



FUNDAMENTAL RIGHTS AND THE RULE OF LAW

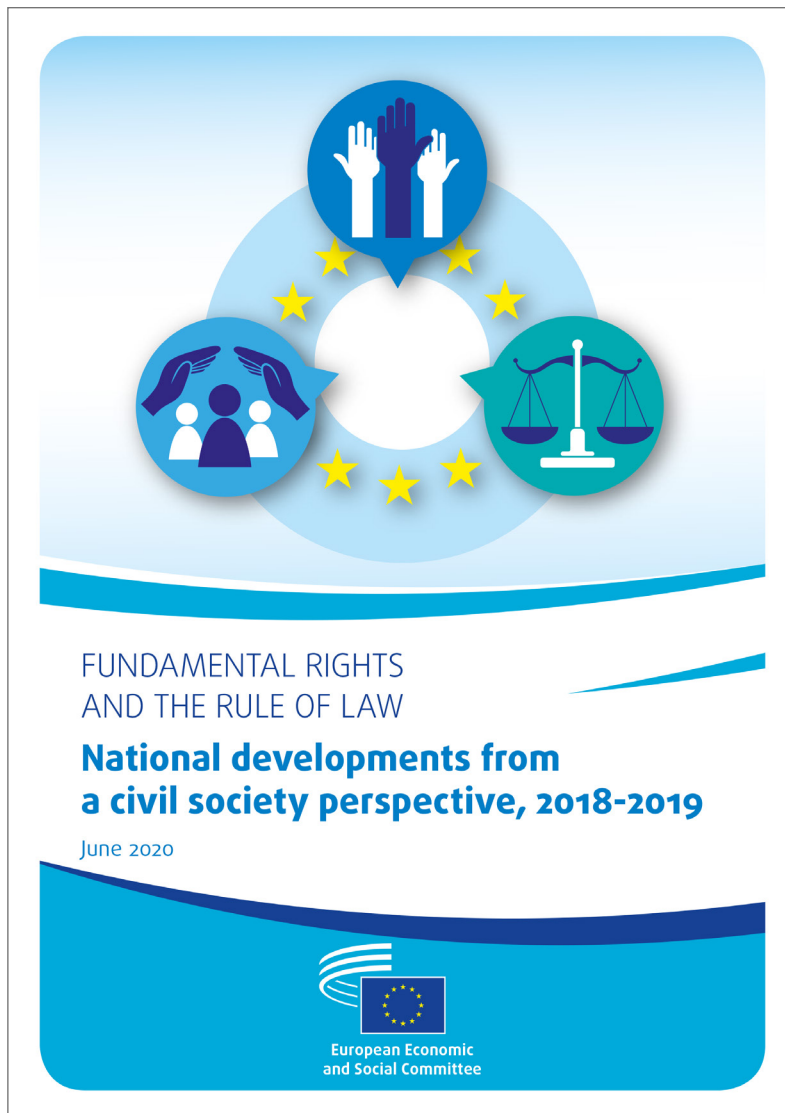
National developments from a civil society perspective, 2018-2019

Excerpt - **Italy** - Country visit report
5-6 December 2019



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Report on the visit to Italy

5-6 December 2019

Six members took part in the country visit to Italy. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, and the legal profession on the one hand, and the Italian authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society.

Freedom of association and assembly - the social partners

Trade union representatives agreed that freedom of assembly and of association was well protected under the Italian Constitution and the law. 2020 will mark the fiftieth anniversary of the Workers' Statute (Act 300/1970) which safeguards workers' freedom and dignity and provides the framework for the role of trade unions in the workplace. Hundreds of collective bargaining agreements are in place. Most of them are signed by very small trade unions, and only around a third are signed by the most representative trade unions.

Trade union representatives agreed that challenges revolved around practical issues rather than legal ones. One of the main challenges they identified is the alternation between phases when political power valued social dialogue, and phases that were qualified as "disintermediation", when political forces are tempted to establish a direct relationship between the authorities and citizens. Even when there was active social dialogue, some trade union representatives considered that the results of the interaction depended a lot on the government's and employers' interests. It was also considered that social dialogue was too often segmented, covering specific sectors rather than offering an opportunity to discuss a vision of the future of the country.

