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2022 Rule of Law Report
Country Chapter on the rule of law situation in Italy

Accompanying the document

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2022 Rule of Law Report
The rule of law situation in the European Union

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ABSTRACT

Comprehensive long-awaited civil and criminal justice reforms have been adopted as part of the commitments of the Italian Recovery and Resilience Plan, aiming at improving the quality and efficiency of the justice system. Digitalisation of the justice system is further progressing at civil courts, while challenges remain at criminal courts and prosecution offices. Specific measures aimed at supporting judges are being implemented. These measures, coupled with forthcoming implementing legislation, intend to address the serious challenges related to the efficiency of the justice system, including backlogs and length of proceedings. On 16 June 2022, the Italian Parliament approved a new law to reform the justice system, which also includes provisions regarding the establishment and functioning of the High Council for the Judiciary. Implementing legislation, to be adopted within one year, will provide the opportunity to adopt more detailed provisions that take into account European standards on judicial independence, including on the organisational powers of the presidents of courts and the involvement of lawyers in the professional evaluation of magistrates.

Italy's new National Anti-Corruption Plan (2022-2024) is planned to be in place in the summer 2022. While the criminal justice reform addresses the excessive delays in corruption prosecutions, close monitoring will be required to ensure that corruption cases will not be automatically closed at appeals level. Challenges still exist for corruption investigators regarding the level of interconnection of the registries that include relevant financial data, which calls for increased digitalisation and artificial intelligence tools. Several legislative proposals aimed at strengthening corruption prevention are still pending, including on whistleblower protection, conflicts of interest and lobbying. Political party and campaign financing rules show some significant loopholes, while several investigations into cases were launched and first instance conviction reached. The practice of channelling donations to political parties through political foundations and associations present a serious obstacle to public accountability, as transactions are difficult to trace and no common, single register exists. Corruption is increasingly used to infiltrate the legal economy.

Italy has a robust legislative framework regulating the media sector, including its public service media, as well as an independent and effective media regulator. Concerns persist with regard to the precarious working conditions of many journalists in the country, the protection of journalistic sources and the issue of professional secrecy. While prison sentences for defamation have largely been abolished following a landmark Constitutional Court ruling in 2021, the increasing prevalence of SLAPP cases and the combination of criminal and civil defamation raises concerns. In spite of a well-functioning and resourced coordination centre dedicated to monitoring the issue, cases of physical attacks and intimidation against journalists and media outlets continue to rise year-on-year.

The Parliament and the Constitutional Court have continued to exercise scrutiny over restrictive measures taken in the context of the COVID-19 pandemic, while the emergency regime has recently ended. Due to delays in the legislative process, a National Human Rights Institution remains to be established. Democratic participation of civil society organisations would be promoted through a permanent advisory board. However, the civic space remains narrow, in particular for the organisations dealing with migrants, and the registration process for non-governmental organisations remains complex.

RECOMMENDATIONS

In addition to recalling the commitments made under the national Recovery and Resilience Plan relating to certain aspects of the justice system and the anti-corruption framework, it is recommended to Italy to:

- Continue the efforts to further improve the level of digitalisation of the justice system, particularly for criminal courts and prosecutors' offices.
- Continue effective operations of police and prosecution service against high-level corruption, including by enhancing digitalisation and interconnection of registries.
- Adopt comprehensive conflict of interests rules and lobbying regulation to establish an operational lobbying register, including a legislative footprint.
- Effectively address the practice of channelling donations through political foundations and associations and introduce single electronic register for party and campaign finance information.
- Introduce legislative and other safeguards to reform the regime on defamation, the protection of professional secrecy and journalistic sources, taking into account the European standards on the protection of journalists.
- Increase efforts to establish a National Human Rights Institution taking into account the UN Paris Principles

I. JUSTICE SYSTEM

The structure of the justice system is set out in the Constitution, which enshrines its independence and autonomy. Ordinary courts have jurisdiction in civil and criminal matters and are organised in three instances. The first instance is composed of justices of the peace, ordinary courts and juvenile courts. The second and third instances are made up of the courts of appeal and the High Court of Cassation, respectively. Administrative justice is organised in first and second instance courts. Jurisdiction in accounting matters is exercised by the Court of Auditors (with Regional and Central Chambers). Regarding fiscal matters, the responsible courts are fiscal courts at first and second instance and the High Court of Cassation at the highest level. The structure of the prosecution service mirrors that of the courts. Italy participates in the European Public Prosecutor's Office (EPPO). According to the principle of unity of the judiciary, ordinary judges and public prosecutors are all magistrates, have a common career structure, and are governed by the High Council for the Judiciary[1]. Administrative, accounting and fiscal magistrates have their own self-government bodies. The National Bar Council is an independent and self-governing body established by law. The Constitutional Court decides in exclusivity on disputes regarding the constitutionality of laws.

Independence

The level of perceived judicial independence in Italy continues to be low among the general public, while it is average among companies. Overall, 37% of the general population and 40% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2022[2]. According to data in the 2022 EU Justice Scoreboard, the perceived judicial independence among the general public has consistently increased since 2016. Both figures have increased in comparison to 2021 (34% for the general public and 29% for companies), as well as in comparison to 2016 (25% for the general public and 24% for companies).

The newly adopted law for the reform of the High Council for the Judiciary (CSM) aims at addressing challenges relating to the representativeness of its members. Since August 2020 a draft law increasing the number of the members of the CSM and modifying the way in which they are elected, to enhance their independence *vis-à-vis* their professional associations[3], was pending before Parliament. On 16 June 2022, the Parliament approved the new law[4], including on the number of CSM members[5] and the way in which they are elected[6].

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1 Consiglio Superiore della Magistratura (CSM) in Italian.

2 Figures 50 and 52, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

3 2021 and 2020 Rule of Law Reports, Country Chapter on the rule of law situation in Italy, pp. 2 and 3.

4 Law n. 71 of 17 June 2022, published on the State Gazette on 20 June 2022 and entered into force on 21 June 2022, empowers the Government to reform the justice system and adapt the military justice system, providing also for provisions on legal, organisational and disciplinary matters, on eligibility and redeployment of magistrates, on establishment and functioning of the CSM.

5 The number is increased from 24 to 30 (20 tenure magistrates chosen by their peers and ten members elected by the Parliament among law professors and lawyers with at least 15 years of experience). See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p.3.

6 Law no. 71 of 17 June 2022 provides that the electoral system be a prevailing majority system with a correction towards a proportional system which aims to offer to minority groups a representation in the CSM. (Art. 29 and following of the law).

The current CSM will end its mandate on 24 September 2022[7]. On 23 March 2022, the CSM issued an opinion on the draft law. While supporting the proposed new electoral system[8], the CSM underlined that some provisions might undermine the independent functioning of the body[9].

Stricter rules on 'revolving doors' for the judiciary and other positive provisions are also included in the newly adopted law. The new legislation[10] also addresses the topic of direct participation of magistrates in political life which has been raised as a concern by GRECO[11]. The law introduces stricter provisions, including the ineligibility to elected positions of magistrates who have been on duty with judicial offices located in the constituency in the three years before the election[12] and a cooling-off period of 3 years if not elected[13]. They also include the prohibition to simultaneously exercise judicial functions and elected/governmental ones[14] and the prohibition for magistrates who have held elected positions to come back to the bench at the end of their term of office. Further positive aspects of the law include a faster access to the competition to access the judiciary, and new trainings, including on statistical data. On 23 March 2022, the CSM assessed such set of rules largely positively[15].

The CSM and other stakeholders have raised concerns that some provisions of the draft law on the reform of the CSM and the justice system could result in an undue influence on judges. The law, approved by the Parliament on 16 June, provides the reform of the justice system and includes provisions on the establishment and functioning of the High Council for the Judiciary. Its implementing legislation is due within one year. The new

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7 Written contribution from the CSM in the context of the country visit, p.1.

8 Opinion of the CSM of 23 March 2022 (on amendments to draft law A.C. 2681 containing, among others, provisions on the organisation, eligibility and appointment of magistrates and the establishment and functioning of the CSM). In particular, it underlines that the system for the election of the judicial members is predominantly majority with a proportional corrective measure and limits the possibility of drawing by lot to marginal applications. 2020 Rule of Law Report, Country Chapter on the rule of law situation for Italy, p. 4; Recommendation CM/Rec(2010)12 of Committee of Ministers of the Council of Europe, para. 27.

9 For instance, those relating to the discretionary power of the Ministry of Justice to build electoral colleges ahead of the election, as well as the absence of any ineligibility clause for lay members aiming to prevent any political or partisan influence. See CCJE Opinion No. 24 (2021) on the 'Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems', p. 4 and Recommendation CM/Rec(2010)12 of Committee of Ministers of Council of Europe, paras. 26- 29.

10 Law no. 71 of 17 June 2022.

11 GRECO Fourth Evaluation Round – Second Compliance Report, recommendation x. See also the opinion of the CSM, of 21 April 2021.

12 They also need to take leave without pay at the moment of the acceptance of the candidacy. See Art. 12 para 5 which refers to ineligibility for CSM members.

13 Magistrates may not be reassigned for three years to a judicial office located in the constituency where they ran as candidates, nor may they be reassigned to the district where they used to exert judicial functions before running for a political mandate. A three-year ban, without territorial exceptions, is provided for the functions of pre-trial investigation judge and preliminary hearing judge or public prosecutor, and to hold or be assigned high or middle managerial positions.

