

Brussels, 30.9.2020
SWD(2020) 311 final

COMMISSION STAFF WORKING DOCUMENT

**2020 Rule of Law Report
Country Chapter on the rule of law situation in Italy**

Accompanying the document

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2020 Rule of Law Report
The rule of law situation in the European Union**

{COM(2020) 580 final} - {SWD(2020) 300 final} - {SWD(2020) 301 final} -
{SWD(2020) 302 final} - {SWD(2020) 303 final} - {SWD(2020) 304 final} -
{SWD(2020) 305 final} - {SWD(2020) 306 final} - {SWD(2020) 307 final} -
{SWD(2020) 308 final} - {SWD(2020) 309 final} - {SWD(2020) 310 final} -
{SWD(2020) 312 final} - {SWD(2020) 313 final} - {SWD(2020) 314 final} -
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{SWD(2020) 318 final} - {SWD(2020) 319 final} - {SWD(2020) 320 final} -
{SWD(2020) 321 final} - {SWD(2020) 322 final} - {SWD(2020) 323 final} -
{SWD(2020) 324 final} - {SWD(2020) 325 final} - {SWD(2020) 326 final}

ABSTRACT

The Italian justice system has a solid legislative framework to safeguard judicial independence, including prosecutors' independence. In August 2020, a reform regarding the High Council for the Judiciary and other aspects of the justice system has been proposed by the Government. It is important that such reform guarantee judicial independence, while strengthening transparency and integrity. As regards efficiency, the justice system continues to face important challenges. New reforms aiming at streamlining civil and criminal procedures are being discussed in Parliament. These reforms, coupled with an increase in human resources and further digitalisation, aim at addressing backlogs.

In 2019 Italy continued strengthening its institutional and legislative anti-corruption framework. Following previous efforts, the anti-corruption law adopted in January 2019 has further tightened sanctioning for corruption crimes and suspended limitation periods after the first instance judgment. In addition, investigative tools for the fight against organised crime have been extended to corruption offences. The National Anti-corruption Authority has reinforced its role in fostering a corruption prevention culture, while continuing its supervising and regulatory role for public contracts. A framework to protect whistleblowers has been adopted. Italy has not yet adopted a comprehensive law regulating lobbying and the conflict of interest regime is fragmented. The capacity to detect, investigate and prosecute corruption is very effective and benefits from the expertise of the law enforcement authorities in the fight against organised crime. However, the effectiveness of repressive measures is hampered by the excessive length of criminal proceedings. A comprehensive reform to streamline criminal procedure is being discussed in Parliament.

The Italian Constitution enshrines freedom of expression and information as well as the principle of transparency of media ownership. The Italian regulatory authority for audiovisual media is deemed to be independent and effective. The political independence of the Italian media remains an issue due to the lack of effective provisions on preventing conflicts of interest in particular in the audio-visual media sector. Italy has established a Centre aiming at monitoring threats to reporters and developing the necessary protection measures to respond to concerns with regard to the safety of journalists. Prison sentences for defamation have been challenged in courts, drawing on the Constitution and the jurisprudence of the European Court of Human Rights on freedom of expression. The matter is currently pending before the Parliament.

As regards checks and balances, the Constitutional Court continues to have an important role, and has recently encouraged an increased participation of civil society and the general public to its proceedings. Regulatory impact assessments and stakeholders' consultations have improved, but can be further developed. Reforms aiming at establishing a national human rights institution, which is still missing, are being debated in Parliament. There is a vibrant civil society, although some NGOs, particularly on certain issues such as migration, are subject to smear campaigns.

I. JUSTICE SYSTEM

The justice system is set out in the Constitution¹, which enshrines its independence and autonomy.² Ordinary courts have jurisdiction in civil and criminal matters and are organised in a system structured in three levels of instances. The first instance is composed of justices of the peace, ordinary courts and juvenile courts. The Courts of appeal are the second instance, and the High Court of Cassation is the highest instance. The administrative justice is organised in first-instance courts (*Tribunali Amministrativi Regionali*) and second-instance courts (*Consiglio di Stato and Consiglio di giustizia amministrativa per la Regione Sicilia*). Jurisdiction in accounting matters is exercised by the Court of Auditors (*Corte dei Conti*, Regional and Central Chambers). Regarding fiscal matters, the responsible courts are fiscal courts at first and second instance (*Commissioni Tributarie Provinciali and Regionali*) and the High Court of Cassation at the highest level. The structure of the prosecution service mirrors that of the courts. With respect to organised crime and other serious criminal offences³, prosecutorial functions are carried out by District Anti-Mafia Directorates.⁴ 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 (*Consiglio Superiore della Magistratura*).⁵ Administrative, accounting and fiscal magistrates have their own self-government bodies (respectively, *Consiglio di Presidenza della giustizia amministrativa*, *Consiglio di Presidenza della Corte dei Conti* and *Consiglio di Presidenza della giustizia tributaria*). The National Bar Council is an independent and self-governing body established by law.⁶

Independence

A solid legislative framework is in place to safeguard judicial independence for both judges and prosecutors.⁷ The judiciary is fully separated from other constitutional powers.⁸ The High Council for the Judiciary⁹ is tasked with guaranteeing the independence of the judiciary. Any decision regarding recruitments, transfers, promotions, professional assessments and disciplinary measures is subject to judicial review. Prosecutors, as members of the judiciary, are independent and enjoy the same guarantees as judges¹⁰. This is in line with a widespread tendency in Europe to allow for a more independent prosecutor's office, as

¹ Art. 101 - 113, Title IV of the Constitution.

² Art. 104 of the Constitution.

