed, in 2018 the budget for Pinto proceedings was 212,4 millions, in 2020 180 millions and in 2021 140 millions. At the beginning of 2020, the Ministry of Justice has renewed the agreement with the Banca d’Italia in order to expedite payments ex Pinto law.

Regarding the new human resources that the State is employing or that plans to employ, please refer to the section “resources of the judiciary”.

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

According to the Annual Penal Statistics (SPACE)¹⁶, in 2019 the average number of detainees without a final sentence in CoE member States was 25.9% while in Italy it was 32.8%. At the end of January 2021¹⁷, such percentage was 31.4% (16,766 people): around half of them were pre-trial detainees and the other half was made of detainees without a final sentence.

In Italy, when people are subjected to unjust detention, they have the right to receive a reparation to compensate for the days spent in prison or in other pre-trial measures. It is possible to apply to receive compensation for unjust detention (ingiusta detenzione) in two cases¹⁸:

Unjust pre-trial detention (pursuant to articles 314 and 315 Code of Criminal Procedure - c.p.p.)

Judicial error (pursuant to article 643 c.p.p.)

The first one concerns two different instances. Art. 314 par.1 c.p.p. concerns people who were subjected to pre-trial detention but that have been acquitted with a final sentence because

16 See https://wp.unil.ch/space/files/2021/02/200405_FinalReport_SPACE_I_2019.pdf, pp. 47-48.

17 https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&contentId=SST320013&previousPage=mg_1_14

18 https://www.dag.mef.gov.it/aree-tematiche/indennizzi/ingiusta_detenzione/index.html

the fact was not committed, because they did not commit the act, because the act does not constitute an offence or is not provided for by law as an offence. Par. 2 of the same article provides compensation to people (irrespective of the final verdict) who were in remand detention without the formal requisites for pre-trial detention as set out by artt. 273 and 280 c.p.p.. The judicial error, on the other hand, concerns cases in which a person, after serving a sentence resulting from a guilty verdict, is found innocent after a revision trial, an extraordinary measure for the revision of trials.

The maximum amount that can be received for an unjust pre-trial detention is € 516,456.90 and it is possible to file a request for compensation within 24 months from the final sentence. The amount is calculated by the judge on a case by case basis taking into account also the detention conditions to which the pre-trial detainee was subjected.

Art. 15 of law n. 47 of 16 April 2015 prescribes to the Ministry of Justice the yearly publication of data on pre-trial measures and on all compensations for unjust pre-trial detention (not on judicial errors). Data on 2019 (pp. 23-27)¹⁹ is not complete (five jurisdictions are missing Courts of Appeal of Brescia, Lecce, Naples, Perugia and Salerno) but the available data shows that 1,026 compensations requests were approved. Among the compensation requests

that were approved, around half of them are irrevocable. 75% of these (350 out of 465) were granted for the violation of art. 314 par. 1 c.p.p. and the others for the violation of art. 314 par. 2. Around 70% of the compensations in both types of violation were granted by Tribunals of first instance while the others by the following instances.

In 2019, compensations were made to 1,000 applicants for a total of € 43,486,630. The highest numbers of measures were granted in three jurisdictions (Rome, Naples and Reggio Calabria) and that the largest payment was issued by the jurisdiction of Reggio Calabria.

Corruption

Framework for the fight against corruption

Over the past few years, Italy considerably strengthened its fight against corruption, introducing the Freedom of Information Access (FOIA), regulations for the protection of whistleblowers, party funding rules and more severe sanctions in case of corruption. The health emergency, however, “revealed corruption as an obstacle to recovery, starting with the pandemic response, including the

19 Senato, [Relazione sull'applicazione delle misure cautelari personali e sui provvedimenti di riconoscimento del diritto alla riparazione per ingiusta detenzione](#) (Aprile 2020).

procurement of medical devices and health-care services”.²⁰

According to Transparency International’s 2020 Corruption Perception Index (CPI), Italy ranks 52 out of 180 countries.²¹ Democracy Reporting International²² indicated that following the state of emergency the Italian government implemented significant human rights restrictions:

- Border restrictions;
- Restrictions on freedom of assembly;
- Limited access to education services;
- Restrictions on freedom of businesses;
- Restrictions on the access to information (FOIA’s temporary suspension²³);
- Suspension of court hearings (hence increasing the risk of the backlog in the already-burdened justice system).