Another set of challenges that was identified concerned the questions of representativeness and the risk of fragmentation and competition between trade unions. Two inter-sectoral agreements on representation and representativeness were signed in 2011 and 2013 between the main employers' organisation and the three major trade union confederations. The agreements favour the role of a unitary union structure in the workplace, which raises the question of the pluralism of trade unions. However, a court ruling confirmed that unitary unions do not have a monopoly on calling for assemblies in the workplace. This was considered as an example of the positive role played by the judiciary in advancing labour rights. Another example which was mentioned was the possibility for members of the police to organise themselves through trade unions – a right which was recognised through a court ruling referring to the European Convention on Human Rights, rather than on the basis of a law (which in any case has yet to be established).

Freedom of association

Like the social partners, the CSO representatives confirmed that freedom of association and assembly was well protected under the Italian Constitution and Law. It was pointed out that Italy had one of the largest civil societies in Europe, with a high number of CSOs and volunteers that contributed to the economic and social wealth of the country. It was explained that in modern Italian history CSOs had played an indispensable subsidiary role in public intervention.

According to participants, this strong role of civil society was reflected in the legislative framework and notably the 2016 legislative review, which led to a single code for the third sector in 2017. An implementation Decree is still needed to make the implementation of this code effective but there also remains the question of knowing whether or not the provisions concerning co-programming and private-public partnerships will contradict EU regulations, notably on procurement.

Despite this positive assessment of the legislative framework, the CSOs all mentioned an increasingly difficult operative environment. They mentioned an emerging climate of suspicion fed by a campaign led by some politicians to stigmatise the work of CSOs. Some of them have even received threats. This climate of mistrust has led to a reduction of donations by individuals and private foundations, in a context where public funding has been cut. According to the participants, politicians had called for stricter control over CSOs' financial management, including through fiscal control, on the presumption that CSOs are mismanaged. A CSO mentioned a proposal by one political party to adopt legislation to impose stricter control on CSO funding from abroad, as already exists in some countries where the civic space has been shrinking.

This climate of mistrust is particularly linked with what CSOs described as the criminalisation of CSOs working in solidarity with migrants. CSOs shared their concerns with regards to the possible lack of political will of the current Italian government to repeal the two Security Decrees adopted by the previous government. Along with the Code of conduct of CSOs working on search and rescue at sea, CSOs considered that these Decrees significantly restricted their legitimate work, notably by entailing substantial fines and seizure of vessels used for rescue at sea. CSOs referred to the numerous statements by the United Nations calling for them to be revised. They expressed their fear that a future revision would only be minimal, for example leading to a lowering of fines for acts of solidarity with migrants rather than a repeal of these fines.

The Italian authorities indicated that a review of the 'Security Decrees' would be considered in 2020 but they did not give specifications on the scope. The Italian authorities acknowledged that there had been a degradation of the CSO climate around migration under the previous government. They indicated that the current government had changed the narrative on the question and had held a good dialogue with the United Nations on these topics. They considered that tensions had eased lately and that the general climate towards civil society was still very positive in the country, as illustrated by the good participation of CSOs in the elaboration of the code on the third sector and the regular constructive exchanges which take place between the authorities and thousands of CSOs.

A CSO gave another illustration of challenges concerning citizens' right to association and assembly by presenting the situation in the Apulia region, where protests against the Trans Adriatic Pipeline project have led to what has been described as a low key but widespread wave of intimidation against an angry population. The CSO described the filming of civil society meetings by members of the police. Questioned on this point, the Italian authorities responded that there was no policy of filming demonstrations and meetings.

Freedom of the media and freedom of expression

According to participants in this session, some of the top challenges that Italy faced in terms of freedom of expression and media freedoms included the conflicts of interest between media owners and the political sphere, impunity for attacks against journalists, and the lack of legislative reforms. Participants agreed that what was most at stake nowadays was the preservation of quality journalism, in a context of increasing threats to journalists and a changing economic and technological environment.

One CSO described its work of closely monitoring threats, intimidation, seizures and other types of abuses faced by journalists, having recorded more than 4000 cases of threats against journalists since 2016. The journalists who are particularly concerned by these acts are investigative journalists or more generally journalists reporting on sensitive developments concerning politicians, the mafia, or speculative projects. Several journalists currently have to live with permanent police protection because of threats they have received from the mafia or extremist political groups.