³ Art. 51 (3-bis) of the Code of Criminal Procedure (e.g. mafia type organised crime; organised crime aiming at trafficking in slavery and illegal immigration; drugs trafficking; kidnapping for extortion purposes; political mafia electoral exchange and other serious crimes).

⁴ Under the coordination and supervision of the National Anti-mafia and Counterterrorism Prosecutor at the National Anti-mafia Directorate, in turn anchored at the General Prosecutor's Office at the Court of Cassation.

⁵ Art. 104 of the Constitution.

⁶ Current governing legislation: Law n. 247/2012.

⁷ GRECO Fourth Evaluation Round, Italy, Evaluation Report, para. 6: "The judiciary is governed by a very solid legislative framework enshrining its independence, both for judges and prosecutors".

⁸ Art. 104 of the Constitution. The Constitution provides for rules as regards recruitment (Art. 106), security of tenure (Art. 107) and disciplinary regime (Art. 105).

⁹ Art. 105 of the Constitution: the Council for the Judiciary is responsible for recruitments, transfers, promotions, professional assessments and disciplinary measures.

¹⁰ Art. 104 and 107 of the Constitution. See also Resolution of the High Council for the Judiciary on the organisation of the Prosecutor's Office of 16 November 2017, amended on 18 June 2018 and further clarified as to the organisational programmes with resolution 4 December 2019.

observed by the Venice Commission.¹¹ The Prosecutor General at the Court of Cassation, who is appointed by the High Council of the Judiciary, has no hierarchical powers over the various prosecution offices.¹²

The level of perceived judicial independence in Italy is low. Only 31% among the general public and 36% among companies considering it to be ‘fairly or very good’ and these percentages have decreased between 2019 and 2020.¹³ The main reasons among the general public and companies for the perceived lack of independence are interference or pressure from Government and politicians and from economic or other specific interests.¹⁴

A reform of the High Council for the Judiciary and other aspects of the justice system has been proposed by the Government. The Constitution has established the High Council for the Judiciary (*Consiglio Superiore della Magistratura* - CSM) as an independent and autonomous body¹⁵, two-thirds of whose members are magistrates elected by their peers from all levels of the judiciary.¹⁶ The remaining members are lay members elected by Parliament among university professors in legal matters and lawyers with at least fifteen years of experience. The President of the Republic (who also chairs the CSM), the First President of the Court of Cassation, and the Prosecutor General at the Court of Cassation are *ex officio* members. The election of magistrates-members of the council takes place in three national colleges.¹⁷ In 2019, the CSM was faced with integrity challenges in relation to serious allegations concerning the appointment of high-level prosecutors, as disclosed by a criminal investigation.¹⁸ This investigation led to the resignation of five members of the CSM.¹⁹ New elections were held to replace some of those members.²⁰ Ten disciplinary proceedings were

¹¹ Venice Commission opinion (CDL-AD(2017)028), para. 42: a more independent prosecutor’s office, rather than one subordinated or linked to the executive. See also Venice Commission report (CDL-AD(2010)040-e).

¹² Art. 6 of the Legislative decree n. 106/2006; Art. 14 of the Legislative decree n. 109/2006; Royal decree n. 12/1941 and further amendments; Art. 51, 54 and 54 bis Criminal Procedure Code.

¹³ Figures 44 and 46, 2020 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%). A survey conducted among judges in 2019 found that around 50 % of judges participating in the survey had experienced a lack of respect for their independence by the Government and the media. European Network of Councils for the Judiciary, Independence and Accountability of the Judiciary – ENCJ Survey on the independence of judges, 2019, Figures 43 and 45. The survey covered 21 EU Member States.

¹⁴ 37% of respondents among the general public and 41% among companies indicated interference or pressure from Government as the main reason; 36% among the general public and 41% among companies indicated interference or pressure from economic or other specific interests; 27% among the general public and companies indicated as main reason that the status and position of judges do not sufficiently guarantee their independence. Figures 45 and 47, 2020 EU Justice Scoreboard. According to GRECO, Fourth Evaluation Round, Evaluation report, para. 6: “The undisputed reputation, professionalism and commitment of individual judges and prosecutors is somewhat tarnished by public doubts about the efficiency of the system to effectively punish law breakers when the risk of a corruption prosecution becoming time barred is no rare occurrence.”

¹⁵ Art. 104 and 105 of the Constitution.

¹⁶ According to the Law of 24 March 1958 n. 195, amended by Law of 28 March 2002 n. 44, 16 members are magistrates elected by their peers, 8 are lay members and 3 are *ex officio* members.

¹⁷ Art. 23 of the Law of 24 March 1958 n. 195, amended by Art. 5 of the Law of 28 March 2002 n. 44.

¹⁸ An investigation started at the Prosecution Office of Perugia – which is responsible for prosecuting crimes involving magistrates working within the district of Rome – using technological instruments introduced by Law n. 3/2019 to counter corruption, unveiled meetings outside the competent institutions among a former member of the CSM, some members of the Council and members of the Parliament regarding the appointments of chief prosecutors at some prosecution offices.

¹⁹ The Prosecutor General at the Court of Cassation decided for his the early retirement.