14 Magistrates holding or taking over political or government offices, must take leave without pay and be deployed outside the judiciary for the whole duration of the mandate,

15 Opinion of the CSM dated 23 March 2022, p. 146. The Opinion issued by the CSM on 29 April 2021 criticised the reduction in the number of the changes in functions among judges and prosecutors (from four to two times, now further reduced to one) as this would lead to the separation of the career of a judge and the career of a prosecutor.

legislation regulates the organisational powers of courts presidents[16]. In particular, it introduces a professional evaluation of magistrates, which, among other things, will take into account the achievement of expected results set by presidents of courts[17] and the possibility to initiate disciplinary action for non-compliance with instructions from presidents of courts as to the expected results[18]. Furthermore, it envisages the reduction of the number of middle managerial positions[19] and regulates powers for the First President of the High Court of Cassation[20]. Moreover, the professional evaluation for high-level positions will take into account the outcome of the ruling in subsequent instances[21], which may be seen as implicitly calling for a uniform ruling on certain topics[22]. While these provisions aim at increasing efficiency, they have been criticised by the CSM and the National Association of Magistrates (ANM) for a tendency towards an increased internal judicial hierarchy[23] and a potential use of disciplinary proceedings as an instrument of governance of judicial offices[24]. The Ministry of Justice noted that the new organisational measures would not impact the decision making autonomy and independence of magistrates[25]. The combined effect of the new provisions may lead to dependencies which may entail undue influence on judge's independence. However, implementing legislation will provide the opportunity for more detailed provisions on how judicial independence is ensured. According to European standards, the search for enhanced efficiency should not compromise judicial independence[26].

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16 The main innovations reported are: i) the introduction of a procedure requiring Heads, both of Chambers and Office, to actively take charge (for prevention and remedy purposes) of situations of suffering, that may consist both of accrued delays in the definition of the proceedings by the judges and difficulties of a Chamber in coping with the definition of contingencies ii) the results expected by each Chamber or magistrate must also be identified in the annual management program (previously, reference was made to the judicial office only as a whole). Furthermore, the Head of the Office must comply with the workload limits of the magistrates identified by the competent self-governing bodies (Art. 14 of the Law n. 71 of 17 June 2022).

17 Art. 3 para 1 lett. d) of the Law no. 71 of 17 June 2022: the annual management programs drawn up by the head of the Office has to be taken into account. .

18 Art. 11 of the Law no. 71 of 17 June 2022. The law introduces new disciplinary offences related to efficiency which are reported to entail the risk to 'transform disciplinary proceedings in an instrument of governance of the offices' (Opinion of the CSM dated 23 March 2022, p. 23). See also the written input from the Court of Cassation as to the personal file of magistrates.

19 Art. 2, para 1 lett. n) of the Law no. 71 of 17 June 2022. Opinion of the CSM dated 23 March 2022 p. 84. See also written contribution from the National Association of Magistrates in the context of the country visit.

20 Art. 7 of the Law no. 71 of 17 June 2022. See also the Opinion of the CSM dated 23 March 2022 p. 94 referring to the power to allocate to the chambers of the High Court of Cassation, judges of the Abstracts and Rolls Office, without the involvement of the CSM.

21 The Judicial Council must acquire necessary information to ascertain the existence of serious anomalies in relation to the outcomes of the cases in the phases or instances following the proceedings (art. 3 lett. g) of the Law no. 71 of 17 June 2022).

22 Recommendation CM/Rec(2010)12 of Committee of Ministers of Council of Europe: Para 5: 'Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts'. See also the Opinion of the CSM dated 23 March 2022, which underlines a limitation to judicial independence in the application of the law.

23 See Opinion of the CSM dated 23 March 2022, p. 108 and following, which underlines that the managerial programme is an instrument which refers to expected results of the court and not of individual judges and deplores the deletion of the reference to an acceptable workload set by CSM. See also written contribution from the National Association of Magistrates in the context of the country visit. In the same direction, see also the written contribution from the Court of Cassation as to the personal file of magistrates.

24 Opinion of the CSM dated 23 March 2022, p. 23.

25 Written contribution from the Ministry of Justice.

26 Recommendation CM/Rec(2010)12 of Committee of Ministers of Council of Europe, para. 22. The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating

Further provisions of the newly adopted law aim to confer voting powers of lawyers on appraisal of magistrates. The new legislation[27] introduces the power for lawyers to vote at Local Councils for the Judiciary[28] on the appraisal of magistrates[29]. While being members of the local Councils for the Judiciary, the lawyers continue to exercise their profession. The CSM and the ANM have raised the concern that this may constitute a conflict of interest[30], due to the absence of incompatibility rules[31]. The Ministry of Justice noted that the new law introduces some safeguards aiming to eliminate the risk of conflict of interest of lawyers called to cast a vote on the assessment of the professionalism of the magistrates[32].

Further measures have been adopted to continue to address integrity challenges. The CSM has continued to take additional action as regards serious allegations relating to magistrates disclosed by a criminal investigation which led to the resignation of five members of the CSM[33]. This includes opening additional disciplinary proceedings against magistrates[34], decisions not to confirm magistrates in high level position functions[35], and

functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence. See also CM/Rec(2010)12 of Committee of Ministers of Council of Europe, para 37.

27 Law no. 71 of 17 June 2022. On increased powers of lay members of the CSM, on 16 February 2022, the Constitutional Court admitted a referendum which was held on 12 June 2022, but did not reach the necessary *quorum*.

28 Leg. Decree n. 25 of 2006: lay members of Local Councils for the Judiciary are lawyers and professors and issue every four years non-binding opinion, not subject to judicial review for the appraisal of magistrates.

29 The Bar Council can inform local Councils on specific facts related to professional activities of magistrates (Art. 11 of the Leg. Decree No. 160/2006). With the new amendments, lawyers will be able to vote.

30 Opinion of the CSM dated 23 March 2022, pp. 58-60 (as to a case pending before the judge concerned where the lawyer in the Local Council for the Judiciary has an interest as to the outcome of the case). See also written contribution from the National Association of Magistrates in the context of the country visit, p. 3.

31 Opinion of the CSM dated 23 March 2022 pp. 58-60 (incompatibility between being a voting member of the Local Council for the Judiciary and simultaneously being registered in the professional district bar). See also written contribution from the National Association of Magistrates in the context of the country visit, p. 3. This voting power, together with the involvement of the bar as regards the procedure to select magistrates for high level managerial positions, raises concerns as judges may need to deal with lawyers in proceedings who at the same time have a say on their professional advancement (see Consultative Council of European Judges, Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence, para 31).

32 Art. 3 lett. a) of the Law no. 71 of 17 June 2022. The lawyers in the local Councils for the Judiciary, whatever their number is, will be able to cast a single unitary vote but only on the basis and in conformity with the report of specific facts, whether positive or negative, relating to the professionalism of the magistrate, produced by the Council of the Bar Association. Written contribution from the Ministry of Justice.

33 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 3-4.

34 Information received from the CSM in the context of the country visit. See also collection of decisions from 2021 on the website of the CSM under disciplinary section.

35 Information received from the CSM in the context of the country visit. See also decisions on the career of magistrates available on the website of the CSM.

administrative transfers[36]. Secondary legislation has been revised to improve the functioning and the independence of the CSM[37].

Quality

Significant recruitments are ongoing for both judicial and administrative staff, while specific measures are envisaged to support the work of judges. Despite the impact of the COVID-19 pandemic on the recruitment of judicial staff which prevented the competition to take place in 2020, in July 2021, a competition for 310 posts for judges and prosecutors was launched and should be completed by the end of 2022[38]. A new competition for 500 posts for judges and prosecutors is expected to start by June 2022[39]. However, from the time the examination is announced to the time the positions are actually filled, there is a delay of at least four years[40]. Administrative staff, especially law clerks and legal assistants, has substantially increased in 2021 (4 837 posts compared to 1 920 posts in 2020). In the context of the National Recovery and Resilience Plan (RRP), specific measures by temporary hiring of administrative staff[41] are envisaged to support the work of judges[42]. This support team was reorganised as part of the existing Office of the Trial[43], a structure aimed at ensuring a reasonable length of the trial[44]. On 6 August 2021, a national competition took place to select 8 171 people to be included in the offices of the trial at civil and criminal courts. The selected staff started work in February 2022[45]. These measures also aim at reducing case backlogs and improving efficiency, and include staff training to meet the digital transition challenges in the justice system. They help addressing a long-standing country-specific recommendation issued in the context of the European Semester on the efficiency of the justice system[46]. In addition, on 27 December 2021, a Decree of the Minister of Justice identified the criteria, minimum

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[36] Art. 2 of Royal Decree No. 511 of 1946 as amended by Art. 26 of Legislative Decree No. 109 of 2006: transfers apply whenever the magistrate cannot perform any more his/her functions in his/her office with independence and impartiality, for a cause which is independent from his/her fault. Information received from the CSM in the context of the country visit. See also collection of decisions from 2021 on the website of the CSM under disciplinary section

[37] Decision of the CSM of 16 March 2022 related to the selection procedure for magistrates at the Secretary and at the Study Office of the CSM; Memorandum of understanding between the CSM, the National School for the Judiciary and the Ministry of Justice, of 22 December 2021 for training related to high level positions; Decision of the CSM 22 December 2021 regarding managerial positions.

[38] Written contribution from the Ministry of Justice in the context of the country visit, 'Office of the Trial, flexible task forces and recruitment of ordinary magistrates', pp. 18 and 19.

[39] Ibid, pp. 18 and 19.

[40] According to the Third Commission of the CSM, there is a national shortage of 15%, since there are 1.568 vacant positions compared to 10.558 available positions in the workforce. Written contribution from the CSM.

[41] 21 910 posts for civil and criminal courts to be recruited by Q2 2024, see also numbers of temporary staff allocated to 225 courts (written contribution from the Minister of Justice in the context of the country visit, pp. 5-9).

[42] This will support study, legal research, drafting of acts and organisation of files. Decision of the CSM of 13 October 2021 on guidelines for the Office of the Trial. See also the Decision of the CSM of 23 February 2022 related to the establishment of a technical table aiming at planning training of staff of the Trial Office.

[43] Council Recommendations of 2013-2020 on the efficiency of the Italian justice system.

[44] In the context of the RRP, the remodelling of the office of the trial, together with the digitalisation of the justice system and the reforms of civil and criminal procedures are the main axes of the comprehensive reform of the justice system aiming at addressing 2020 and 2019 country-specific recommendations on improving the efficiency of the judicial system.

[45] Written contribution from the Minister of Justice in the context of the country visit, p. 9 (6 471 recruitments have already taken place).

[46] 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 8, footnote 71.

duration and priority rules, also based on the targets set in Italy's RRP, to activate an *ad hoc* flexible task force[47]. It also completed the legal framework for magistrates to be allocated where most needed in each judicial office in a critical situation. For administrative justice, specific recruitments for temporary staff are also envisaged in the context of the RRP[48]; a competition for 168 units started in July 2021 and 162 selected staff signed their contract in early 2022[49].