The main authority in charge of the prevention, detection and prosecution of corruption in Italy is ANAC - Autorità nazionale anticorruzione.²⁴

Access to information

In 2016 Italy approved a Freedom of Information Act (FOIA) (i.e. Legislative Decree no. 97/2016), recognizing the right to access data and documents from public administrations (PAs), which has proven to be a particularly relevant instrument for journalists’ enquiries.

While Italy considerably improved its right to information rating with the implementation of this measure, the law still has several shortcomings: e.g. the lack of sanctions for public bodies that illegitimately refuse to disclose documents; the absence, in many Italian regions, of an ombudsman that can safeguard the right to access to information; the limited duties on proactive transparency for PAs. In addition, although the Italian National Anti-Corruption Authority has adopted guidelines for public bodies handling access to information requests, these seem to be disregarded or unknown by civil servants.

20 SIR, [Corruption](#). Transparency International: “Italy ranked 52nd. All countries suffered the impact of the COVID-19 emergency” (January 2021).

21 Transparency International, [Corruption Perception Index 2020](#) (February 2021).

22 Democracy Reporting International, [Phase two of COVID19 responses across the EU – the rule of law stress test continued](#) (July 2020).

23 For more information see https://www.infodata.ilsole24ore.com/2020/04/01/43750/?refresh_ce=1

24 <https://www.anticorruzione.it/portal/public/classic/>

The Italian FOIA still falls far behind international standards, as it forces applicants to go through the infamously-slow Italian court system in order to challenge decisions of non-disclosure of information, making it difficult to hold public officials accountable and nearly impossible for citizens to participate in decision making processes. On top of this, although almost all Italian regions have equipped themselves with an Access Register, they present significant differences in reporting, information-gathering and publication methods, thus leading to frequent gaps in yearly collections.

The actual implementation of the FOIA also appears to be unsatisfactory. Monitoring activities in 2017 and 2018 showed that around 75% of the requests were not answered at all by public bodies (no more recent data could be retrieved). One third of the denial by PAs to disclose information was illegitimate and, in most cases, the responses received from PAs could be considered totally inappropriate or deprived of any sound legal basis.

On top of this, the Decree-Law of 17 March 2020 suspended FOIA requests that were not “immediate and urgent” (with no precise indication of what kind of information can be considered such) until 31 May 2020. A second Decree issued on 27 March 2020 suspended all non-urgent administrative proceedings, including FOIA requests, until 15 April 2020.

Rules on preventing conflict of interests in the public sector

Constitutional references on the matter are scarce, generic and only implicitly addressed in Articles 97 and 98 of the Constitution. There are, however, several other sources applicable, among which Anti-corruption Law no. 190/2012, which foresees provisions for the prevention and repression of corruption and illegality in the public administration.

Whistleblower protection

Law no. 179/2017 - “*Provisions for the protection of whistleblowers who report offences or irregularities which have come to their attention in the context of a public or private employment relationship*” - stipulates that public and private sector employees must be protected if they report illegal practices within their company or organisations. Before its entry into force, whistleblowing was only regulated with reference to the public sector (article 54-bis of Legislative Decree no. 165/2001 as amended by Law no. 190/2012), banking and finance sector (Legislative Decree no. 72/2015) and for listed companies (Article 7 of the Corporate Governance Code). Additionally, this law sets forth protective measures also for workers belonging to the private sector who report offences or irregularities which have come to their attention in the context of the employment relationship. Workers are protected by the law and the applicable collective bargaining agreement. It is automatically unfair to dismiss or victimise an employee because he/

she made a disclosure if in doing so he/she did not breach the law or the contract.

There is no statutory requirement that employers put in place a whistleblowing policy or arrangements. There is, however, an increasing awareness that doing so means that concerns can be dealt with efficiently and transparently. There is also the added benefit that having an internal policy in place means that concerns can be raised and managed internally, not externally mitigating the risk of reputational damage/repercussions.