²⁰ In addition to the election a replacement mechanism was put in place.

initiated and certain precautionary measures were adopted.²¹ In addition, the National Magistrates' Association expelled one of the magistrates from the Association. On 7 August 2020 the Government proposed a draft law²² reforming the High Council to tackle the concerns raised by the abovementioned criminal investigation. Such reform includes an increase in the number of the Council's members²³, the provision of 19 territorial colleges of magistrates²⁴, and the setting up of a new disciplinary panel. Moreover, new rules to increase transparency in the appointment of high-level judges and prosecutors are part of the draft reform. It includes the possibility of drawing by lot for the selection of the candidates for the CSM.²⁵ It is important that any reform takes account of Council of Europe recommendations relating to the Councils for the judiciary, including as regards the selection of their members.²⁶ In addition, the draft reform aims at tightening the requirements for magistrates to engage in political activity.²⁷ In this regard, asset disclosure obligations were recently strengthened²⁸, and targeted initiatives were put in place to increase awareness of judicial ethics and judicial independence²⁹, although a lack of proper regulation of the political activity of magistrates had been raised by GRECO.³⁰

Quality

Resources have been allocated for additional magistrates and administrative staff. The Budget Law 2019³¹ provided for the recruitment of 600 new magistrates for the civil and criminal justice courts³², divided among the Court of Cassation and lower courts, as well as the Prosecutor's Office service.³³ New recruitments are envisaged to be completed by the end of 2021 and are foreseen to create efficiency gains in disposition time.³⁴ The Budget Law 2020³⁵ introduces more flexibility in the allocation of judges and allows judges to volunteer

²¹ In particular, the disciplinary measure of the suspension from office with the suspension from salary was applied against one magistrate and has been confirmed by the Court of Cassation in January 2020.

²² Draft law approved by the Council of Ministers on 7 August 2020 enabling the Government to adopt a legislative decree for the reform of the judiciary and for the adaptation of the military judiciary and introducing new rules on legal, organisational and disciplinary matters, on the eligibility and relocation of magistrates and on the establishment and functioning of the High Council for the judiciary. Once the law is approved by the Parliament, the Government will have one year to adopt one or more legislative decrees.

²³ Total number: 30 members, among which 10 are lay members elected by the Parliament between professors or lawyers with 15 years of profession, excluding current members of the Government or members in the previous two years or current members of the Regional Councils or members in the previous two years.

²⁴ A college is an electoral area. The increase in number of colleges appears to aim at guaranteeing a more adequate relationship between the elected and the individual territorial realities.

²⁵ The mechanism of drawing by lot occurs when the candidates do not reach the number of ten in each college or when gender equality is not respected.

²⁶ Recommendation CM/Rec(2010)12 of Committee of Ministers of Council of Europe, para. 27.

²⁷ In particular, a two year ban has been set for the magistrate to be a political candidate in the territory where he/she has held judicial office. In addition, magistrates who are elected or act in the Government, must take special leave and be out of the role and, at the end of their mandate, cannot return judicial offices, but at the Ministry of Justice or other Ministries.

²⁸ Resolution of the CSM, 13 November 2019.

²⁹ Resolution of the National Association of Magistrates of May 2018; specific trainings on ethical matters at the High School of Judiciary since 2016; specific section on the website of the High Council for the Judiciary on ethical topics; guidelines of the High Council for the Judiciary of 13 May 2020 for local level judicial council, including regarding transparency, and powers of enquiry for professional appraisals, well as for promotions.

³⁰ GRECO Fourth Evaluation Round - Compliance Report, rec. x.

³¹ Law 30 December 2018 n. 145.

³² From 10.151 to 10.751 units.

³³ 50 of them at the Court of Cassation; 18 of them at the General Prosecution Office at the Court of Cassation.

³⁴ The Ministry of Justice carried out a simulation on efficiency gains showing a reduction of disposition time.

³⁵ Law no. 160 of 27 December 2019.

for ‘flexible task forces’ to tackle particular backlogs. Recently, up to 850 auxiliary judges have been tasked with addressing lengthy proceedings also at criminal appeal courts.³⁶ A high number of vacancies for administrative staff are expected to be covered in 2020, while new competitions will be held in 2021. In addition, extraordinary measures aiming at speeding up pending cases and enhancing digitalisation in criminal proceedings enabled the employment of 1000 units for a two-year period.³⁷ As to administrative justice, the Budget Law 2018³⁸ increased the number of administrative magistrates by 20 and, in February 2020, a new section of the Council of State and two new sections at one of the first instance courts (*Tar Lazio*)³⁹ were established. However, challenges remain as regards the considerable number of magistrates’ vacancies, especially at first instance.⁴⁰

Ongoing reforms aim at further improving the digitalisation of the justice system. The digitalisation of proceedings at first and second instance civil courts is advanced, while it is under testing at the Court of Cassation (civil section). Currently, any act in the first and second instance proceedings is drafted, signed, sent, and archived, for extraction and consultation, in digital format. The draft reform under discussion in Parliament⁴¹ concerning civil procedure would further improve digitalisation by providing for an exclusive online filing and a wider range of electronic means coupled with online payment of court fees and an extension of the digitalisation to the justices of peace.⁴² In criminal proceedings, digitalisation is partial and covers notifications and communications, electronic registers and electronic connection with the Bar association granting access to public defenders. The draft reform under discussion in Parliament⁴³ concerning criminal procedure provides for the possibility of online submission and notifications being put in place through a wider range of electronic means. For administrative courts, digitalisation is advanced. A recent amendment⁴⁴ has abolished the requirement of the paper copy in addition to the electronic one.

The pre-existing digital solutions and the legal framework allowed for some of the court activities to be maintained during the COVID-19 pandemic. In the context of the COVID-19 pandemic, the Government adopted organisational measures, to be implemented in cooperation with the Heads of Judicial Offices and the High Council for the Judiciary, allowing for remote civil and criminal hearings.⁴⁵ The crisis led to an acceleration of digitalisation in criminal trials, where the Prosecution service was granted the possibility to hear witnesses and examine suspects through video conference, and appoint experts as well.⁴⁶ In addition, a memorandum of understanding has been signed among the High Court of

³⁶ Decree law of 19 May 2020 n. 34, Art. 256.

