

ITALY

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Summary:

*In Italy, associations and social movements represent a widespread social infrastructure that performs essential democratic functions of promoting social bonds, responding to social needs, educating citizens to the values of democracy and anti-fascism, and defending human rights. They also play a crucial role in supporting public institutions fighting against organised crime, supporting its victims and raising awareness. The Constitution protects **freedom of association**, but there is an increasing bureaucratic burden on the sector that drains resources from the core mission of civic organisations. The controversy over introducing VAT is in line with this trend and showcases a misunderstanding of the specificity of associations and their democratic function. If implemented, it will significantly impact the not-for-profit sector. Regarding the **financial sustainability** of the sector, there is a lack of significant funding streams for human rights work on the national territory. Civil society organisations' economic and financial sustainability was also greatly affected by the pandemic crisis. Over the years, the legislative framework has introduced provisions **restricting and sanctioning civil society's action for migrants' rights and environmental protection**. While the revision of two security decrees has improved it, concerns remain in these areas, particularly for search and rescue operations of NGOs and the right to protest.*

***Forms of intimidation against migrants' rights defenders at the judicial level** persist. They reinforce the hostile climate towards defenders assisting migrants and the use of criminal law as a way to discourage defenders from assisting them. While most of the lawsuits brought against NGOs or defenders of the rights of migrants resulted in the acquittal of the accused, these processes have contributed to delegitimising the work of those who are committed to the rights of migrants. This context of a "hostile" environment is further aggravated and has in part determined the first sentence against Mimmo Lucano, issued by the Court of Locri in October 2021. Concerning the **criminalisation of the environmental movement**, from 2011 until now, a rather constant trend in the number of arrests, special surveillance orders, restrictions to freedom of movement, and house arrests has been registered against the No TAV (movement against the construction of the Turin-Lyon High-Speed train in Val di Susa, Northern Italy) and No TAP (movement against the Trans Adriatic Pipeline, in Salento, Southern Italy) movements. Since 2017 and following the adoption of the so-called Salvini Security Decrees, an increase in criminal convictions and the use of the DASPO (temporary restrictions to the freedom of movement for demonstrators) on protesters has been noted. **Defamation, delegitimation, stigmatisation, physical and verbal assaults** and threats are also a concern for journalists covering organised crime and migrants' rights, individual rights defenders and headquarters of organisations. These are facts that jeopardise not only the physical integrity, freedom, security and dignity of human rights defenders but also the very sense of solidarity and the moral imperative of respect for human rights, with severe consequences for our democracy and the rule of law. While there has been much progress in response to forms of intimidation and stigmatisation committed online, there is a lack of adequate investigations into the perpetrators of physical abuse.*

Institutional landscape and safe space (including state duty to protect and right to freedom from fear)

Harassment, intimidation and attacks

Since 2006, over 3,700 abuses against journalists have been documented, especially for those dealing with organised crime, migration and large infrastructure projects. Abuses, mainly defamation and personal attacks, occur directly, indirectly and through social media. Recourse to SLAPPs is very widespread in Italy: the country has also been the subject of various warnings from European Community authorities. The adoption of a specific law currently being examined by Parliament is still pending.¹

Defamation, delegitimation, stigmatisation, physical and verbal assaults and threats also target individual rights defenders and headquarters of organisations. For example, in October 2021, an attack on the national headquarters of the CGIL trade union in Rome took place by the extreme right-wing movement Forza Nuova.² These are facts that jeopardise not only the physical integrity, freedom, security and dignity of human rights defenders, but also the very sense of solidarity and the moral imperative of respect for human rights, with severe consequences for our democracy and the rule of law. Among the most affected categories are defenders of migrants and refugees, environmental defenders, journalists, lawyers, even more at risk if women or people belonging to the LGBT+ community (among these, the lawyer for the rights of LGBT+ Cathy La Torre).

¹ <https://www.balcanicaucaso.org/Occasional-papers/SLAPP-la-querela-che-minaccia-la-liberta-di-espressione>

State duty to protect

While there has been much progress in response to forms of intimidation and stigmatisation committed online: 288 suspected perpetrators were identified by the competent authorities in 2019. The same cannot be said for direct attacks and abuses committed in other contexts such as those just described. There is a lack of adequate investigations into the perpetrators of these abuses, and the trend is to minimise the phenomenon.