Sectors with high-risks of corruption

The sectors with higher risks of corruption in Italy are:

- Healthcare
- Assistance
- Public utilities

Measures taken to address corruption risks in the context of the COVID-19 pandemic

Mr Giuseppe Busia, President of the ANAC (National Anti-Corruption Authority), affirmed that several regulatory interventions

and anti-corruption coalitions have been launched to address corruption risks in the context of the COVID-19 pandemic. These include upgrading the national database of public procurement and “ensuring the transparency of Next Generation EU funds, allowing institutions and all citizens to accurately verify how these funds will be used, avoiding that they are diverted from society at large and squandered instead of being spent for the benefit of future generations”.²⁵ Particular attention has also been directed towards digitalisation, a key instrument to reduce the risk of corruption, increase transparency and market competitiveness, as well as an essential investment process of the Recovery Fund.

Media environment and freedom of expression and of information

Media authorities and bodies

Information about the mentioned aspects must be reported to the Communications Regulatory Authority (Autorità per le Garanzie nelle Comunicazioni, AGCOM)²⁶ and is held in the Register of the Communications (ROC). The AGCOM is charged with ensuring equitable conditions for fair market competition and protecting fundamental rights of all to

25 SIR, *Corruption*. Transparency International: “Italy ranked 52nd. All countries suffered the impact of the COVID-19 emergency”, cited.

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

media pluralism. Law No. 249/1997 entrusts AGCOM with tasks that range from identifying and monitoring the relevant media markets to issuing sanctions and approving regulations, to advising the Government and Parliament on matters concerning communications.

Transparency of media ownership and government interference

The Italian media market is characterized by considerable market concentration, in which the two main industry competitors, public broadcaster RAI and private media firm Mediaset, dominate market share and generate most of the revenues from FTA Audiovisual Media Services²⁷. In terms of print press audience, the main media companies in Italy are GEDI Gruppo Editoriale, RCS Mediagroup, and Editoriale Nazionale (Monrif/Poligrafici Editoriale)²⁸ and in terms of revenues the dominant Italian media companies are RCS Mediagroup, GEDI Gruppo Editoriale and Il Sole 24 Ore.²⁹

In most cases significant media owners have other relevant industrial and financial interests,

as well as political interests putting at risk media pluralism. According to the Centre for Media Pluralism and Media Freedom at the European University Institute, political and editorial independence within private media scores at a level of “medium risk” in Italy.³⁰ This is due to historical and structural features, where only one of the main owners is a “pure” publisher, while the others often manage additional businesses.

Being listed companies, most media companies are legally obligated to disclose in detail their ownership and governance structures on their websites and respect additional publishing regulations. They are not required to provide information on:

- Political, religious or other affiliations of shareholder or owner;
- Interests by owners in other media organisations;
- Interests by owners in non-media businesses;
- Interests in the media organisation by individuals (e.g. family members or organisations) affiliated to the owner.

27 See Centre for Media Pluralism and Media Freedom, [Media Pluralism Monitor 2016 Monitoring Risks for Media Pluralism in the EU and Beyond Country report: Italy](#).

28 See http://www.adsnotizie.it/_dati_DMS.asp

29 https://www.mbres.it/sites/default/files/resources/rs_Focus-Editoria-2018.pdf

30 See Centre for Media Pluralism and Media Freedom, [Media Pluralism Monitor 2016 Monitoring Risks for Media Pluralism in the EU and Beyond Country report: Italy](#), cited.

Media organisations and/or their owners are specifically required to disclose ownership details directly to the public according to Article 2, Press Law No. 48 of 8 February 1947 (“the Press Law”). Relevant legislation covers both online and written “editorial products”. According to Article 1 of Law No. 62 of 7 March 2001, an “editorial product” is “produced on paper, including in a book, or through the computer, destined for publication or, however, for the dissemination of information to the public by any means, including electronic means, or via television or radio-broadcasting, with the exclusion of musical recordings or cinematic products.” This definition does not include broadcast media, which are therefore excluded from the application of this law.