Participants described how the journalism industry was evolving in a direction that was affecting quality journalism. They explained how, in a context of harsh competition for the production of fast news between traditional media and online platforms, hundreds of journalists from previous generations had been encouraged to retire and were increasingly replaced by freelance journalists. Such a generation of freelance journalists do not benefit from all the legal, economic and social support needed to produce quality work. They tend to avoid difficult issues and to focus on the ones that remunerate their work, as they know that their weak status will not offer them the appropriate backing in case of a slander trial. It was also mentioned that local news publishers were particularly sensitive to political and economic pressure and tended to be particularly cautious about avoiding any focus on sensitive issues. A participant also pointed out that the last collective bargaining agreement concerning journalists was around ten years old, which meant that journalists' revenue had been decreasing.

The competition imposed by online platforms was seen as particularly harsh, especially because they benefit from a high level of self-regulation while traditional media do not. The question of outsourcing the policing of problematic content to private companies was also presented as a challenge. Concerning the question of the economic concentration of the media, a participant indicated that regulation existed to prevent a company possessing more than 20% of national newspapers. It was, however, noted that restructuring processes had still led to some media concentration within the limits of this regulation.

A participant pointed out that the UN had been calling for a revision of the law on defamation for more than ten years, but that discussions on such a reform had not yet led to a concrete

legislative change. This participant indicated that official court statistics showed that the great majority of defamation cases were unfounded and were therefore dismissed by judges. However, before reaching this stage, journalists would have lost much time and money in their defence, leading to what was described as a “tax on truth” infringing on media freedom. Another participant mentioned that there was a law on hate speech but that this was not properly enforced.

The Italian authorities indicated that they were working with the Council of Europe platform on the protection of journalists and specialised Italian CSOs to address threats against journalists. They indicated that the Inter-Ministerial Committee on Human Rights (Comitato Interministeriale per i Diritti Umani, CIDU) followed up with the Ministry of Justice after any act of violence against a journalist to ensure that investigations took place. The Ministry of Interior also has a “Coordination Centre for Monitoring, Analysis and permanent exchange of information on the phenomenon of intimidation of journalists”. The Italian authorities indicated that the Italian Communications Authority (Autorità per le Garanzie nelle Comunicazioni, AGCOM) and the relevant parliamentary committee chaired by the opposition were in charge of guaranteeing the independence of the media and of providing guidance on pluralism.

Discrimination

CSOs working on the rights of women described the challenges in Italy as deeply rooted in cultural bias. It was described how the perception of violence against women was low compared to the reality, and too often approached through the prism of conflict within the couple. Access to justice for female victims of violence was considered to be insufficient. It was mentioned that the European Court of Human Rights had ruled against Italy in 2017 for having failed to protect victims of domestic violence. It was also considered that the country was lagging behind in terms of implementation of the EU Directive on Victims’ Rights and that the courts were not granting adequate compensation. More generally, CSOs working on women’s rights considered that the financial support in this area was insufficient, especially in support of shelters for victims of violence. It was said that some of these centres could be faced with a risk of closure, or be managed instead by local authorities.

A CSO working on LGBTI rights presented a situation in which, despite some advances in social perceptions and law, significant challenges remained. Following the adoption of the law on same sex civil union in 2016, a series of hate speeches and hate crimes illustrated that progress was still needed. It was explained that bullying of LGBTI pupils at school was still a major problem and that it came both from schoolmates and from teaching staff. Other challenges which were mentioned included the lack of media visibility for LGBTI persons and the absence of important debates, for example on the offer of solutions to transgender children. The Italian authorities indicated that they were in permanent contact with LGBTI CSOs through the consultation table devoted to the topic.

Concerning the rights of persons with disabilities, it was considered that despite Italy’s ratification of the UN Convention on the Rights of Persons with Disabilities in 2009, de facto discrimination remained widespread. This was particularly the case in terms of economic and social inclusion. It was hoped that the recent adoption of a law to favour the inclusion of persons with disabilities in the education system would address the fact that only a third of persons

with disabilities finished advanced educational studies, which led to a similarly low proportion of these persons having a job. A consequence of this central problem is that very few persons with disabilities take an active role in civic, cultural and political life, which reinforces a situation of de facto marginalisation in society.

The situation of Roma, Sinti and Camminanti persons was described by several CSOs as being a humanitarian emergency. It was explained that the previous government had a clear anti-Roma narrative and policy, which included the order for local authorities to map out informal Roma, Sinti and Camminanti settlements in order to facilitate their destruction. According to these CSOs, this added to existing practices of forced evictions that did not respect procedural safeguards, and adequate relocation was not proposed. More generally, CSOs explained that Roma, Sinti and Camminanti persons suffered from strong discrimination in the area of housing and education and that their marginalisation kept them in extremely bad health, economic and social conditions. A CSO questioned the adequate use of EU funds allocated to policies on Roma, Sinti and Camminanti persons in Italy. The Italian authorities indicated that they were in permanent contact with Roma CSOs through a consultation table devoted to the topic.