The regulatory environment for and implementation of civic freedoms

Freedom of association and impact of Covid-19

In Italy, freedom of association is recognised as an important constitutional principle. The third sector code outlines how it can be expressed and organised. There are also a number of specific laws based on the areas of associative action. In Italy, the associative sector represents a widespread social infrastructure that performs an essential function in protecting communities and in public education for democracy, positive recreation of social relations, and promotion and support of the right of access to culture. Nevertheless, the legislative framework is more oriented towards service providers than the self-organisation of people and movements, which are the majority of NGOs in Italy. This shifts the role of NGOs from a democratic player to a body responsible for implementing governmental policies. An existing concern is the bureaucratisation of associative life, with the increasing reporting obligations.

² <https://civicspacewatch.eu/italy-calls-to-ban-neo-fascist-groups-after-a-violent-attack-against-trade-union/>

During the pandemic, any legislation referring to civic freedoms has been subordinated to the right to health, which must be guaranteed priority. The regulatory constraints imposed by the pandemic have transformed daily relationships into a digital format in order to preserve everyone's right to health: for example, many of the training courses that used to be held live have been transformed into online appointments, mediated by digital platforms and (for many) new ways of sharing language: sharing videos, creating graphic material and photos, group calls, online workshops, digital platforms for exchanging ideas. As a result, civil society organisations have transformed their methods of action with respect to the previous historical phase since the pandemic crisis has made it impossible to maintain the centrality of the 'relationship with the other' that prevails for most organisations.

Salvini Security Decrees I and II remain a concern

While the revision of the Security Decrees (known as 'Salvini Security Decrees' following the name of the former Minister of Interior) represents an improvement of the legislative framework, the risk of a sanction against NGOs or individual defenders remains high, even if these comply with the rules of the international law of the sea (Source: Asgi).

Additionally, the measures restricting the right to protest remain unchanged, such as penalties against the roadblock up to 6 years and the expansive applicability of DASPO (temporary restrictions to the freedom of movement for demonstrators).

Criminalisation of solidarity

Forms of intimidation against migrants' rights defenders at the judicial level persist. They reinforce the hostile climate towards defenders assisting migrants and the use of criminal law as a way to discourage defenders from assisting them. The widespread institutional and media attitude of suspicion

towards defenders who provide assistance and carry out rescue activities in the Mediterranean has determined the definition of "crime of solidarity". Beyond the public discourse, this is reflected in some (precautionary) measures the judicial authority takes, such as the orders to seize boats engaged in providing aid to migrants (Court of Trapani in 2017 and Court of Catania in 2018 and the trials against the Luventa ship, managed by the German NGO Jugend Rettet, Proactiva Open Arms, Mediterranea and Sea Watch. With the exception of the case of Jugend Rettet, all the lawsuits brought against NGOs or defenders of the rights of migrants resulted in the acquittal of the accused. Nonetheless, these processes have contributed to delegitimising the work of those committed to the rights of migrants. Nor has there been any explicit pronouncement in support of their work by public authorities - as it should comply with the OSCE guidelines on Human Rights Defenders.

Among more recent developments is the acquittal of two activists of the Linea di Confine association, while trials are still underway against an activist from the Baobab association in Rome and three activists from an association for migrants from Pordenone. More recently, in December 2021, No TAV activist Emilio Scalzo was extradited and detained in France under the accusation of having participated in some initiatives to protect the rights of migrants along the Italy-France border.

This context of a "hostile" environment is further aggravated and has in part determined the first sentence against Mimmo Lucano, issued by the Court of Locri in October 2021. Lucano has been three times mayor of Riace, a city that was once a model for welcoming migrants. The sentence, which doubled the penalty called for by the General Attorney for allegedly aiding and abetting illegal immigration, fraud and abuse of office, turned into an exemplary punishment for a

different model of assisting and welcoming migrants (Source: Fondazione Basso and Volere la Luna).

Right to protest and criminalisation of environmental movements

From 2011 until now, a rather constant trend in the number of arrests, special surveillance orders, restrictions to freedom of movement, and house arrests has been registered against the No TAV (movement against the construction of the Turin-Lyon High-Speed train in Val di Susa, Northern Italy) and No TAP (movement against the Trans Adriatic Pipeline, in Salento, Southern Italy) environmental movements. Since 2017 and following the adoption of the so-called Salvini Security Decrees, an increase in criminal convictions and the use of the DASPO (temporary restrictions to the freedom of movement for demonstrators) against protesters has been noted.