Article 2 of the Press Law requires the following details to be published:

- Executive Director or Deputy Executive Director;
- Publisher (or publishing company) and related legal address;
- Printer (or printing company) and related legal address.

The information must be made available on every copy and in every edition, in the same format. The information must be disclosed in

the publication itself, although the exact position is not specified.

The information that media organisations are required to publish is limited and does not include details on the ownership structure, the beneficial ownership, the size of their shareholding, any companies with indirect control and/or connected companies. In addition, they are not required to publish information on the sources of media revenue.

Funding landscape

Recent governmental decisions concerning a reduction in state subsidies for the media risk of undermining journalistic work.

Disinformation

The Italian media environment faces the increasing challenge of addressing disinformation through quality reporting. However, according to the Report of the independent High level Group on fake news and online disinformation of the European Commission, media companies are associated with quality and trusted content rather than disinformation.³¹ While disinformation increases³², Italy has no record of systematic fact-checking

31 European Commission, [Final report of the High Level Expert Group on Fake News and Online Disinformation](#) (March 2018).

32 See <https://www.agcom.it/documents/10179/3744102/Allegato+22-11-2018/3aff8790-8039-4456-8f9adae2497289a4>

initiatives carried out by media companies or any other independent outlet.

According to an April 2020 AGCOM report, the pandemic has been marked by an influx of disinformation; at its peak on March 11, almost three weeks after the outbreak began, nearly half of all disinformation on websites and social media was related to the pandemic. Information that was circulated included claims that the virus was created by Chinese spies in a Canadian lab, that the virus was patented by a group financed by US software developer and philanthropist Bill Gates, that it was connected to 5G technology, and that remedies like garlic could cure the disease. The independent watchdog NewsGuard highlighted the existence of at least 10 Facebook pages that played a significant role in disseminating disinformation about the virus. The pages, which ostensibly focused on topics like fashion and cooking, together accounted for over five million followers and repeatedly shared disinformation content produced by two websites, [ViralMagazine.it](https://www.viralmagazine.it) and [FanMagazine.it](https://www.fanmagazine.it). At least nine of the pages had been shut down as of May 6.

Framework for the protection of journalists and other media activists

Threats and intimidation

The impunity rate for abuses against journalists remains high due in part to the fact that it is often difficult to investigate violations committed online and find the perpetrators, as they generally use fake accounts or have tools at their disposal that make them anonymous and difficult to track online. While Italian politicians are now less virulent towards journalists, violence (disparagement and intimidation) against reporters keeps on growing, especially in Lazio and in the South.³³

As for the frequency of the attacks, Ossigeno per l'informazione indicates as follows:

- January - March³⁴: 123 intimidations and threats in Italy against journalists, bloggers and other information operators. For 77 of these 123 episodes, the Observatory rigorously verified and certified the facts. For the other 46 episodes, the Observatory had to stop at the stage of preliminary examination, from which it appears “probable” that each of them constitutes a similar serious violation. Therefore, these 46 names have been publicly reported, separately from the others, with the invitation to verify and

33 Reporters Without Borders, [Italy](#).

34 <https://www.ossigeno.info/italia-il-rapporto-trimestrale-di-ossigeno-sulle-piu-gravi-violazioni-gennaio-marzo-2020/>

ascertain their validity and provide due assistance.

- April - June (most recent report available)³⁵: 73 intimidations and threats directed against 127 journalists, bloggers and other information operators. For 27 of these 73 episodes, the Observatory rigorously verified and certified the facts. For the other 46 episodes, it had to stop at the stage of preliminary examination, from which it appears “probable” that each of them constitutes a similar serious violation. Therefore, 83 names have been publicly reported separately from the others.

On top of this, about 20 Italian journalists are still under 24/7 police protection because of serious threats or murder attempts by the mafia.

Strategic litigation against public participation (SLAPP)

Defamation suits against journalists, including those operating online, remain common. Drawn-out legal proceedings, whatever their result, can entail serious financial costs for defendants. Ossigeno per l’Informazione has reported hundreds of “frivolous defamation suits” against the media since 2011, including cases against online media.