³⁷ Decree law of 19 May 2020 n. 34, Art. 255.

³⁸ Law 27 December 2017, n. 205.

³⁹ Law 28 February 2020, n. 8.

⁴⁰ On 31 December 2019, 276 judges were employed at first instance against 410 units in the organisation chart, and 106 judges at second instance courts against 125 units in the organisation chart.

⁴¹ *Atto Senato n. 1662*. “*Delega al Governo per l’efficienza del processo civile e per la revisione della disciplina degli strumenti di risoluzione alternativa delle controversie*”.

⁴² Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. written contribution from the Ministry of Justice (a project was already on-going where, in June 2020, for 63 offices of the justices of peace digitalisation was in place).

⁴³ *Atto Camera n. 2435*: “*Delega al Governo per l’efficienza del processo penale e disposizioni per la celere definizione dei procedimenti giudiziari pendenti presso le corti d’appello*”.

⁴⁴ Law 25 June 2020, n. 70.

⁴⁵ Art. 83 of the Decree-law of 17 March 2020 n. 18.

⁴⁶ Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. Ministry of Justice contribution (an increase of 89% in videoconferences has been registered in May 2020 with respect to May 2019).

Cassation, the Prosecutor General's Office at the High Court of Cassation and the National Bar Association (*Consiglio Nazionale Forense*) regarding digitalised acts.⁴⁷ Hearings in administrative courts were initially suspended and then organised remotely.⁴⁸ A memorandum of understanding has also been signed among the Council of State and Bar Associations as regards remote hearings.⁴⁹

Online access to judgments is being improved. Online access to both civil and criminal judgments is fully available for the highest courts' decisions, while for first and second instance courts, resolutions on publishing judgments adopted by the High Council for the Judiciary are being implemented.⁵⁰

Reforms are pending in Parliament to restructure and increase the specialisation of the first and second instance tax courts. A marked rise in incoming cases in the field of tax disputes at the highest instance raises concerns about the quality of Italy's tax justice system at first and second instance.⁵¹ The issue was raised by GRECO, which took note of some improvements, yet underlined the absence of regular trainings and systematic supervision also by means of periodic appraisals, as well as of a Code of Professional Conduct.⁵²

Standards have been introduced to improve the quality of judicial decisions. Standards were set through the cooperation between the judiciary and lawyers, with support from the Ministry of Justice.⁵³ These standards aim at improving the clarity and conciseness of the acts in the proceedings. This also paved the way for a complete digitalisation process up to the Court of Cassation in civil matters. Checks on quality of the decisions contribute to ensuring a high level of quality.

Proximity offices have been established to enhance the courts' accessibility. The project is pursued by the Ministry of Justice within the Operational National Programme Governance and Institutional Capacity 2014-2020⁵⁴. It aims at improving access to Courts by enhancing a service of justice closer to the citizens, including the vulnerable groups. Furthermore, it establishes a network of offices providing homogeneous services in the field of voluntary jurisdiction. The objective is to improve access to Courts with the involvement of local authorities and the use of the digital civil trial.

⁴⁷ [Memorandum of 9 April 2020.](#)

⁴⁸ Decree Law n. 18/2020 and decree law n. 28/2020. See also Guidelines of the President of the Council of State for a uniform application of the new rules for administrative courts of 25 May 2020. [Guidelines 25 May 2020.](#)

⁴⁹ [Memorandum](#) of 26 May 2020.

⁵⁰ Status of implementation of resolutions relating to collection of decisions to be included in the ItalgiureWeb Archive of Merit Decisions - Operational indications (High Council for the Judiciary resolution June 19, 2019).

⁵¹ Legislative Decree no. 545/1992, Art. 4 e 5. Also in 2019 the Court of Cassation managed to obtain positive results by important investment in term of staff and equipment in the tax section (Report by the First President of the Court Of Cassation on the state of justice in 2019, Rome, 31 January 2020).

⁵² GRECO Fourth Evaluation Round - Compliance Report, rec. VII.

⁵³ In 2016 the Minister of Justice set up a working group (Ministry of Justice, Attorney General, members of the judiciary and of the Bar Association *Consiglio Nazionale Forense* (CNF)) on clarity and conciseness of procedural acts (DM 9 February 2016; DM 18 September 2017 and DM 3 January 2018); the High Council for the Judiciary (CSM) with resolution 5 July 2017 and 20 June 2018 issued Guidelines for drafting the procedural acts; a Memorandum of understanding was signed on 19 July 2018 between the CSM and the CNF regarding preliminary examination of appeals, organisation of work, clarity and conciseness of acts in appeal proceedings.

⁵⁴ For a total amount of EUR 36 764 941; three pilot projects are on-going (Piedmont, Tuscany and Liguria).