Digitalisation of the justice system is progressing in civil and administrative courts, while challenges remain in criminal courts and prosecution offices. While already completed at first and second instance of civil courts[50], the digitalisation of proceedings is still in progress at the civil sections of the Court of Cassation[51]. For Judges of Peace, electronic communication has been extended also for interaction with public administrations, and the management of electronic filing of documents by lawyers is expected to be completed by June 2022[52]. However, at criminal courts, digitalisation of trials is still at the beginning[53] and is expected to be completed only for the first instance by late 2023[54]. At prosecution offices, digitalisation still faces some challenges, but there are efforts to improve[55]. In administrative proceedings, digitalisation is the rule except for the hearings[56]. In particular, rules are in place that allow, in some cases, to use distance communication technology in hearings[57]. Secure electronic communication is now available between all courts, between all courts and lawyers, detention facilities and notaries, and between some courts and bailiffs[58]. Digital solutions to initiate and follow proceedings have been further expanded, especially in civil and commercial proceedings where it is now also possible in some cases to file an

47 Decree of the Minister of Justice of 27 December 2021, published on the Official Gazette No. 34 of 10 February 2022. See also Decree of the Minister of Justice dated 23 March 2022 which sets the total number of flexible task force in 179 posts, 125 with judicial function and 54 with prosecutorial function.

48 According to the RRP, recruitments of 168 units are envisaged to start by the end of 2022 for identified courts where backlogs are most important.

49 Written contribution from the Council of State in the context of the country visit, p. 4.

50 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 5.

51 A double path still allows paper filing of documents. The written contribution from the Court of Cassation in the context of the country visit underlines the cooperation with lawyers leading to 40% of electronic filings for new enrolments. However, it is underlined the importance to speed up the possibility to have digital access to the file existing at lower instances. In the context of the RRP, mandatory electronic filing of all documents and full electronic workflow for civil proceedings is due by late 2023.

52 Written contribution from the Ministry of Justice in the context of the country visit.

53 Figure 47, 2022 EU Justice Scoreboard.

54 In the context of the RRP, digitalisation of first instance criminal proceedings (excluding preliminary hearing office) is due by Q4 2023.

55 The Ministry of Justice is developing the web portals that would allow for receiving electronically notification for crime offences from law enforcement and would permit lawyers to submit electronically criminal files to the prosecution offices. In addition, an internal Work Flow Manager system is being developed for judges and prosecutors. See written contribution from the Ministry of Justice, Digitalisation, p. 3 in the context of the country visit. See also Figure 43, 2022 EU Justice Scoreboard: the use of digital technology by the prosecution service has improved leading to the possibility for staff to work remotely but only in limited cases.

56 Written contribution from the Council of State in the context of the country visit, p. 4: all aspects of the trial are completely digitalised, from the filing of the case till the electronic signature of the ruling except for the hearings (during COVID-19 pandemic remote hearings have taken place).

57 It is possible in some cases to use distance communication technology for interpretation and for hearing experts, witnesses and parties. Figure 42, 2022 EU Justice Scoreboard.

58 Figure 44, 2022 EU Justice Scoreboard. See also 2022 Report of the First President at the High Court of Cassation which underlines the existence of a cooperation project to manage electronically data flows between administrative justice (Council of State and first instance administrative judges) and the Court of Cassation regarding matters of jurisdiction of common interest.

application for legal aid online[59]. Training for judicial and administrative staff on enhanced digitalisation of the justice system has started[60]. Furthermore, a cooperation started on 29 September 2021 between the judiciary and the academia in order to develop algorithm-based search engine for legal analysis and artificial intelligence tools applied to case law[61]. The High Court of Cassation, the Council of State and the Court of Auditors, together with the Data Protection Authority, have started to cooperate with the aim to explore common procedures to anonymise personal and sensitive data, notably those included in publicly accessible judicial databases[62].

A comprehensive reform of tax courts of first and second instances is foreseen by the end of 2022. A new technical and operational committee has been tasked to draft a legislative proposal reforming tax justice[63], including tax courts[64]. The draft aims at introducing a gradual turnover mechanism to replace part-time tax judges with full-time judges. It also aims at introducing a mechanism allowing to end proceedings after a certain period of time, in the absence of an interest of the parties not to close the case. It also creates a facilitated settlement of pending disputes[65]. In order to improve efficiency, on 19 October 2021, the Court of Cassation and the Ministry of Economy and Finance, signed an agreement[66] allowing the judges of the High Court of Cassation to access the information technology system of tax justice of first and second instances[67].

Standards to improve the quality of judicial decisions have been included in the enabling law for the efficiency of civil trials. Law No. 206 of 26 November 2021 has introduced standards for clarity and conciseness for judicial decisions and for judicial acts of lawyers[68]. Stakeholders have pointed out that electronic filing through a structured format would facilitate the registration and the examination of the act and would consequently allow for clear and concise rulings, aiming also at efficiency gains[69].

One additional region has been admitted to the Proximity Offices project to enhance access to justice. Three-fourths of regions have now been allowed to establish proximity offices to facilitate access to justice especially for vulnerable groups[70]. Such offices will inform users about legal protection and access to justice in proceedings where no assistance

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59 Figure 46, 2022 EU Justice Scoreboard.

60 2022 Report of the First President at the High Court of Cassation: in October 2021, specific training has been provided to Presidents of panels and further extended in December 2021 to all judges.

61 2022 Report of the First President at the High Court of Cassation, p. 109, agreement between the High Court of Cassation and the University School of Higher Studies of Pavia.

62 2022 Report of the First President at the High Court of Cassation, p. 110.

63 In the context of the RRP, the reform aims to decrease the incoming cases at the Court of Cassation and at a more effective system regarding tax law is due by late 2022.

64 See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 6

65 Written contribution from the Minister of Justice (input from Legislative Office) in the context of the country visit.

66 2022 Report of the First President at the High Court of Cassation, p. 99.

67 Electronic storage of the case law of High Court of Cassation in this system should raise awareness on main interpretative trends on tax law cases and thereby help decreasing litigation.

68 Art. 1, para 17 of the Law No. 206/2021. See also written contribution from the Ministry of Justice in the context of the country visit, p. 7. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 6.

69 Written contribution from the Court of Cassation in the context of the country visit.

70 2020 and 2021 Rule of Law Reports, Country Chapters on the rule of law situation in Italy, p. 6.

of a lawyer is needed, facilitate the electronic filing of documents, obtain copies of judicial acts through simplified procedures, and ease contacts with the judiciary for some topics[71].

New provisions regarding criminal justice aim at efficiency gains and need close monitoring to ensure the effectiveness of the justice system is maintained. The reform for the efficiency of criminal justice[72] also includes some provisions applicable for crimes committed after 1 January 2020, setting maximum time limits to conclude trials at the Court of Appeal and the High Court of Cassation, otherwise the case will be barred[73]. Due to efficiency issues especially at appeal level, the new measures risk to negatively impact the criminal trials, especially ongoing ones, as they could be automatically terminated. Although exceptions[74] have been introduced and temporary rules are in place[75], the effectiveness of the criminal justice system requires close monitoring at national level to ensure a right balance between the introduction of the new provisions and the rights of the defence, the rights of victims and the interest of the public in efficient criminal proceedings[76]. To that aim, a technical-scientific Committee established at the Ministry of Justice will monitor the gradual transition to the new regime[77].

Efficiency

The length of proceedings is still a serious challenge. In 2020, disposition times[78] showed an increase at all instances both for civil and commercial litigious cases[79], and for criminal

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71 Written contribution from the Ministry of Justice in the context of the country visit, p.1. The proximity offices aim e.g. to arrange remote hearings between vulnerable persons and guardianship court members.

72 Law No. 134 of 27 September 2021 introduced Art. 344 *bis* of the Criminal Procedure Code as of 19 October 2021.

73 This will happen even if the statute of limitation has not run out. See Law No. 134 of 27 September 2021, Art. 161 *bis:* statute of limitation stops with first instance ruling.

74 Law No. 134 of 27 September 2021: in case of complex cases for all crimes, judges may extend the duration of the time limit for the trial (i.e. prolongation of one year for the Court of Appeal, and six months for the High Court of Cassation, for a total maximum of three years for the Court of Appeal and one year and half for the High Court of Cassation); for terrorism, mafia type organised crime, mafia political electoral exchange crime, sexual violence and drugs smuggling, extensions can be made without a maximum time limit for the trial; for crimes aggravated by the mafia method, the extension is up to five years for the Court of Appeal, and two years and six months for the High Court of Cassation). In addition, time limits do not work for the crimes punished with life imprisonment (Art. 344 *bis* para 9) and whenever the indicted person asks for the continuation of the trial (Art. 344 *bis* para 7).

75 Law No. 134 of 27 September 2021: three years at the Court of Appeal and one year and a half at the High Court of Cassation for three years since the entry into force of the reform.

76 See the Opinion of the CSM dated 29 July 2021, on the amendments of the Government dated 14 July 2021.

77 See Decree of the Minister of Justice dated 28 December 2021, implementing Art. 16 para 2 of Law No. 134 of 27 September 2021. See also, for the High Court of Cassation, 2022 Report of the First President at the High Court of Cassation, p. 102.

78 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, footnote 56: The disposition time is the theoretical time necessary for a pending case to be solved in court and is obtained by dividing the number of pending cases at the end of the observed period by the number of resolved cases within the same period multiplied by 365.

79 Figure 8, 2022 EU Justice Scoreboard. See also CEPEJ (2021) Study on the functioning of the judicial system in the EU Member States: in 2020, civil and commercial litigious case lasted on average 674 days in first instance, 1026 days in second instance and 1526 days in third instance (compared to CEPEJ 2020 Study, for 2019, civil and commercial litigious case lasted on average 532 days in first instance, 791 days in second instance and 1302 days in third instance).

cases[80]. The temporary slowdown of judicial activity due to severe restrictive measures adopted to address the COVID-19 pandemic in 2020 had an impact on both incoming and resolved cases with a strong influence on disposition time[81]. Accordingly, provisional data on disposition time for 2021 show a clear drop back to pre-pandemic values[82]. At the High Court of Cassation, a positive development is observed as incoming cases continue to decrease and resolved cases continue to increase[83]. However, in 2021, more than half of the cases in the field of international protection have been declared inadmissible[84] and tax court cases registered high rates of annulments[85]. Administrative courts kept decreasing disposition time at all instances[86], with continued positives results in some areas such as public procurement[87] and electoral matters[88]. Italy remains under the enhanced supervision of the Council of Europe's Committee of Ministers as regards length of proceedings in administrative cases[89] and length of proceedings in criminal cases[90].