A draft law regulating defamation³⁶ is being currently discussed in Parliament. It brings forward an increase of the sanctions for defamation that would replace prison sentences. If a judge dismisses a civil action for defamation as unfounded, the same judge may require the person who brought the suit to compensate the journalist with an amount not less than half of what is required of the journalist as damages.

The only provisions that can be relied upon to prosecute perpetrators of hate speech and other verbal abuses are the same ones used against journalists (e.g. defamation). Decriminalising these provisions, hence, would hence mean that there would be no other viable instrument to combat hate speech and forms of libel.

Freedom of expression and of information

Access to information

Legislative Decree no. 97/2016, known as Freedom of Information Act (FOIA), been particularly relevant for journalists’ enquiries. Its suspension during the COVID-19 pandemic strongly impeded journalists’ access to data about the spread of the pandemic on the local and regional level.

35 <https://www.ossigeno.info/italia-2-rapporto-trimestrale-ossigeno-aprile-giugno-2020/>

36 Text available at: http://www.senato.it/japp/bgt/showdoc/18/DDLPRES/0/1078704/index.html?part=ddl-pres_ddlpres1-articolato_articolato1

Freedom of expression online

According to Comparitech (which conducted a research in 150 countries on the relationship between restrictions, censorship and Internet)³⁷ Italians enjoy a high degree of freedom of expression online even compared to neighbouring countries: Italy does not typically block or filter content of a political, social, or religious nature; all major websites and communication platforms are freely available; Italians do not face special economic or regulatory obstacles to publishing content online. Italy's Declaration of Internet Rights expresses the country's commitment to the net neutrality principle. However, the 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.

As for self-censorship, Freedom House³⁸ reports that content creators and online writers do exercise caution to avoid controversies with powerful entities or individuals and libel suits by public officials, whose litigation - even when unsuccessful - can take a significant financial toll. Individuals writing about the activities of organised crime in some parts of the country may be especially at risk of extra-legal reprisals.

Also, authorities sometimes request the

removal of specific content. According to Facebook, from July to December 2019, 579 pieces of content were removed from the main platform and 18 from Instagram. The report noted that 42 of these removals occurred "in response to valid court orders," while four items were reported by the National Office against Racial Discrimination (UNAR). The remaining items were removed following "user reports related to Holocaust denial" and "private reports of defamation." Twitter's transparency report for 2019 lists seven requests for content removal, including one court order, between January and June, but no content was ultimately withheld. According to Google's transparency report, the government sent 121 content removal requests between January and June 2019, including 64 for defamatory content, 42 for privacy and security reasons, and eight for hate speech.³⁹

Other issues related to checks and balances

Process for preparing and enacting laws

The need to act quickly to counter the effects of Covid-19 has led the government to declare

37 See <https://www.comparitech.com/blog/vpn-privacy/internet-censorship-map/>

38 Freedom House, [Italy](#).

39 See again Freedom House, [Italy](#), cited.

a state of emergency and to centralize most of the decisions. The majority of the acts adopted were in fact issued directly by the Central Government through Presidential decrees or by structures that refer to it, as the Civil Protection Department or the extraordinary Commissioner for the emergency.

In addition, many measures of fundamental importance for the lives of citizens (e.g. lockdown, support to the economy, fund allocation) have been taken through the various decree-laws issued by the government. Decree-laws are a fast-track instrument that the government uses to legislate; once published it has immediate effect but must be converted into law by Parliament within 60 days.

According to Openpolis⁴⁰, as of November 2020, 24 decree-laws were issued to deal with the COVID emergency. These needed 297 implementing decrees required, of which 198 (66%) have yet to be adopted. The publication of these regulations involves 20 ministries plus the Presidency of the Council of Ministers.

Independent authorities

Italy still lacks a National Human Rights Institution (NHRI). Equality bodies, such as UNAR (the Anti-Discrimination National Office), often lack independence from the government and thus have limited capacity.