Efficiency

The justice system continues to experience serious challenges relating to the length of proceedings. Despite a constant clearance rate above 100%⁵⁵ in the civil sector, the estimated time needed to resolve civil and commercial litigious cases remains among the highest in the EU.⁵⁶ In 2019, the disposition time continued to decrease at first and second instances.⁵⁷ At the Court of Cassation, the positive trend observed in 2018 has been reversed due to a marked rise in incoming cases in the field of international protection⁵⁸ and a still considerable number of incoming cases regarding tax disputes⁵⁹, with high rates of inadmissibility.⁶⁰ In 2019, administrative courts have reversed a negative trend and have started to decrease the disposition time at all instances, while remaining above average.⁶¹ In addition, positive results are observed in the area of public procurement.⁶² Italy remains under enhanced supervision of the Council of Europe's Committee of Ministers as regards length of proceedings in administrative cases⁶³. In criminal proceedings, disposition time above average is observed⁶⁴ at the appeal level, despite a further decrease over 2018-2019. However, positive results in containing trial length continue at first instance courts⁶⁵ and at the Court of Cassation⁶⁶, notwithstanding a slight increase with respect to the previous year.⁶⁷ Italy remains under enhanced supervision of the Council of Europe's Committee of Ministers also as regards length of proceedings in criminal cases.⁶⁸ A reform stopping the statute of limitation after a first-instance ruling, which is in line with a long-standing country-specific

⁵⁵ Figure 10, 2020 EU Justice Scoreboard, meaning that the justice system is able to deal effectively overall with the number of incoming cases.

⁵⁶ Figure 7, 2020 EU Justice Scoreboard. See also CEPEJ (2020), Study on the functioning of the judicial systems in the EU Member States: for the civil sector, 527 days at first instance, 863 at second instance and 1266 at the court of Cassation. The estimated disposition time measures 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.

⁵⁷ Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. written contribution by the Ministry of Justice; See also CEPEJ (2020), Study on the functioning of the judicial systems in the EU Member States, that reported a disposition time decrease in 2018 by 3.7% at first instance, 3.4% at second instance and 2.5% at the Court of Cassation.

⁵⁸ 2020 Report of the First President at the High Court of Cassation: in 2019, 10 341 complaints have been filed (against 374 complaint in 2016).

⁵⁹ 2020 Report of the First President at the High Court of Cassation: in 2019, 9 537 complaints have been filed.

⁶⁰ For 2019, 18.7% of all civil appeals to the Supreme Court were declared inadmissible, compared to 16.6% in 2018 (Court of Cassation, Statistical Yearbook 2019 and 2018).

⁶¹ Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. written contribution Council of State (820 days at first instance in 2019 compared to 888 in 2018; 692 days at highest instance in 2019 compared to 791 days in 2018); Figures 8 and 9, 2020 EU Justice Scoreboard.

⁶² Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. written contribution Council of State (230 days at first instance in 2019 compared to 237 in 2018, and 123 at highest instance in 2019 compared to 274 in 2018).

⁶³ ECtHR Judgment in case *Abenavoli v Italy*, Application no. 22461/93, 2 September 1997; Resolution by the Committee of Ministers of the Council of Europe, CM/ResDH(2016)358, 6-8 December 2016.

⁶⁴ Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. written contribution Minister of Justice: 2019: 835 days.

⁶⁵ See previous note - 392 days.

⁶⁶ See previous note - 166 days.

⁶⁷ Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. written contribution Minister of Justice: 2018: first instance 382 days; Court of Cassation: 156 days.

⁶⁸ ECtHR Judgment in case *Ledonne v Italy*, Application no. 35742/97, 12 May 1999; Resolution by the Committee of Ministers of the Council of Europe, CM/ResDH(2018)353, 18-20 September 2018.

recommendation⁶⁹ in the context of the European Semester, entered into force in January 2020.⁷⁰ As a result, there is a strong need for measures to increase efficiency, especially at the appeal level.

Reforms to address the efficiency challenges of civil and criminal proceedings are under discussion in Parliament. A comprehensive draft reform to streamline the civil procedure, recommended since 2013 in the context of the European Semester⁷¹, is currently being discussed in Parliament.⁷² It aims at efficiency gains through simplified procedures, speediness and enhanced digitalisation. The proposal extends the use of simplified procedures and the range of cases where a single judge is competent to adjudicate. It also reduces the timeframes for procedures and obliges the judge to set up a calendar for the gathering of evidence, and for the parties to file electronically any relevant act and document. It reviews the appeal procedure and the rules on alternative dispute resolution, and introduces exclusively filed electronic written pleadings. Moreover, it speeds up the enforcement of proceedings by reforming the procedure for forced execution. A comprehensive reform of the criminal procedure aiming at strengthening the efficiency of criminal trials and speeding up proceedings at courts of appeal is also currently being discussed in Parliament. The reform includes a revision of the following elements: the notification system, a broader use of simplified procedures, the introduction of a single judge in second instance for direct summons, a broader use of electronic filing of documents, simplified rules on evidence, the definition of time limits for the duration of preliminary investigation and measures to avoid stagnation in the investigative phase. The reform foresees that the suspension of the statute of limitations from the date of delivery of the first-instance judgment (as result from a recent reform) is applicable only to convictions and not to acquittals. The swift adoption of these reforms could contribute to increased efficiency. However, certain provisions aim at introducing new disciplinary offences for magistrates in case of excessive length of proceedings. In that respect, it is important that any such envisaged provision take account of Council of Europe recommendations and safeguard judicial independence.⁷³

II. ANTI-CORRUPTION FRAMEWORK

The legal and institutional anti-corruption framework is broadly in place. New legislation increasing penalties for corruption offences has entered into force. The prevention and fight against corruption is shared between several authorities. The National Anticorruption Authority (ANAC) is the authority in charge mainly with the prevention of corruption within the public administration, well as with defining the Anti-corruption strategy and supervising the adoption of the three-year plans. The Anti-corruption Unit of the Financial police (*Guardia di Finanza*) is responsible for the investigation and prevention of corruption as a

⁶⁹ Council Recommendation of 9 July 2013 on the legal framework for corruption and in particular over the statute of limitation.