A comprehensive long-awaited civil justice reform has been adopted, aiming at addressing efficiency challenges. In the context of the RRP, Italy has committed to reducing by 40% the disposition time at three instances of civil justice by late 2026[91]. On 26 November 2021, Parliament adopted an enabling law[92] on the efficiency of civil proceedings

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80 CEPEJ (2021) Study on the functioning of the judicial system in the EU Member States: in 2020, the average length of criminal cases was 498 days in first instance, 1 167 days in second instance and 237 days in third instance.

81 CEPEJ (2021) Study on the functioning of the judicial system in the EU Member States, country fiche for Italy. See also Figure 8 EU Justice Scoreboard 2022.

82 Written contribution from the Ministry of Justice in the context of the country visit (General Directorate for Statistics): in 2021, civil and commercial litigious cases lasted on average 567 days at first instance, 663 days at second instance and 1002 days at third instance; in 2021, criminal law cases lasted on average 423 days in first instance, 909 days in second instance and 184 days in third instance.

83 Written contribution from the High Court of Cassation in the context of the country visit: incoming cases from 36 881 in 2018 to 31 544 in 2021; resolved cases from 32 441 in 2018 to 40 757 in 2021. CEPEJ (2021) Study on the functioning of the judicial system in the EU Member States: clearance rate at the civil High Court of Cassation in 2020 increased by 4% up to 89%, while at the criminal High Court of Cassation in 2020 the clearance rate was 98%.

84 2022 Report of the First President of the Court of Cassation, synthesis, p. 10: international protection cases have been attributed to the High Court of Cassation by law and, not having an appeal level, they reverse at the level of the High Court of Cassation issues of merit, which are not in the remit of the High Court of Cassation which deals only with legality issues. Therefore, this the Court of Cassation receives applications - often benefitting from legal aid.

85 2022 Report of the First President of the Court of Cassation synthesis, p. 11: more than half of the resolved cases at the tax section of the High Court of Cassation are annulment of lower instance rulings. This suggests that the quality of lower instance rulings is not high. (5 713 cases annulled and 4 271 cases dismissed).

86 CEPEJ (2021) Study on the functioning of the judicial system in the EU Member States: in 2020, administrative cases lasted on average 862 days in first instance and 667 in second instance. In 2021, administrative courts further decreased disposition time (756 days in first instance and 658 days in second instance). See also written contribution from the Council of State in the context of the country visit: the instrument of the 'short ruling' allows judges to decide the case following a request for an urgent measure (Art. 120 para. 6 of the Administrative Procedure Code).

87 Written contribution from the Council of State in the context of the country visit: on average, in 2020, 205 days in first instance (in 2021, 174 days) and 253 days at second instance (in 2021, 276 days).

88 Written contribution from the Council of State in the context of the country visit: on average, in 2020, 170 days in first instance and 49 days at second instance.

89 Judgment of the European Court of Human Rights of 2 September 1997, *Abenavoli v. Italy*, 24487/94.

90 Judgment of the European Court of Human Rights of 12 May 1999, *Ledonne v Italy*, 35742/97

91 RRP, M1C1-45 related to civil and commercial litigious cases compared to 2019.

92 Law No. 206 of 26 November 2021, entered into force on 24 December 2021. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 8.

and the revision of alternative dispute resolution (ADR) measures, together with directly applicable provisions on family law, forced execution and right of citizenship. It sets out the principle aiming to reduce the length of civil proceedings. A reduction of number of incoming cases in courts is envisaged through increased recourse to ADR mainly by strengthening mediation[93] and arbitration[94], by introducing fiscal incentives and legal aid for those procedures, and by reviewing the current system of quantification and recoverability of legal fees to discourage frivolous litigations[95]. A simplification of proceedings is envisaged by introducing the possibility to declare an appeal clearly unfounded[96], extending the cases where a single judge is competent to adjudicate and securing the implementation of binding timeframes for procedures especially at first instance. At the High Court of Cassation the filter section will be abolished and an accelerated procedure[97] and a preliminary ruling procedure will be introduced[98]. The reform aims at harmonising performances across courts through a monitoring system and incentives to accomplish standard performance. Together with staff recruitment (Office for the Trial) and increased digitalisation, implementing legislation, due by late 2022, is important in order to reach the final targets of the RRP[99]. On 14 January 2022, the Minister of Justice established seven working groups to draft implementing legislation by 15 May 2022[100].

A comprehensive long-awaited criminal justice reform has been adopted, aiming at addressing efficiency challenges. In the context of the RRP, Italy committed to reducing by 25% the disposition time at three instances of criminal justice by late 2026[101]. On 27 September 2021, Parliament adopted an enabling law[102] on the efficiency of criminal trials and restorative justice, together with directly applicable provisions for a swift definition of criminal cases. It aims at reducing the length of criminal proceedings i.a. by extending the application of simplified procedures[103], broadening the use of digital technology[104], and defining time limits for the preliminary investigation[105]. It also allows a wider intervention of

[93] Increased economic and fiscal incentives, and expansion of mandatory out-of-court settlements in compliance with EU law (see 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 8 and footnote 77, and written contribution from the Ministry of Justice in the context of the country visit, pp. 12 and 13).

[94] Increased independence and impartiality safeguards for arbitrators by a disclosure duty and introduction of possibility to issue interim measures (Written contribution from the Ministry of Justice in the context of the country visit, p. 5).

[95] Law No. 206 of 26 November 2021, Art. 1 para 5, 7, 8 and 17 aiming at reducing frivolous litigations.

[96] When it appears it would not succeed (Law No. 206 of 26 November 2021, Art. 1 para. 8).

[97] Implementing legislation may take into account that the single judge who proposes the accelerated procedure could shorten the proceedings by eliminating the oral hearing (written contribution from the Court of Cassation in the context of the country visit).

[98] The preliminary ruling procedure aims at providing lower courts with clear interpretative criteria in order to decrease future potential litigations as the outcome of the case appears more predictable (written contribution from the Ministry of Justice in the context of the country visit, p. 8).

[99] 2022 Report of the First President at the High Court of Cassation, synthesis, p. 7.

[100] Decree of the Minister of Justice dated 14 January 2022.

[101] RRP, M1C1-46 related to criminal cases compared to 2019.

[102] Law No. 134 of 27 September 2021, entered into force on 19 October 2021. Implementing legislation is due by 19 October 2022. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 8.

[103] Law No. 134 of 27 September 2021, Art. 1 (paras. 9 and 10) introduces incentives to extend the use of plea bargains, immediate proceeding and abbreviated proceedings.

[104] Law No. 134 of 27 September 2021, Art. 1 (paras. 5 and 8) establishes general use of electronic notification with the aim at speeding up the procedures and the possibility to hold remote hearings with the agreement of the parties.

[105] Written contribution from the Ministry of Justice in the context of the country visit pp. 13-14.

the judge at the stage of the preliminary investigation, decreasing the number of cases at trial level[106], introducing a selective access at appeal level[107] and new criteria[108] which would allow to drop a case before trial. The reform seeks to harmonise performances across courts through a monitoring system and incentives to accomplish standard performance[109]. Together with staff recruitment (Office for the Trial) and increased digitalisation, implementing legislation, due by late 2022, is important in order to reach final targets of the RRP[110]. On 28 October 2021, the Minister of Justice established five working groups to draft implementing legislation by 30 April 2022, and by 15 May 2022 for restorative justice[111]. On 14 April 2022, the Minister of Justice established an additional working group to draft implementing legislation by 20 June 2022 for criminal digital trial and office for the trail[112].

II. ANTI-CORRUPTION FRAMEWORK

The National Anti-Corruption Authority is the main entity in charge of the prevention of corruption within the public administration sector, coordinating the National Anti-Corruption Plan and supervising the adoption of the local three-year anti-corruption action plans. The Anti-Corruption Unit of the Financial Police is responsible for the investigation and prevention of corruption as a specialised law enforcement body. As an independent authority at the Bank of Italy, the Financial Intelligence Unit provides support to the competent prosecutor's office and cooperates with the Financial Police as the competent authority for receiving reports of suspicious financial transactions. To prevent and fight corruption in the allocation and implementation process of resources received under the RRP, consultative and control tasks have also been assigned to the Court of Auditors[113].

The perception among experts and business executives is that the level of corruption in the public sector remains relatively high. In the 2021 Corruption Perceptions Index by Transparency International, Italy scores 56/100 and ranks 13th in the European Union and 42nd globally[114]. The perception has significantly increased over the past five years[115]. The

[106] By increasing the cases in which it is a decision of the victim to start a criminal proceeding; by broadening the possibility to consider the particular tenuousness of the fact so that the trail will not start; by extending the possibility of extinguishing certain types of crime through remedial conducts (written contribution from the Ministry of Justice in the context of the country visit; website of the Chamber of Deputies, Study "the content of the reform approved by parliament").

[107] Written contribution from the Ministry of Justice in the context of the country visit, p. 15.

[108] Law No. 134 of 27 September 2021, Art. 1 (paragraphs 9 and 12) introduces a new rule of decision: if there is no 'reasonable expectation of conviction', dismissal of cases during preliminary investigation phase or at preliminary hearing before the trial may occur (previously, the rule of decision to start the trial phased was the existence of elements which would allow the prosecution, without any reference to expected conviction).

[109] Managerial trainings for the judiciary are part of the Memorandum of Understanding signed on 22 December 2021 by the Ministry of Justice, the CSM and the High School for the Judiciary (i.e. training courses for magistrates in managerial positions in order to strengthen the managerial and digital skills for Head and Deputy of Judicial Offices).