Numerous abuses committed by police officers during demonstrations organised have been documented. Among these, the massive and disproportionate number of vehicles and agents displayed to control the territory; the blocking of accesses and exits from the places where the demonstrations were taking place, also extended to the citizens present in the surroundings; the aggressive and violent attitudes carried out by agents, even to the detriment of non-demonstrators; the identification and reporting of demonstrators; the limitation of freedom of movement and the creation of "red zones" around construction sites.

Judicial repression has also been very harsh: hundreds of trials against the members of the No TAV movement are underway with over a thousand suspects, also for episodes of minor significance (see the case of No TAV activist Dana Lauriola).

The recurring scheme also applies to activists of the No TAP movement. In 2018, 47 activists were involved in a maxi-trial with over 74

counts. On 21 March, the Court of Lecce, in three separate trials, issued sentences against 67 environmental varying between three and six months of imprisonment and fines of up to 4200 euros, with the accusation of unauthorised protests, resistance and offence to a public official and disruption of public service (source: FrontLine Defenders). More recently, at the beginning of December, three No TAP activists were sentenced to 4 months, and about 30 others are still on trial for having participated in some demonstrations against the pipeline two years ago after being subjected to intimidation by police forces.

Other cases of criminalisation or delegitimation of nonviolent ecological and pacifist movements concern the "Mothers against the Lince operation and against the Repression" in Sardinia (45 sons and daughters of theirs are on trial for having protested against military bases in Sardinia under the accusation of terrorism) and the No PFAS mothers in Veneto. The latter case was also analysed by an OSCE-ODIHR delegation that visited Italy two years ago to assess the situation of the defenders in our country, and that published a report this year.

The framework for civic organisations' financial viability and sustainability

Public funding and Covid-19

There is a lack of significant funding streams for human rights work on the national territory.

Civil society organisations' economic and financial sustainability was greatly affected by the pandemic crisis. Associations faced a loss of budget due to stopped activities, and issues with members fees due to the pauperisation of the population.

During 2020, European and national 'extraordinary' support allowed many associations not to succumb to the crisis,

thanks to the massive mobilisation to request the inclusion of the sector in the support for economic entities. In the year 2021, this availability was not confirmed. The number of opportunities and the amount of funds available has drastically decreased.

In the first phase of the emergency, the calls of different institutional actors were very similar and had common objectives aimed at supporting services for vulnerable groups above all. In the subsequent phase, the limited availability of public tenders forced associations to turn more carefully to the private sector, which, however, does not guarantee large amounts of funding. Therefore, the risk is that many organisations - especially the smallest - cannot guarantee the continuity of their activities.

There is a need to support the sector with long-term funding in order to revive and strengthen the civic sector and its action. Such funding needs to support associations in their role as a bridge between institutions and citizens, which increasingly needs adequate resources and spaces to achieve the goal of greater proximity and trust in public service. Indeed, the relational role of associations with institutions is one of the fundamental vectors for economic, social and cultural recovery during and after the covid 19 pandemic.

Controversy over the imposition of VAT on associations

To date, the associative sector is excluded from VAT legislation as it recognises the non-profit nature of NGOs, including membership fees and economic activities.

In 2008, the European Commission opened infringement procedure No 2010 against Italy for alleged breach of Article 132 of the VAT Directive 2006/112/EC. Following the opening of the procedure, in July 2019, the Italian State received notification of the second letter of formal notice. According to the European Commission, the above-mentioned sources of income of CSOs should be subject to VAT or,

at least, exempt. The Court of Justice has defined enterprises as any entity engaged in economic activity, regardless of its legal form, regardless of how it is financed and whether or not it is profit-making. According to the Court, economic activity is any activity consisting of offering goods and services on a market in return for remuneration.

Consequently, in the conversion into law of decree-law 146/2021, the Government inserted the subjection to VAT of the proceeds deriving from institutional activities carried out by charitable associations, cultural associations, amateur sports associations, associations for social promotion and associations for extracurricular training. Following the protest of the third sector, the measure was postponed to 2024. According to civic organisations, the controversy is linked with a misunderstanding of the role of the non-profit sector and the EU directive. The move risks progressively eroding the significance of the social function of associations and their place in the context of non-commercial bodies. It also would negatively impact the financial viability of organisations and increase the bureaucratic reporting for the sector, with significant repercussions for smaller organisations.

The right to participation and dialogue between the civic sector and governing bodies

There is no framework for civil dialogue in the country. Dialogue between authorities and the civic sector regularly takes place. The dialogue between the sector and government bodies needed more attention to give specific actors in the various fields. Not even in the academic sector has much space been given to civil dialogue, which needed more attention from the institutions.