⁷⁰ 8% of crimes at first instance, 24% at second instance and 17% at the High Court of Cassation, fall under the statute of limitation.

⁷¹ Council Recommendations of 2013-2020 on the efficiency of the Italian justice system, in particular over the length of civil proceedings.

⁷² *Atto Senato n. 1662. "Delega al Governo per l'efficienza del processo civile e per la revisione della disciplina degli strumenti di risoluzione alternativa delle controversie"*. The act under discussion is an enabling law setting the criteria that the Government would follow while issuing a legislative decree within one year from the entering into force of the enabling law.

⁷³ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 69. See also Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe, para. 5 lett. e). See also Venice Commission, (CDL-AD(2016)009), para. 34; (CDL-AD(2015)042), para. 113; (CDL-AD(2014)006), para. 19; (CDL-AD(2011)012), para. 60.

specialised law enforcement body. Furthermore, specialised police and prosecution services increase their efforts in order to tackle the infiltration of organised crime into public administration. The Financial Intelligence Unit for Italy (*Unità di informazione finanziaria per l'Italia*), independent authority at the Bank of Italy, provides support to the competent prosecutor's office and cooperates with *Guardia di Finanza* as the competent authority for receiving reports of suspicious transactions.

Italy scores 53/100 on the latest Transparency International Corruption Perception Index and ranks 15th in the EU and 51th globally.⁷⁴ According to 2020 Special Eurobarometer survey, 88% of respondents consider corruption widespread (EU average 71%) and 35% of respondents feel personally affected by corruption in their daily lives (EU average 26%).⁷⁵ As regards businesses, 91% of companies consider corruption to be widespread (EU average 63%), while 54% of companies consider that corruption is a problem when doing business (EU average 37%). 42% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%) while 25% of companies consider that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%).⁷⁶

A revision of the level of sanctions for corruption related offences has been carried out recently. Increased levels of penalties have been provided for in legislation for almost all corruption offences with the aim of increasing their effectiveness and dissuasiveness. Penalties have been substantially increased in cases of active and passive corruption of both domestic and foreign officials. In the beginning of 2019, the sanctioning regime for improper bribery was further tightened. The law has also reinforced the regime of accessory penalties by extending the scope of the life-long disqualification and prohibition from holding public office for a wide range of corruption offences. In May 2019, relevant provisions⁷⁷ on the subject of political-mafia exchange voting were amended, with the aim of targeting possible networks of criminal organisations, politicians, entrepreneurs, and administrations. Italy has an effective asset recovery system, which is key for complementing the sanctioning regime for corruption. The Italian asset recovery regime, which includes both conviction and non-conviction based confiscation, is largely recognised as a good practice at international level.⁷⁸

The powers and capacity of the National Anti-corruption Authority have been strengthened as regards its preventive role to fight corruption. As regards corruption prevention, Italy's approach changed with the creation of the National Anti-corruption Authority (ANAC) in 2012, whose role and powers, mainly on prevention of corruption within the public administration, have been strengthened in recent years. ANAC is an independent authority. The board is composed of five members appointed for a non-renewable mandate of six years. The nominations, proposed by the Minister for Public Administration and Simplification, in agreement with the Minister for Justice and the Minister for the Interior, are approved by the Council of Ministers and the candidates are appointed by the President of the Republic. ANAC has a staff of 350 employees. It has also

⁷⁴ Transparency International, Country data. <https://www.transparency.org/en/countries/italy>.

⁷⁵ Special Eurobarometer 502 (2020). Since the high-level workshop on corruption measurement held on October 2017 under the Italian G7 Presidency, Italy is promoting a new approach at the international level (G20, UNCAC and OECD) to find a more comprehensive approach to measure effective levels of corruption, beyond the mere perception, based on objective and evidence-based indicators. See also UNCAC 8th CoSP resolution n.10. https://www.unodc.org/UNCAC/COSP/session8/Advance_unedited_resolutions.

⁷⁶ Flash Eurobarometer 482 (2019), Businesses' attitudes towards corruption in the EU.

⁷⁷ Art. 416-ter Criminal Code.

⁷⁸ UNCAC II Review Cycle Country Report on Italy, p. 14.

been identified as the responsible entity for the supervision and regulation of public contracts. This competence is complemented by the collection of data on tenders and on companies operating in the public sector. For this purpose, ANAC manages the Observatory for public contracts. ANAC is also a recipient of whistleblowing reports from public administrations pursuant to Legislative Decree 90/2014.⁷⁹ Furthermore, ANAC is tasked with defining the Anti-corruption strategy and supervising the adoption of the three-year plans. The Anti-corruption strategy builds on a national Anti-corruption plan (PNA) and three-year anti-corruption plans and codes of conduct to be adopted by the public administration and state-controlled enterprises. Whilst ANAC can impose sanctions in case of failure to adopt the three-year plans and/or the codes of conduct, the authority has largely invested in fostering a preventive culture by providing advice and guidance to the public administration, as well as establishing guidelines and standards for codes of conduct in specific administrative areas. The autonomy and independence of ANAC is further guaranteed by its own financial resources system. Own resources account for approximately 87 % of the authority's budget.⁸⁰

Anti-corruption institutions cooperate to counter the infiltration of organised crime in public administration. The district anti-mafia directorate (DDA), the component of magistrates who make up the specialised 'district anti-mafia prosecutor', is responsible for mafia and other serious crimes. It is the only specialised prosecutorial office in Italian law. As far as criminal offenses against the public administration are concerned, including corruption, the national prosecutor's offices, especially those of medium and large size, rely on specialised working groups to investigate crimes against the public administration, including competence over economic crimes that can be linked to corruption. The use of investigative schemes and protocols deriving from the fight against organised crime are particularly important to counter corruption offences, notably the establishment of an inter-group of judicial police forces (State Police, *Carabinieri*, Financial Police and sections of General Prosecutor's Office), and the establishment of judicial police groups specifically dedicated to these crimes. In November 2017, the National Anti-Mafia and Counter-Terrorism Directorate (DNA) and the National Anti-Corruption Authority signed an agreement to allow DNA to access the information available from the Companies' Register and the National Public Contracts Database, managed by ANAC.