[110] 2022 Report of the First President at the High Court of Cassation, synthesis, p. 7.

[111] Decree of the Ministry of Justice dated 28 October 2021. Written contribution from the Ministry of Justice (Legislative Office) in the context of the country visit, p. 13. The Ministry of Justice informed that there is no prolongation of the working groups, but there is no public draft legislation yet.

[112] Decree of the Ministry of Justice dated 14 April 2022. The Ministry of Justice informed that there is no prolongation of the working groups, but there is no public draft legislation yet.

[113] Art. 46 of Law No. 238 of 23 December 2021.

[114] Transparency International (2022), Corruption Perceptions Index 2021. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

2022 Special Eurobarometer on Corruption shows that 89% of respondents consider corruption widespread in their country (EU average 68 %) and 32 % of respondents feel personally affected by corruption in their daily lives (EU average 24 %)[116]. As regards businesses, 91 % of companies consider that corruption is widespread (EU average 63 %) and 41 % consider that that corruption is a problem when doing business (EU average 34 %)[117]. Furthermore, 39 % of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34 %)[118], while 29% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29 %)[119].

A new National Anti-Corruption Plan (2022-2024) is planned to be in place by the end of the summer. The new National Anti-Corruption Plan, which is based on the main corruption prevention law[120], is Italy's overarching strategy for corruption prevention. The finalisation of the new Plan[121] was deliberately delayed to 2022 to align it with the new Decree[122] creating an 'integrated plan' to coordinate anti-corruption prevention measures in line with the Italian RRP. The new plan sets out the main policy objectives for a period of three years, to be updated every year[123]. The central theme for the new Plan is the use of the funds related to the RRP with a focus on public procurement and anti-corruption measures[124]. It also provides overall support to the public administration in the design and implementation of entity-specific three-year action plans[125]. According to a 2021 evaluation of the National

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[115] In 2017, the score was 50, while, in 2021, the score is 56. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points), and is relatively stable (changes from 1-3 points) in the last five years.

[116] Special Eurobarometer 523 on Corruption (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

[117] Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

[118] Special Eurobarometer 523 on Corruption (2022).

[119] Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022).

[120] Law No. 190 of 6 November 2012, Prevention and repression of corruption in public administrations, Official Gazette of the Italian Republic, General Series No. 265 of 13 November 2012.

[121] The National Anti-Corruption Plan was established as the main anti-corruption law by Law No. 190 of 6 November 2012, Prevention and repression of corruption in public administrations, Official Gazette of the Italian Republic, General Series No. 265 of 13 November 2012. The last plan covered 2019-2021, Italian Anti-Corruption Authority, National Anti-Corruption Plan, Resolution No. 1064, 13 November 2019.

[122] The Government has adopted Decree No. 80 of 9 June 2021 on urgent measures to strengthen the administrative capacity of public administrations with the functions to implement the RRP, introducing an 'Integrated Plan of Activities and Organisation' (IPAO) to coordinate prevention measures relating to performance and results with the overall goal of simplification and digitalisation.

[123] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 9.

[124] Information received by the National Anti-Corruption Authority in the context of the country visit to Italy.

[125] Each ministry, local government and municipality design and implement their own local plans. Among others, such plans aim at establishing rules for the appointment of a corruption prevention officer; specifying the public entities' role in evaluating and managing corruption risks, enhancing transparency, supporting whistleblowers, and in the monitoring of privatisation procedures. The plan also sets up rules on the drafting of three-year anti-corruption plans in the areas most exposed to corruption, such as healthcare. In this context, see three-year plan of the Ministry of Interior 2021-2023, as a sample, written contribution received by the Ministry of Interior in the context of the country visit to Italy.

Anti-Corruption Authority, the implementation of the entity-specific plans of 2019 was satisfactory[126].

Italy is committed to proactively monitor the impact of the criminal justice reform concerning corruption cases closed at appeal level without a verdict. The criminal justice reform was adopted in September 2021[127]. It aims at reducing the excessive disposition times that have been found to hamper, among others, Italy's efforts to effectively prosecute and adjudicate corruption cases, jeopardising the right to a speedy trial and to good administration[128]. The governing coalition found a compromise by suspending the limitation periods for first instance trial, including for proceedings concerning corruption, and instead set time limits on subsequent appeals. At the appeal level, corruption proceedings are amongst those which would automatically close after a lapse of time of two years[129], unless the judge requests an extension. The effectiveness of the reform will therefore require close monitoring with regard to the fight against corruption, particularly at the appeal level that Italy committed to undertake from the entry into force of the law[130]. A referendum held on 12 June 2022 on the abolishment of the 'Severino law' prohibiting individuals convicted of serious crimes, including corruption, to run as candidates in European, national and regional elections for a period of six years did not pass[131].

Cooperation between the relevant entities fighting corruption continues to work well[132], however, challenges remain as regard corruption vulnerabilities in public funds as well as the capacity to effectively prosecute foreign bribery[133]. Overall, coordination and cooperation between the prosecution services, the Financial Police, the Financial Intelligence Unit, the Prosecutor's Office at the Court of Auditors, the National Anti-Mafia Directorate and the Anti-Corruption Authority remains effective, including for high-level corruption cases, with increasingly effective information exchanges between them[134]. In practice, challenges remain for investigators, in particular regarding the level of interconnection of the registries of the various entities that hold financial information of relevance to the fight

[126] According to information received by the National Anti-Corruption Authority in the context of the country visit to Italy, the analysis showed that most public administrations operate in line with the National Anti-Corruption Authority's indicators on corruption mapping, anti-corruption processes, corruption risk analyses, the provision of trainings and anti-corruption recommendations. Some challenges were identified, including the local monitoring of the implementation of the entity-specific anti-corruption plans and with regards to small public entities. The National Anti-Corruption Authority is in the process of developing new indicators on simplification measures specifically for such small public administrations.

[127] The justice reform responds to recommendations made under the European Semester; see the Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Italy, Country specific recommendation 4, p. 11, and Recommendation for a Council Recommendation, Recital 27.

[128] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 11.

[129] Permitting time to clear the COVID-19 related case backlog, the reform will fully enter into force in 2025.

[130] European Semester, 2022 Country report on Italy. See in this context also section I.

[131] The referendum did not reach the necessary quorum and was therefore invalidated. The results of the 2022 referendum are available at the website of the Ministry of Interior (12 June 2022). The Constitutional Court approved five justice referenda, Decisions No. 56-60 of 16 February 2022.

[132] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 10.

[133] Information received by the Prosecution Service at the High Court of Cassation in the context of the country visit to Italy.

[134] Information received by the Prosecutor's Office at the Court of Auditors, Financial Police/National Anti-Mafia Directorate/Anti-Corruption Authority in the context of the country visit to Italy. As reported in 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 10, the cooperation with customs and monopoly agencies is considered useful to uncover corruption in the larger context of organised crime infiltrating the economy and the public administration.

against corruption[135]. Investigators consider that they could benefit from further digitalisation and the use of artificial intelligence to enhance and speed-up the identification of suspects and the evidence-gathering, including in high-level corruption cases[136]. Areas where most cases of corruption occur remain the public administration and public tendering, with increasing vulnerabilities in the renewable energy and construction sectors[137]. Despite important legislative developments[138], lack of resources, limited experience and insufficient legal expertise continue to undermine the capacity of law enforcement authorities to pursue and prosecute foreign bribery effectively[139]. As a major exporter, Italy had dropped from active to moderate enforcement regarding foreign bribery[140], although attention to this form of crime has significantly increased compared to ten years ago[141].

Concerns exist as to the legislative proposal on conflicts of interest for political office holders, including parliamentarians, which remains pending in Parliament for several years. The proposal[142] includes a definition of conflicts of interest and the introduction of stricter integrity measures for members of national, regional and local government offices[143]. Until the new law is adopted and enters into force, legislation on conflicts of interest remains fragmented[144]. A Code of Conduct for Ethics has not been adopted[145]. Similarly, no further developments have taken place with regard to the mandatory publication of asset declarations

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135 Information received by the Financial Police/National Anti-Mafia Directorate in the context of the country visit to Italy.

136 Written contribution received by the *Guardia di Finanza* in the context of the country visit to Italy, p. 1.

137 Information received by the Prosecutor's Office at the Court of Auditors, Financial Police/National Anti-Mafia Directorate/Anti-Corruption Authority in the context of the country visit to Italy. See also written contribution received by the Court of Auditors in the context of the country visit to Italy, p. 2.

138 In 2019, new legislation extended prescription periods and increased sanctions for bribery. Cf. also OECD, Statement of the OECD Working Group on Bribery on Italy's implementation of the Anti-Bribery Convention (2017).

139 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 10.

140 Italy opened 23 investigations, launched nine cases and concluded four foreign bribery cases with sanctions. Transparency International (2020), Exporting Corruption, p. 73. For data between 1999-2020: OECD, 2020 Enforcement of the Anti-Bribery Convention, Investigations, proceedings, and sanctions (2021), p. 3.

141 Information received by the Prosecution Service at the High Court of Cassation in the context of the country visit to Italy; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 11.

142 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 11-12; and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 11. The legislative proposal No. 1461, Macina and others, Legislative Proposal of interest (2018) presented in May 2019 would amend and replace almost entirely the provisions of Law No. 215/2004 on Conflicts of Interest. Input from Italy for the 2021 Rule of Law Report, p. 30. It was approved by the Constitutional Affairs Committee of the Chamber of Deputies in October 2020. The entry into force was planned for 1 July 2021.

143 The proposal provides for additional cases of ineligibility for the office of deputy senator and senator and regional councillor. It includes new rules on the ineligibility of magistrates and provisions on the regulatory regime to be applied to magistrates who are candidates in the elections (see also section I). It delegates the Government to define a more stringent discipline for the prevention of conflicts of interest in the public administration, entrusting the Anti-Corruption Authority with specific powers to intervene and to impose sanctions, providing for greater forms of transparency with respect to the current regulatory framework. The proposal enlarges the provisions on non-transferability of offices (currently governed by Legislative Decree no. 39/2013), and limits the possibility of accumulating roles in administrative and control bodies in publicly controlled companies and the extension of the subjective scope of the rules on conflicts of interest. Cf. GRECO Fourth Evaluation Round - Second Compliance Report, paras. 15-19.