Some Italian associations and networks have promoted opportunities for discussion with the relevant authorities, and there has been

an opportunity to meet with various ministries to present the critical aspects of the pandemic crisis.

Civil society is crucial to give voice and political representation to the vast majority of the population who have been weakened and impoverished in recent years and who will find no effective response in the current economic model that is prone to inequality, underpaying work and squeezing all the resources, including exhaustible ones, of our planet for its own interests, undermining our right to life and that of the generations to come.

Civil society's responses to challenges to democracy, the rule of law and fundamental rights

Social vulnerabilities are multiplied, civil society responds to the emergency

Inequality, poverty, precariousness and social and psychological distress have continued to grow in the country: 6 million people in absolute poverty, over 9 million in relative poverty, unemployment over 10%, more than 950,000 jobs lost since the start of the pandemic and millions of working poor, to mention just a few figures. The fragilities present in families have increased. Also, domestic violence has increased, and threats against women and minors have become more severe, especially within families, even more so if they are connected to fragile contexts.

The role of civic actors has been crucial to support the most fragile categories and protect them. Associations have stretched their capacities to respond to the social needs exposed by the pandemic and expanded some of their areas of intervention, supporting or creating new solidarity services in the various territories where volunteers were already active: such as the canteen service and the offer of free food packages for

the most vulnerable families and people, creating new synergies with local actors and communities. Mutual aid groups also have sprung across the country. Thanks to the many support services set up in neighbourhoods and suburbs, it has been possible to meet marginalised people and families who previously had no contact with the local community and associations. In order to carry out this "emergency" commitment, many associations did not ask for money but received donations for the management of these support services for citizens.

Role of civil society in the fight against corruption and criminal organisations

Civil society actively advocates for the strengthening and protection of the judicial system and the implementation of policies and tools to fight mafia infiltration and acts of corruption. On this front, the monitoring of funds and - more generally - of common goods by third sector actors has had an important role, alongside the welfare and educational services provided at the local level and beyond.

A positive example is the City Forum on Confiscated Assets of the Municipality of Rome, advocated for years by civic organisations. Through a participatory process involving civil society, the forum manages assets confiscated from organised crime on the territory in Rome. Municipalities will use villas, apartments, shops, garages and land for social, cultural and institutional reuse projects. A thematic citizen forum, formed by representatives of local authorities, associations and citizens, will identify the intended use and the necessary interventions to return the properties to the community. Also, at the European level, civil society advocates for important tools against organised crime. For example, the European network CHANCE - Civil Hub Against organised Crime in Europe (2019) calls the European Commission to set up a forum for

the fight against organised crime in which representatives of reference associations, institutional representatives and academics can participate, as it already happens for the theme of the fight against drug trafficking.

Recommendations

1. Italy should adopt a national program for the protection and protection of defenders of human rights, which ensures transparency and commitment of the competent authorities, in accordance with the provisions of the UN Convention on Human Rights Defenders and OSCE-ODIHR guidelines. The establishment of the independent National Authority for Human Rights and the inclusion, in its mandate, of support for human rights defenders can no longer be postponed. The Authority must prepare and coordinate a national program for the protection of human rights defenders that includes the active participation of civil society, to ensure inter-institutional coordination and investigation into any violations of the rights of defenders. Pending the establishment of the National Authority, a national action plan on defenders should be promoted to ensure independent monitoring and coordination with international bodies and the application of commitments and the standards of protection of their work.

2. Training modules on international instruments and obligations relating to the respect of defenders should be developed and directed to public officials, police, officials of the judiciary (prosecutors and judges) and competent ministries.

3. A report on the state of implementation of the country's commitments to respect human rights defenders, OSCE-ODIHR guidelines, recommendations of international protection bodies and initiatives taken in this regard should be published annually.

4. The Open Government Partnership, curated at Italian level by the Department for

Public Administration, is an important venue for civil society to promote transparency and participation. This space seeks to promote dialogue with institutions, citizen participation and accountability. Italy needs to continue and strengthen its commitment to OGP.

5. One of the most important participatory tools for civic space developed in recent years are forums or shared decision-making spaces, where, depending on the specific issue (urban planning, environmental rights, human rights), a representative of citizenship is involved in order to interact and bring a direct contribution from civil society. Local authorities should increase the presence of citizens and civil society in decision-making forums, so that on the one hand civic responsibility is strengthened and on the other hand the accountability of institutions is ensured.

6. There is a need to invest in the financial sustainability of associations, so that they can also increase the quality of their local, national and international action. The provision establishing VAT for the non-for-profit sector should be removed.