The protection and perception of migrants' rights was considered as particularly problematic by several CSOs. They stressed the gap that existed between the reality of the societal challenge and the perception of the situation in the mind of a great part of the population. It was explained that a feeling of "invasion" was fuelled by some media and some politicians who always associated migrants with crime. This narrative was presented by two CSOs as encouraging a "war of the poor against the poor" instead of addressing issues through the proper use of resources. CSOs described how the two 'Security Decrees' adopted by the previous government had led to an abolition of humanitarian protection for asylum seekers. The impossibility for asylum seekers to obtain legal address was also presented as a factor keeping them on the margins of society, as such a requirement was necessary to get access to rights and to work. It was also explained that the prevalence of undeclared work amongst migrants put them in a situation of dependence on employers. A trade union representative explained how they worked together with humanitarian CSOs to help migrants become integrated. It was mentioned that while migrants could not vote in political elections, they could still get representation in the workplace as trade unions did not distinguish between workers.

The Italian authorities indicated that so far the bulk of financial allocations to address the migration challenge in Italy had come under the Italian rather than the EU budget. The Italian authorities indicated that Italy had clear channels for asylum, through resettlement, humanitarian corridors and humanitarian evacuation. In their view, an adequate response to the Italian people's frustrations with regards to the migration challenge would involve an increase in support by other EU Member States and a collective EU response to tackle these challenges. According to the Italian authorities, this would notably entail more cooperation on disembarkation of search and rescue ships, the revision of the Dublin regulation and the allocation of sufficient resources in the next Multiannual Financial Framework (MFF) for the integration of migrants in Italy.

Rule of law

The CSOs and legal practitioners specialised in the rule of law who took part in this session described developments in the past years as leading to a deep institutional crisis. According to them, the rise of a political culture of mistrust, anti-establishment and anti-parliamentarism had been clashing with the longstanding constitutional tradition of the country. They explained that this trend was illustrated by the attacks on the judiciary and associations of judges and prosecutors following unpopular judgements protecting migrants' rights. Legislation restricting search and rescue activities was mentioned as an example of the possibility for a political majority to pass legislation in a formally correct way while its content would breach international and constitutional law as well as fundamental rights.

Participants considered that the last years had seen increasing impediments imposed by the political sphere on the remit of the judiciary. According to these participants, some politicians had sought to impose the public narrative that elected politicians were the only representatives that had the legitimacy to act on behalf of the people, creating a dangerous delegitimisation of the role of the judiciary in the eyes of the people. Judges were asked to implement rather than interpret the law, in a complete reversal of their traditional function. Participants explained that attacks on the judiciary were not new in Italy and they had especially been linked to the reaction of some politicians in corruption-related cases. It was explained that what was new and particularly dangerous this time was the fact that it was now a big part of the political class that portrayed the judiciary as a whole as being "against the people". In this context, the people are encouraged to think that the real challenges that the judiciary is facing, and primarily its slowness, is the fault of the judges and not the result of insufficient public policies failing to allocate the sufficient resources to the judiciary.

Participants gave other examples of current challenges concerning the rule of law in Italy. A participant explained that a bill could put at stake the feature of the Italian judicial system which meant that prosecutors belonged to the judiciary and were totally independent from the executive. The Italian authorities explained that public prosecutors were indeed only subject to the law and did not come under the executive. According to the Italian authorities, the guarantee of their independence was ensured through the High Council of the Judiciary (Consiglio Superiore della Magistratura, CSM). They indicated that a reform was under discussion concerning the composition of the CSM and its disciplinary prerogatives.

A participant mentioned plans for legal reform that would have gone or could go against the Constitution, like the plan of a major political force in the previous government to impose an imperative mandate on Members of the Parliament, or a push to stop the statute of limitation after the first instance trial which could end up lengthening appeals. This participant also gave concrete examples of unprecedented attacks on the checks and balances of power under the previous government, which had forced the persons heading the Central Bank, the Italian Companies and Exchange Commission (CONSOB), and the National Social Welfare Institute (INPS) to resign after they had warned about the impact that some public policies would have in the areas they monitored.