144 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 11, and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 11-12.

145 GRECO Fourth Evaluation Round - Second Compliance Report, paras. 10-11, recommending also to further develop the range of non-criminal sanctions for unethical behaviour.

for members of the Chamber of Deputies and the Senate, which remains fragmented and non-transparent[146].

A new lobbying law passed the lower house of Parliament. In January 2022, the Chamber of Deputies approved one of the draft legislative proposals on lobbying presented in the course of 2018 and 2019[147]. The draft law proposes the establishment of an electronic, mandatory register of interest representatives. Concerns have been raised with regard to the limited scope proposed, exempting business associations, trade unions and religious entities from the obligation to register despite their relevance in representing interests in the decision-making process[148]. Further, the one year cooling-off period for former members of the national and regional governments following the termination of their activities to prevent 'revolving doors'[149] does not extend to former members of Parliament[150]. The introduction of a 'legislative footprint' would enhance transparency as to who seeks to influence specific pieces of legislation. The approval of the draft law by the Senate is planned for the beginning of 2023. Until an operational lobby register, including a 'legislative footprint', is set up, regulation of lobbying vis-à-vis the government will remain fragmented[151].

Risks of corruption in political party financing raise public attention. 2022 saw several corruption cases under investigation, prosecution, and adjudication for violation of the law on political parties' public funding[152], including high-ranking political figures[153]. In this context, the practice of channelling donations through political foundations and associations before they are transferred to political parties present an obstacle to public accountability, as such transactions are difficult to trace and monitor[154]. Italy prohibits direct public funding to

[146] This refers also to members of the Government and senior civil servants, see for more details the 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 11 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 12. This is despite Italy's open data commitment in the G20 context; see also G20 Anti-Corruption Open Data Principles (2015), Transparency International, Connecting the dots: Building the case for open data to fight corruption.

[147] Chamber of Deputies, Act No. 196-721-1827-A, Legislative Proposal No. 196 by Fregolent, Discipline of the activity of representation of special interests and establishment of the public register of interest representatives (196), as presented on 23 March 2018 and approved on 12 January 2022 by the lower chamber, currently pending before the Senate. Other proposals concern Proposal No. n. 721 by Madia, Rules on the transparency of relations between the representatives of special interests and members of the Government and the leaders of the state administrations; and Proposal No. n. 1827 by Silvestri, Discipline of the activity of institutional relations for the representation of interests.

[148] TheGoodLobby (2022), Lobbying law has been approved and is welcomed, although with shortcomings.

[149] This ban extends to external experts working for public administrations for the duration of their contract.

[150] According to information received from TheGoodLobby in the context of the country visit to Italy, previous drafts had included a cooling-off period for all decision-makers moving to public affairs, which would have included relevant actors, such as the former chairs of parliamentary committees. For more details, see TheGoodLobby (2022), Lobbying law has been approved and is welcomed, although with shortcomings.

[151] Decision No. 208/2017 only regulates activities of the Chamber of Deputies, not of the Senate. Across the national territory, the situation remains fragmented with no national register for the government. Some regions and municipalities have taken positive steps forward and implemented regulation (e.g. Milan and Rome publish meetings between stakeholders and public decision-makers online for some of their departments) but there is no systematic or standardised approach. GRECO, Fourth Evaluation Round, Second Compliance Report, paras. 30-37.

[152] Law No. 3/2019.

[153] See *ANSA* (2022), Giulio Centemero got a suspended sentence to eight months for illicit financing; Politico (2022), Italy's Matteo Renzi charged with illegal party financing.

[154] As already reported last year, in 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 13, this practice has reportedly raised the attention of investigators and prosecutors already at the outset of 2020. Donations made to third-party associations accounted for nearly EUR 10 million, or 37 per

political parties, including for political campaigns[155]. Political parties are therefore required to finance themselves almost exclusively through private donations from individual donors or legal entities[156]. This is seen as one reason why members of Parliament often rely on their own resources to fund political campaigns, making political actors more dependent on private donations and more vulnerable to undue influence[157]. There is a relatively high ceiling for direct private donations at EUR 100 000 per year[158]. The rules on the transparency of financing to political organisations in force since 2019 oblige parties to publish data on donations[159]. Donations over EUR 500, received in money or in-kind, need to be published along with the donor's identity within one month from the date of reception. Failure to comply with the publication requirement is subject to an administrative fine of three to five times the value of the non-reported donation. Foreign donations are banned. However, publicly available information is stored in different formats and not evenly structured, which limits possibilites of public monitoring impacting on accountability[160]. A centralised, single, machine-readable register is not in place, which would help to ensure that such political party and campaign finance information is made available in a coherent, understandable and timely manner[161]. Concerns also exist as to the capacities and resources of the oversight and supervisory bodies[162].

Amendments to the whistleblower law remain to be adopted[163] **but were already at the final legislative stage at the time of the 2021 report**[164]. Due to the time that lapsed during

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cent of the total volume of political funding in 2019. Transparency International (2020), Debugging Democracy, Open data for political integrity in Europe, pp. 4 and 19-20.

155 The law abrogating public funding was amended following referenda on political party financing in 1993 and 1997. In 2014 legislation was passed to phase out the state financing of political parties (Decree Law No. 149/2013, converted into Law No. 13/2014), with changes gradually introduced between 2014 and 2017.

156 Following a referendum in 1993 and the subsequent measures adopted from 1993 to 2013, direct public funding to political parties was banned.

157 Data published by the Chamber of Deputies, who mapped donations during the period of February to November 2019, indicates that 72.7% of funds allocated to Italian parties came from members of Parliament, 22.9% from physical persons and 4.9% from private companies. See also Transparency International (2020), 'Money and politics: what do the data tell us?'.

158 For indirect contributions, Law No. 13/2014 maintained the option for natural persons to devolve a compulsory 0.2 per cent of their annual income tax to political parties, after taxpayer contributions had first been introduced as a source of financing for political parties in 1997 (Law No. 2/1997).

159 Law No. 3/2019.

160 In December 2021, the Italian newspaper '*L'Espresso*' published data on donations made to political parties from August 2020 to October 2021, illustrating that political parties had received EUR 47 million from private entities and individual donors, with 400 enterprises and entrepreneurs from the construction and healthcare sector as well as private universities.

161 GRECO Third Evaluation Round - Second Addendum to the Second Compliance Report, para. 37, recommending to introduce a coordinated approach for the publication of information on the financing of political parties and election campaigns, and to ensure that such information is made available in a coherent, understandable and timely manner.

162 Transparency International-Italia (2021), TheGoodLobby, Black Lobby: Proposals on Financing Politics. Information also received by Libera in the context of the country visit to Italy highlighting that de facto control is exercised primarily by the prosecution service due to the limited resources of oversight committees. Oversight bodies include: Committee for the Transparency and Control of Financial Statements of Parties and Political Movements, Court of Audit, Regional Electoral Guarantee Board.

163 Amendments were approved in a second reading on 31 March 2021 and sent to the senate for final approval. The amendments are due to the transposition of the relating EU Directive on the subject-matter. Italy's legislative framework on whistleblowing comprises the Law of 30 November 2017, No. 179 and Legislative Decree of 8 June 2001, No. 231.

164 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 11.

the process, only the adoption of a new enabling law[165] is necessary for the Government to further revise Italy's stand-alone whistleblower law[166]. The enabling law was also already approved by the Chamber of Deputies on 16 December 2021 and is now requiring the approval by the Senate. Once in force, the Government has 3 months to implement and follow up on the delegation[167]. Until adoption, the protection of whistleblowers in the private sector remains limited as it is based on voluntary compliance programmes that not all companies have instituted[168]. In practice, the Anti-Corruption Authority does not have the mandate to receive whistleblower disclosures from private sector employees or to issue sanctions[169]. The extension of the scope of application to all companies with more than 50 workers will therefore be an important new level of protection for private sector whistleblowers[170].

COVID-19 pandemic related corruption risks remain high, while corruption is increasingly used to infiltrate Italy's legal economy. Heightened risks during the COVID-19 pandemic[171] have in the course of 2021 turned into increased occurrence of corruption and corruption-related crimes[172] with attempts by organised crime to infiltrate the legal economy presenting one of the main challenges in Italy's fight against corruption[173]. According to investigators, criminal networks have benefitted in particular from the pandemic-related needs of economically fragile SMEs and the procurement of state aid and public grants, with

[165] An enabling law/legislative delegation is necessary to mandate the Government to begin implementation. The new enabling law is included in the draft European delegation law 2021 within the Senate Act. The previous legislative delegation to transpose the EU Whistleblower Directive into Italian law expired in August 2021. See enabling law No. 53 of 22 April 2021, Delegation to the Government for the transposition of European Directives and the implementation of other European Union acts - European enabling Law 2019-2020, Official Gazette of the Italian Republic No. 49 of 23 April 2021.

[166] Law No. 179/2017.

[167] Chamber of Deputies (2022), Stenographic report of the Assembly Session No. 639, where the Ministry of Justice responded to questions in relation to the status of the transposition of the Directive on the Protection of Persons who Report Breaches of Union Law, Directive(EU) 2019/1937.

[168] With the adoption of Law No. 179/2017, the whistleblowing regulation, which is generally applicable to the private sector, came into force on in December 2018. The protection scheme for whistleblowers provided by the law is voluntary and applicable only to those companies where the employer has adopted an organisational model for crime prevention pursuant to Decree No. 231/2001 relating to corporate criminal liability. The law requires only from those companies that have the Decree 231 model in place to set up a whistleblower reporting system for the protection of whistleblowers.

[169] In turn, and as reported in the 2020 Rule of Law report, Country Chapter on the rule of law situation in Italy, p. 11, public sector reports to the Anti-Corruption Authority have significantly increased following the revision of the legal framework in 2017. In June 2021, the Anti-Corruption Authority had also issued a new set of guidelines on whistleblowing. According to the Italian authorities, this set of guidelines takes into account the principles of the Directive (EU) 2019/1937.

[170] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 11.

[171] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 13-14.

[172] This includes the crime of abuse of office and fraud, according to information received by the Financial Police/National Bar Association in the context of the country visit to Italy.