Criminal organisations are increasingly resorting to corruptive practices to achieve their goals. ANAC and the Prosecution service uncovered that mafia-type organised crime groups systematically use corruption and collusive methods towards the public administration, especially in the context of public procurement. As ANAC stressed in its 2020 annual report to the Parliament⁸¹, the trend is constantly increasing. In 2019, 633 anti-Mafia interdiction measures were taken, compared to 573 in 2018 (a 10% annual increase), and 2,600 since 2015 altogether.

The Specialised police, *Guardia di Finanza*, is specifically tasked to counter corruption. The *Guardia di Finanza* (GdF) is a military police body which provides support to the competent prosecutor's office and cooperates with the National Anti-Corruption Authority. The GdF is the competent authority for receiving reports of suspicious transactions and

⁷⁹ By adopting the law n. 179/2017, Italy has adopted provisions that strengthen the protection of whistleblowers and extend it to the private sector. For whistleblowers are now available three different reporting channels (RPCT, ANAC or Court of Auditors).

⁸⁰ The Authority operates through a mixed financing system, characterised by contributions from the entities operating in the sectors of competence, i.e. economic operators, contracting stations and SOAs (equal to 87.28% of revenue) and by a contribution from the state budget (equal to 6.35% of revenue).

⁸¹ Annual report on the activity carried out by the National Anti-Corruption Authority in 2019 (2020).

together with the anti-mafia Directorate, conducts the ensuing investigations, and can access banking information. According to the GdF, between August 2016 and August 2019, 339 legal actions concerning corruption were launched with 117 pre-trial detention orders for corruption issued by the judicial authorities and related only to the procurement sector. 74% of the events (113 cases) concerned the awarding of public contracts. Municipalities represent the entities most at risk of infiltration by organised crime and use of corrupt and collusive methods to direct public procurement. The GdF can support ANAC in the exercise of its competences both in the area of public contracts and in the broad sector of corruption prevention measures. The GdF also cooperates with the European Anti-Fraud Office (OLAF), with which it has recently launched a monitoring action to identify online sales of medical and health devices.

Whistleblowing legislation in the private sector is based on voluntary compliance programmes. Following the revision of the legal framework in 2017⁸² on whistleblowers, there has been a rise in reporting in the public sector. However, protection of whistle-blowers in the private sector remains less effective due to the voluntary nature of the compliance programme. According to the most recent ANAC annual report, the use of the whistleblowing instrument saw an exponential rise in recent years, increasing from 125 reports in 2015 to 873 in 2019, with a total of 2,330 reports in the period 2015-2019.⁸³

The conflict of interest regime is fragmented. Italy regulates conflicts of interest in the public administration and in the Government by establishing cases of ineligibility and incompatibility by law.⁸⁴ ANAC is tasked with interpreting the legal framework on “the ineligibility and incompatibility of positions in the public administration”, as well as supervising the correct enforcement of the legislation. A provision on conflict of interest is included in the central Code of conduct.⁸⁵ For some public officers, there are restrictions on activities or external assignments carried out after their public service has finished. The Authority for Competition and Market is responsible for checking incompatibilities following the appointment of a political position in the Government, as well as during and after the end of the mandate. Conflict of interest prevention rules are also included in the Presidential Decree 2013. In 2019, ANAC issued guidelines to regulate conflict of interest. However, a fragmented ineligibility and incompatibility regime applies to elected public officials, with no complete system of enforcement of the regime. As regards asset disclosure, Government members and senior civil servants are required by law to fill in forms indicating their sources of income, assets and external positions, along with a copy of the tax return. Members of the Chamber of Deputies and the Senate are required to submit a report relating to their properties, assets registered in public registers, social actions, shareholdings in companies and a copy of their most recent tax return. Some of this information is available on Parliament’s website and on the profile page of each Member. Magistrates are required to submit to the High Council for the Judiciary statements containing the same type of information as members of Parliament.

Lobbying and ‘revolving doors’ need attention. The Decision No. 208/2017 on Lobbying in the Chamber of Deputies establishes a mandatory public register of lobbyists for any individual or legal entity representing collective interests. That applies also to former members of Parliament or members of Government, who intend to carry out lobbying

⁸² Law n. 179/2017.

⁸³ ANAC Annual Report 2020.

⁸⁴ Legislative Decree 39/2013; Legislative Decree 235/2012.