Nonetheless, during a 2020 OSCE/ODIHR-led event on the situation of human rights defenders in Italy, both governmental representatives and civil society organisations stressed the need to establish an independent and fully funded NHRI, with its own staff and a specific funding plan that should link in a network all entities working in the promotion of human rights at regional, national and international levels. They reported that a draft law on the establishment of an NHRI is currently being reviewed by Parliament. According to participants, the establishment of an NHRI remains a key priority because it would be a significant step forward in protecting and promoting human rights in Italy, as well as in addressing the difficulties faced by defenders.

Other systemic issues affecting rule of law and human rights protection

Implementation of judgments of the European Court of Human Rights

As of 26 February 2021, Italy is still far from ensuring the full implementation of the judgements issued by the European Court of Human Rights⁴¹, as shown by recent data:

40 See <https://www.openpolis.it/decreti-attuativi-a-rilento-il-66-ancora-da-approvare/>

41 See <https://www.einnetwork.org/italy-echr>

- Number of leading cases pending: 56
- Average time leading judgments have been pending: 5 years, 9 months
- Proportion of leading cases pending from the last ten years: 60%

The lack of follow up on the recommendations of the Committee of Ministers is particularly worrying for the judgements *Khlaifia et al. v. Italy*⁴², concerning the holding of foreigner individuals in a reception centre on the island of Lampedusa then on ships in Palermo harbour (Sicily), and the cases *Ricci v. Italy*⁴³ and *Belpietro v. Italy*⁴⁴ concerning media pluralism.

While civil society organisations (including CILD) have been trying to push for the implementation of the above mentioned judgements 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.

Impact of COVID-19

Impact on the justice system

As reported above, the health emergency led to the suspension of many court hearings and non-urgent administrative proceedings, hence increasing the risk of the backlog in the already-burdened justice system.

It is also important to point out the problems caused by the sudden need to digitalise the penal justice system during the lockdown that took place between March and May.

The research *Justice under Lockdown*⁴⁵ carried out by Antigone and Fair Trials Europe found opposing positions on the management of remote justice. In some cases, the good practice of certified emails was implemented in order to send and receive complete case files and Court documents that were made immediately available. However, not all Tribunals were ready for this sudden change and cases of “total confusion” have been reported, up to the point of using unconventional means like WhatsApp to send Court documents.

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

43 <http://hudoc.exec.coe.int/eng?i=004-28242>

44 <http://hudoc.exec.coe.int/eng?i=004-28294>

45 Fair Trials Europe, [Justice under lockdown in Europe - A survey on the impact of COVID-19 on defence rights in Europe](#) (September 2020).

The impossibility for external personnel (e.g. lawyers) to physically access Tribunals and Court offices caused also many difficulties in the communication with magistrates and registries. As it is highlighted in one contribution to the journal *DisCrimen*⁴⁶, websites of the different offices often show wrong phone numbers and inactive email addresses (also in the case of certified emails) making it very difficult for defense lawyers to contact such offices, hence creating difficulties for the effectiveness of the defence.

The *Justice under Lockdown* report also points out the difficulties that lawyers encountered when they had clients in police custody. Since they could not meet in person with their clients because of Covid-19 restrictions, lawyers claim that the impossibility of meeting their clients undermined the quality of legal assistance. In particular, the construction of a trust relationship is difficult via technological means or phone, especially with new clients. Another issue that was pointed out regarded the lack of confidentiality of the consultation between lawyer and client that was severely restricted by the use of remote consultation tools in police stations.

About legal defense rights in remote hearings, the vast majority of interviewees expressed concerns regarding the possible impacts. In

particular, they render it difficult to establish a relationship between the defendant and lawyer and make it more difficult for the judge to evaluate the person. Also, the technical tools did not guarantee the possibility of a clear conversation with the magistrate and the accused and there was a limited possibility to present, exhibit and view documents. There have also been cases in which lawyers were not able to participate in hearings because they were not given access to the remote hearing despite their availability.⁴⁷ The criminal lawyers' union president, pointed out other problems such as the lack of technical assistance for the parties that need to intervene in the hearing, the possibility of network failures, privacy and safety related issues.⁴⁸