[173] Written contribution received by the Ministry of Interior/DCA in the context of the country visit, p. 2. See also Report of the Minister of the Interior to the Parliament (2022), Activities and results achieved by the Antimafia Investigation Directorate in January-June 2021, p. 61, reporting in some parts a recorded increase of 8% of crimes against the public administration, reaching a peak of 32% for corruption offences. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 13-14, reporting that criminals have benefitted in 2020 in particular from purchases of small private enterprises in economic difficulties due to the COVID-19 pandemic and of sanitary products, including face masks, protective equipment and medical gadgets, which can serve as a means to facilitate other corruption-related crime.

money being misused for other purposes and not being recovered[174]. Concerns exist of similar trends with regard to the future procurements of public funds of the RRP due to its size[175]. To significantly revise the Public Contracts Code[176] and simplify the large amount of secondary implementing sources[177], a draft single regulation is currently under discussion in Parliament with an indicative timeline of adoption in the summer of 2022[178].

III. MEDIA PLURALISM AND MEDIA FREEDOM

Freedom of expression and information, press freedom as well as the principle of transparency of media financing are enshrined in the Italian Constitution[179]. A Press Law[180] regulates the written press while the Italian Audiovisual Media Law[181], regulates audiovisual communications and establishes the independent media regulator, the Authority for Guaranteeing Communications (AGCOM) and the legal framework for the managament and monitoring of Italian public service media. Italy's Freedom of Information Act regulates 'civic access' to data and documents held by the public administration[182]. A specialised Coordination Centre monitors acts of intimidation against journalists[183].

The regulator for audiovisual media services continues to function independently and effectively[184], including in its monitoring of public bodies' advertising expenditure. By virtue of a specific provision of Legislative Decree no. 208/2021[185], all Italian public administrative bodies that purchase advertising space in mass media outlets are obliged to inform AGCOM about their advertising expenditures for the previous financial year. The law establishes a set of criteria which determine how such expenditure shall be spent, namely that

[174] Information received by the National Anti-Mafia Directorate in the context of the country visit to Italy and written contribution by the Ministry of Interior/DCA in the context of the country visit to Italy, p. 2, reporting that organised crime has, in the first phase in the pandemic, created an 'alternative welfare' to the slower and more cumbersome pandemic support offered by the State, to strengthen its territorial control over enterprises in rural areas and to enhance social credit. In a second phase, organised crime networks have positioned themselves as interlocutors of SMEs in economic difficulty also in Central and Northern Italy through the provision of low-interest loans. Where criminal organisations already enjoyed stability and economic and social credit, organised crime has been directly approached by the vulnerable, because they are recognised. In territories, where a direct rapprochement would not have had any effect, criminal organisations have made use of 'hinge' men, intermediaries, such as lawyers and accountants, exploiting their professional channels to obtain information on fragile subjects or companies or to use their skills.

[175] Information received by Court of Auditors/Prosecutor's Office at the Court of Auditors in the context of the country visit to Italy. See also written contribution by the Ministry of Interior National Anti-Mafia Directorate in the context of the country visit to Italy, p. 4.

[176] From the pre-pandemic period, there is the Leg. Decree no. 50/2016 in place, as amended by Legislative Decree no. 56/2017 ('Corrective Decree'), Law no. 96/2017 and Law no. 55/2019 ('Sblocca Cantieri Law').

[177] A number of emergency measures have been adopted by the Government to support economic operators most affected by the COVID-19 pandemic with another set of amendments of the Public Contracts Code by a number of law decrees, including Law Decree no. 76/2020, as converted with amendments into Law no. 120/2020 ('*Semplificazioni* Decree') and Law Decree no. 77/2021 as converted with amendments into Law no. 108/2021 ('*Semplificazioni-bis* Decree'), which now form the Public Contracts Code. In addition, there is a large amount of guidelines issued by the National Anti-Corruption Authority.

[178] Information received by the National Anti-Corruption Authority in the context of the country visit to Italy.

[179] Constitution of Italy, Art. 21.

[180] Law n. 47 of 8 February 1948 on the press.

[181] Amended in 2021 to transpose the AVMS Directive (EU) 2018/1808.

[182] Leg. Decree 97/2016.

[183] Italy ranks 58th in the 2022 Reporters without Borders World Press Freedom Index compared to 41st in the previous year.

[184] 2020 and 2021 Rule of Law Reports, Country Chapters on the rule of law situation in Italy.

[185] Art. 49. of Leg. Decree no. 208/2021.

at least 15% shall be spent on advertisements broadcast on private local television stations and local radio stations operating in the territories of the EU Member States and that at least 50% of such expenditure shall be spent on advertisements published in daily newspapers and magazines. AGCOM may levy fines of up to EUR 5 200 on such public authorities if they do not adhere to these obligations. The MPM 2022 concludes, once more, that the independence of the media regulator presents low risk given that 'the appointments procedures and the rules on budgetary independence of the authority are designed to minimise the risk of political or economic interference'[186]. With regard to the disbursement of state advertising, the MPM 2022 maintains its low risk evaluation given that Italy possesses elaborate legislation on state advertising while pointing out, however, that 'such rules are limited to the public administration and do not extend to the publicly owned companies'[187].

Public service media in Italy is regulated by means of a multilayered monitoring system. The key legislative provisions are enshrined in Legislative Decree no. 208/2021[188] which establishes the precise services which public service media shall guarantee[189]. The law stipulates that the concession of public radio, television and multimedia service is granted by the state for periods of 10 years following a public consultation relating to public service obligations. In practice this concession is granted and renewed in favour of one company, RAI-Radiotelevisione italiana S.p.a. RAI's Board of Directors, made up of seven members[190] and elected for a three-year period renewable once, carries out administrative functions and ensures that the aims and obligations of the general public service broadcasting are fulfilled. Two members are elected by the Chamber of Deputies, by the Senate and by the Council of Ministers respectively, on a proposal by the Minister of Economy and Finance[191]. Another member is appointed from among the employees of the company itself. The Board appoints its chairperson but such appointment is dependent on the assent of the Parliamentary Committee for the General Guidelines and Supervision of Broadcasting Services[192], to which the Board shall report every six months prior to the approval of its financial statements. This Parliamentary Committee typically addresses hundreds of questions per year, relating to RAI's compliance with its public service function, to RAI's Board of Directors. RAI is financed by means of an annual fee, established and adjusted by the Ministry of Economy and Finance, levied on subscribers to the service, as well as by means of advertising

[186] 2022 Media Pluralism Monitor, p. 13.

[187] Ibid. p. 20.

[188] Title VIII.

[189] Art. 59(2)(d) thereof specifically stipulates that access to public service media airtime shall be ensured, according to the modalities established by law, for, among others, political parties and groups represented in parliament and in regional councils, national unions, religions and political movements who have a sufficient degree of representation. Italy is, furthermore, endowed with a legislative framework law, namely *Legge 22 febbraio 2000, n. 28 Disposizioni per la parita' di accesso ai mezzi di informazione durante le campagne elettorali e referendarie e per la comunicazione politica*, which establishes detailed rules governing access to mass media for political communication by all political groups with a view to guaranteeing equal treatment and impartiality throughout the year as well as, specifically, during electoral campaigns.

[190] Persons having the prerequisites for appointment as constitutional judges pursuant to Art. 135(2) of the Constitution or, in any case, persons of recognised good reputation, prestige, and professional competence and well-known independence of conduct, who have distinguished themselves in economic, scientific, legal, humanistic cultural, or social communication activities, gaining significant managerial experience, may be appointed as members of the board of directors. The board members must be of good repute, have no conflicts of interest and may not hold positions in competitor companies.

[191] Nominations are made following a public selection process where any individual may submit a candidature.

[192] Based on Art. 2 of Regulation of 13 November 1975, the Committee is composed of 20 deputies and 20 senators appointed by the Presidents of the two Houses, on the basis of nominations made by the parliamentary groups in such a way as to ensure proportional representation therein.

revenues. The media regulator, AGCOM, monitors the respect by RAI of those audiovisual content rules under AGCOM's control[193]. The MPM 2022 considers that this remains a high risk area given that the reforms along the years have failed to substantially shelter the public service media board of directors from political influence and that the amount of the revenue devolved to public service media is determined on a yearly basis by the government via the Budget Law.[194].

The laws on defamation have not been amended and remain a key area of concern for journalists and organisations representing them. As reported in the 2021 Rule of Law Report[195], the Constitutional Court held that Article 13 of the Press Law - as far as it provides for the penalty of imprisonment for press defamation - is unconstitutional and incompatible with Article 10 of the European Convention on Human Rights[196]. However, there have been no amendments to the Italian laws regulating libel, either civil or criminal. Several libel cases, often entailing lengthy proceedings, have an effect akin to local strategic lawsuits against public participation (SLAPPs)[197]. The MPM 2022 points out that following the aforementioned Constitutional Court ruling, the prison sentence for defamation has practically been abolished in Italy. It however highlights the increasing prevalence of SLAPP cases and concludes that 'the combination of criminal and civil defamation can be used with a chilling effect on journalistic activity'[198]. A Media Freedom Rapid Response (MFRR) report published following MFRR's recent mission to Italy highlights the extent to which various types of legal threats are having a tangible adverse effect on investigative and independent journalism in the country[199].