Shrinking civic space

Humanitarian ships arriving on Italian coasts have to undergo a 14-day obligatory quarantine period starting from the date of disembarkation. These measures apply despite the crew's pre-departure isolation and swab tests, their negative COVID-19 tests upon arrival, the strict health protocols (Ffp2 masks, visors and biocontainment suits) on board and the exemptions provided for in Article 7, point 8 of the Prime Ministerial Decree of 14 January 2021. The latter stipulates that "crew and

46 See <https://discrimen.it/wp-content/uploads/disCrimen-3-2020.pdf>, pp. 343-345.

47 See <https://www.strali.org/ilcasoprocessotelematico>

48 See <https://www.ildubbio.news/2020/04/18/la-denuncia-di-caiazza-e-un-processo-o-un-videogame/>

travelling personnel” must only take a test upon arrival and not undergo a 14-day quarantine. Not only is this applied to airlines’ staff, it is also applied to the crew of commercial ships, Coast Guard and Financial Police that provide assistance to migrants at sea. On 26 February 2020, Il Manifesto reported that, while the Open Arms was blocked by a two-week quarantine (on 16 February 2020 it arrived in Italy with 146 people), the Asso30 was allowed to depart 24 hours after its arrival (on 22 February, it disembarked 232 people).⁴⁹

The COVID-19 pandemic has also hindered the monitoring of human rights and fundamental freedoms, especially freedom of expression and living conditions in places of detention.

Inequality and discrimination

From a socio-economic perspective, women have been the most affected category by the health emergency. The Fondazione Studi Consulenti del Lavoro⁵⁰ reports that, in Italy, female employment fell by two percent, compared to the 1.7 percent of male employment. Of the 841 thousand jobs lost in the second quarter of 2020 compared to the same period in 2019, 55.9 percent belonged to women. This means that 470 thousand female positions were lost, with a growth of inactive women touching 707 thousand. 74% of women workers in

Italy continue to work. Among them, three million women have had to find a balance with childcare. As a result, the stress level is very high - and increased - resulting in the risk of job abandonment.

The Civil Protection Department measure of 12 April 2020 provided for the possibility of holding migrants, who had been rescued or who had arrived on foreign-flagged vessels, on ships identified by the Ministry of Infrastructure and Transport off Italian coasts during their medical isolation period. In addition to those who arrived by sea on both Italian and non-Italian vessels, in October 2020, these ships started hosting also Covid-positive migrants who held a regular Italian residence permit. Quarantine ships went from being an exceptional reception measure to floating immigration holding facilities. In response to the reports and complaints of the civil society, the Minister of the Interior Lamorgese affirmed that, due a lack of on-land facilities, the measure was deemed necessary to ensure the isolation of virus-affected migrants and, hence, to protect the other hosts of the centres and their staff. “Once Covid-free”, she stated “migrants will be transferred to their provinces once again”. The Minister finally accepted the civil society’s request to stop the illegitimate holding of regular migrants on quarantine ships. She reassured that transfers from reception centres to quarantine ships will no longer be carried out and that the ships will

49 <https://ilmanifesto.it/covid-quarantene-mirate-per-femare-le-navi-delle-ong/>

50 See <http://www.consulentidellavoro.it/home/storico-articoli/13330-ripartire-dalle-donne>

be employed only for those migrants arriving by sea during their medical isolation period.

During the height of the epidemic in Trieste, in the Friuli Venezia Giulia region, regional authorities proposed to moor a “ship” in the port of the city to host old people affected by Covid-19. Although protests and opposition followed swiftly, the plan of a “lazareth-ship” remained solid for more than one month; the “Gnv Allegra ship” (one of the ships currently hosting migrants) was identified and commissioned for the job. Finally, however, regional authorities decided not to proceed and the agreement fell through. The health emergency should not be used as an excuse to discriminate.

Poverty

Italian agriculture lobby Coldiretti ⁵¹estimates that the virus has created 300,000 newly poor people, based on surveys of the dozens of charity groups operating in the region. Nationally, one-third of all people seeking help from Caritas during the pandemic are first-time recipients, and in a reversal of usual trends, most are Italians and not foreign residents. Food security emerged as a key issue.

51 See <https://apnews.com/article/pandemics-italy-coronavirus-pandemic-financial-markets-milan-821336fb6b-1fe6892fd178433de0fc70>