Cases of physical attacks, death threats and other forms of intimidation against journalists have continued to rise. Since the 2021 Rule of Law Report, 12 alerts concerning Italy were registered by the Council of Europe's Platform to promote the protection of journalism and safety of journalists[200]. Six of those cases concern court proceedings in civil or criminal cases brought against journalists or media outlets. The remaining cases concern assault and intimidation of journalists covering COVID-19 pandemic related events and stories, cases of physical and sexual assault, death threats and the raiding of the offices of a newspaper by unkonown individuals. Despite the repeated requests made by the Italian Press Association, the protection of journalistic sources and the framework law on the professional secrecy of journalists remain inadequate[201]. As a result, the MPM 2022, once more rates the indicator on journalistic profession, standards and protection as medium risk but has slightly

193 Audiovisual content rules which all broadcasters must adhere to.
194 2022 Media Pluralism Monitor, p. 21.
195 2021 Rule of law Report, Country Chapter on the rule of law situation in Italy, p. 16.
196 Official Press Release of the Italian Constitutional Court dated 22 June 2021 published on its website.
197 Written contribution from NGO *Ossigeno per l'Informazione* in the context of the country visit.
198 2022 Media Pluralism Monitor, p. 11.
199 '*Who is afraid of journalists?'* Report of the MFRR fact-finding mission to Italy 4-6 April 2022, coordinated by OBC Transeuropa.
200 Council of Europe, Platform to promote the protection of journalism and safety of journalists, Italy. Italy has replied to seven of those alerts.
201 Contribution from the Italian National Press Federation for the 2022 Rule of Law Report. Concerns have also been voiced by this association with regard to journalistic coverage of crimes due to the application of Legislative Decree 188/2021 which implements Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. Under the Legislative Decree all police contacts with the press have been concentrated in the hands of the Chief Prosecutor.

increased its risk score within that band[202]. As in past years, both the MPM 2022 and several stakeholders continue to flag the deterioration of journalists' working conditions, characterised by a growing gap between employed journalists and freelancers and a generalised reduction in newsroom staff, as an issue of major concern[203]. While the Ministry of Interior continues to monitor the cases of physical attacks and other threats against journalists via the specialised Coordination Centre, cases of intimidation have continued to rise[204]. The latest statistics made available by the Coordination Centre reveal that, in 2021, 232 acts of intimidation were recorded (a 42% increase over the previous year) of which 11% concerned organised crime and 49% were of a 'political-social nature'. 44% of all cases of intimidation occur on line, on social media networks or by email[205]. The above-mentioned MFRR report recognises the value of the Coordination Centre but suggests Italy should consider additional measures under the Centre's remit – such as looking more closely at threats appearing on social media platforms - given the dramatic scenario on the ground[206]. A series of economic measures in the form of tax credits introduced in 2021, aimed at mitigating the impact of the consequences of the COVID-19 pandemic on the media and based on a series of objective criteria, have continued to provide support to the sector.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Italy is a unitary parliamentary republic with an indirectly elected President[207]. The Parliament is bicameral: it comprises the Chamber of Deputies and the Senate, both having the same powers. The right of legislative initiative is vested in the Government, the members of Parliament, 50 000 citizens, the National Council for Economics and Labour[208], and the Regional Council. The Constitutional Court decides in exclusivity on disputes regarding the constitutionality of laws. There is currently no national human rights institution, and several regional ombudspersons are responsible for safeguarding the freedoms and rights of persons[209]. The Inter-ministerial Committee for Human Rights (CIDU) is the coordinating national institution interacting with civil society, academia, and all relevant stakeholders to ensure reporting and follow-up on human rights issues.

The Parliament and the Constitutional Court have continued to exercise scrutiny over restrictive measures taken in the context of the COVID-19 pandemic, while the emergency regime has recently ended. In 2021, rules governing the emergency situation were introduced primarly by Decree laws with subsequent scrutiny by Parliament, while the Decrees of the President of the Council of Ministers were used in a limited manner[210]. On 22

[202] 2022 Media Pluralism Monitor, p. 12. The risk score has increased from 42 to 47%.

[203] Written contribution from *Ossigeno per l'informazione, Articolo 19 and the Italian Press Federation* in the context of the country visit.

[204] The success of the Coordination Centre's awareness-raising may contribute to the increasing numbers of incidents reported and therefore registered.

[205] Coordination Centre for monitoring, analysis and permanent exchange of information on acts of intimidation against journalists. In the first quarter of 2022, cases of intimidation decreased by 30% compared to the same period of the previous year.

[206] 'Who is afraid of journalists?' Report of the MFRR fact-finding mission to Italy 4-6 April 2022, coordinated by OBC Transeuropa, p. 17-19.

[207] The President is elected by Parliament, meeting in joint session, together with 58 regional electors.

[208] The National Council for Economics and Labour is also vested with the right to propose legislation in the economic and social field.

[209] For more information, see Ombudsman of Tuscany website, http://www.difensorecivicotoscana.it.

[210] In 2020, 20 Decree of the President of the Council of Ministers were issued as a response to the COVID-19 pandemic, compared to only two Decree of the President of the Council of Ministers issued in 2021.

October 2021, the Constitutional Court declared that Decrees of the President of the Council of Ministers related to the COVID-19 pandemic comply with the legality principle[211]. On 1 April 2022, the emergency regime ended. The emergency regime adopted on 31 January 2020 was last renewed until 31 March 2022[212]. The discussion on the establishment of a special bicameral Commission[213] to be consulted on any act of the Government related to the pandemic is still ongoing in the Senate, but became less urgent following the adoption of Decree-laws for countering the situation in 2021[214].

On 1 January 2022, Italy had 58 leading judgments of the European Court of Human Rights pending implementation[215]. At that time, Italy's rate of leading judgments from the past 10 years that remained pending was at 58% and the average time that the judgments had been pending implementation was over 5 years and 10 months[216]. The oldest leading judgment, pending for 25 years, concerns the excessive length of criminal and administrative proceedings[217]. On 1 July 2022, the number of leading judgments pending implementation has increased to 59[218].

A National Human Rights Institution remains to be established. The creation of a National Human Rights Institution (NHRI)[219] remains a concern as it continues to be subject to debates[220] and no relevant progress has been realised. Three draft laws aimed at establishing such institution have been unified in one single draft law with a view to creating a National Commission for the Promotion and Protection of Human Rights and the Fight against Discrimination[221], a NHRI in line with the Paris Principles and recommendations

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Moreover, since January 2021, 58 decree-laws have been adopted and converted into law, including 16 decree-laws, which have lapsed and have been incorporated in other legislation. - Written contribution from Parliament in the context of the country visit.

211 The Constitutional Court found that the measures established by Decree-laws introduced a sufficiently precise and defined legal framework, compatible with the principles set out by the Constitution. XIX Congress of the Conference of European Constitutional Courts, pp. 20 and 21. Ruling of the Constitutional Court *No. 198 of 2021* (ECLI:IT:COST:2021:198).

212 Decree Law No. 221 of 2021 converted into Law No. 11 of 18 February 2022. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 17-18.

213 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp.17 and 18.

214 Written contribution from Parliament in the context of the country visit.

215 The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

216 All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 52..

217 Judgment of the European Court of Human Rights of 2 September 1997, *Abenavoli v. Italy*, 24487/94, pending implementation since 1997.

218 Data according to the online database of the Council of Europe (HUDOC)

219 Italy has two institutions dealing with specific areas of human rights - National Authority (*Garante nazionale*) for the rights of persons deprived of liberty and the Authority for Children and Adolescents.

220 Input from Italy for the 2022 Rule of Law Report, p. 52.

221 *Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali e per il contrasto alle discriminazioni. Proposte di legge C. 1323 Scagliusi, C. 855 Quartapelle Procopio e C. 1794 Brescia, p. 57.* Written contribution from Parliament in the context of the country visit. See also Contribution from Civil Liberties Union for Europe on Italy for the 2022 Rule of Law Report, p. 26.

from the United Nations[222]. The timetable for the work of the First Committee is being drawn-up in order to examine the amendments. In November 2021, the Government reiterated its full support for the establishment of this institution[223] and the Minister of Foreign Affairs recently indicated the need to expedite this process[224].

The civic space remains narrowed, in particular for civil society organisations dealing with migrants. Despite some improvements noted in the 2021 Rule of Law Report[225], the civic space continues to be assessed as narrowed[226]. During 2021, Italian Courts discharged NGOs that carried out search and rescue operations in the Mediterranean[227]. These NGOs had been accused by authorities of facilitating irregular migrations and irregular borders crossing[228].Stakeholders reported that forms of intimidation against civil society organisations (CSOs) dealing with migrants' rights persist[229]. No developments have been reported as regards the complexity of the registration process for NGOs and delays in the implementation of the law harmonising rules on the non-profit sector[230]. However, the RRP provides for the establishment of a permanent advisory board including CSOs to promote democratic participation[231]. Additional funds have been allocated to CSOs through an extraordinary fund for the support of the third sector due to the COVID-19 pandemic and social bonus for organisations providing funds to civil society[232].

[222] Following its a visit to Italy in October 2021, the UN Working Group on business and human rights has called on Italy to establish a strong, independent NHRI without further delay with an explicit mandate to deal with business-related human rights abuses. Contribution from UN OHCHR on Italy for the 2022 Rule of Law Report, p.1.

[223] Ibid, p. 30.

[224] Input from Italy for the 2022 Rule of Law Report, p. 50.

[225] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 18-19.

[226] See the rating given by CIVICUS, lastly updated on 31 January 2021. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 19.

[227] Dismissal by the Court of Agrigento dated 20 December 2021. See also Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Italy, p. 4.

[228] Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Italy, p. 4.

[229] Contributions from European Civic Forum and Civil Liberties for Europe for the 2022 Rule of Law Report.

[230] 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp.18-19.

[231] Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Italy.

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Annex I: List of sources in alphabetical order*

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Annex II: Country visit to Italy

The Commission services held virtual meetings in March and April 2022 with:

- A buon diritto
- AGCOM (Media Authority)
- National Association of Magistrates (ANM)
- Anti-corruption Agency (ANAC)
- Anti-corruption Unit of the Financial Police
- Anti-mafia and Anti-terrorism National Directorate (DNAA)
- Articolo 21
- CILD
- Constitutional Court (Corte Costituzionale)
- Council of State (Consiglio di Stato)
- Court of Auditors and Prosecutor's Office at the Court of Auditors
- High Court of Cassation
- High Council for the Judiciary
- In difesa di
- l'Associazione Italiana Donne per lo Sviluppo – AIDOS
- Italian Bar Association (Consiglio Nazionale Forense)
- Libera
- Ministry of Interior
- Ministry of Justice
- National Press Association and European Union of Journalists
- Ossigeno per l'informazione
- Presidency of the Council of Ministers, Department for European Policies
- Prosecution Service of the High Court of Cassation
- Rai Radiotelevisione italiana, Relazioni istituzionali
- The Good Lobby

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea

- Reporters Without Borders
- Transparency International Europe