⁸⁵ Presidential Decree no. 62/2013.

activities.⁸⁶ A similar obligation to report meetings with third parties does not apply to the members of Government. As regards ‘revolving doors’, specific provisions are in place. In October 2019, the National Council appointed the Italian Anticorruption Authority as both the supervisory and sanctioning authority on ‘revolving doors’.⁸⁷ The authority has been entrusted with the powers of assessing infringements, voiding contracts, and establishing sanctions.⁸⁸ The provisions on ‘revolving doors’ are currently provided only for public officials, and not to the holders of political offices. The Anti-corruption Authority has called for the Government to improve the legislation on ‘revolving doors’.⁸⁹

III. MEDIA PLURALISM

Freedom of expression and press freedom are enshrined in Article 21 of the Constitution.⁹⁰ Secondary legislation establishes a robust framework geared at ensuring media pluralism in the country. An independent regulator, the Authority for guaranteeing the Communications (AGCOM), is established by law⁹¹ and entrusted with regulatory, monitoring, enforcement and sanctioning powers in the media sector. The criminal penalty for defamation, which is of up to one year of imprisonment, is currently under review by the Constitutional Court.⁹² Journalists must be registered in the Order of Journalists⁹³, which provides for self-government by the profession. Furthermore, they are bound by ethical rules governing the sector, namely the consolidated text on journalist’s duties.⁹⁴ AGCOM plays a supervisory role in the media sector and conducts monitoring activity on the profession via its Observatory on Journalism, which dedicates a specific report to threats against journalists.

The regulator for audiovisual media services is independent. According to the law, AGCOM “*operates in full autonomy and is independent in its judgment and assessment*”.⁹⁵ Since the Italian Budget Law of 2006, AGCOM manages its budget autonomously and is entirely financed by firms operating in sectors under its remit, which contribute with a percentage of their annual revenues and based on strict accounting rules. The procedures for the nomination and appointment of AGCOM’s President and Board members are set by law and strict rules to prevent conflicts of interests are established.⁹⁶ Board members’ mandates are intentionally and expressly decoupled from electoral cycles, while the dismissal of AGCOM’s Chairman and Board members is not envisaged.⁹⁷ AGCOM applies strict rules in terms of human resources recruitment, while providing for a 2-year cooling-off period during

⁸⁶ EUPACK 2019: the implementation of the regulation appears to be not very effective, due to the fact that the information reported in the register remains rather vague and generic.

⁸⁷ National Council (2019), Verdict 7411, 29 October 2019.

⁸⁸ Italian Anti-Corruption Authority (2019), ‘National Council’s verdict concerning ANAC’s authority on the matter of revolving doors’.

⁸⁹ Italian Anti-Corruption Authority (2020), Reporting act No. 6, 27 May 2020 on revolving doors.

⁹⁰ Art. 21, para. 1, of the Constitution: “Anyone has the right to freely express their thoughts by means of words, writings and any other means of diffusion. The press cannot be subject to authorisation or censorship”.

⁹¹ Law 31 July 1997 n. 249.

⁹² Ordonnance n. 132/2020.

⁹³ [Order of Journalists](#).

⁹⁴ [Observatory on Journalism](#) which dedicates a specific report to threats against journalists.

⁹⁵ Art. 1 of the Law 249 of 31 July 1997.

⁹⁶ Law 249/1997 and Law 481/1995.

⁹⁷ Termination of their mandate is only possible if incompatibility as specifically listed in Law 481/1995 arises.

which former managers may not have any direct or indirect relationship with any undertaking operating in the regulated sectors. The independence of AGCOM is therefore guaranteed.⁹⁸

Italy's *Ordine dei giornalisti*⁹⁹ is a non-profit body of public law founded in 1963¹⁰⁰ and represents the journalistic profession. It manages the *Albo dei giornalisti* (Registry of journalists) – where registration is mandatory for exercise of the profession – and monitors and protects the work of its members. The *Ordine*'s National Council can issue warnings, censor, suspend and expel its members. The *Ordine* operates in line with the integrated “*Testo unico dei doveri del giornalista*” (Consolidated Code of Conduct) which was adopted in 2016. The Media Pluralism Monitor (MPM) 2020 refers to the fact that this system, particular to Italy, means that access to the profession is not totally open “even if this requirement is progressively less respected in practice”.¹⁰¹

The principle of transparency of media ownership is enshrined in the Constitution.¹⁰²

The following anti-concentration thresholds are set by law: the limited number of licences that a single content provider can possess, limits to the total revenues a single operator can make, scrutiny by AGCOM of any mergers and acquisitions in the sector, restrictions on cross-media ownership and prohibitions of dominant positions in any of the relevant markets. A Register of Communication Operators (ROC) was established¹⁰³ in 1997 and the operators in the Italian communications sector are obliged to register filling out a number of forms on their ownership structure and persons with editorial responsibility over the media outlet. The ROC can semi-automatically acquire the ownership chains of the subjects registered from the national Chamber of Commerce. The information on the ownership of the media companies registered in the ROC is accessible on the Chamber of Commerce website or by sending to AGCOM a motivated request to access that information. However, the MPM 2020 points to certain limitations in the effective application of the system and to the fact that not all of the afore-mentioned information is directly accessible to the public, in particular with regard to ultimate ownership. Consequently, the MPM assesses this indicator as demonstrating medium risk.¹⁰⁴

Robust rules on state advertising are in place. Public authorities that purchase advertising space in the mass media must inform AGCOM about the advertising expenditures of the previous financial year via an electronic tool adopted by AGCOM¹⁰⁵ and spending criteria are set¹⁰⁶, while hefty fines are provided for in case of breach. In addition, all relevant data relating to the expenses for institutional communication are published in the section of the Government's website dedicated to transparency. In this context, the MPM 2020 considers this area to be at low risk.

⁹⁸ The 2020 Media Pluralism Monitor (Report on Italy p. 12) considers risks associated with AGCOM's independence to be low. Information confirmed during the country visit.

⁹⁹ *Ordine dei giornalisti*. <https://www.odg.it/>.

¹⁰⁰ By means of Law 69/1963.

¹⁰¹ 2020 Media Pluralism Monitor, Report on Italy, p. 12.

¹⁰² Art. 21 para. 5 of the Constitution, which stipulates that: “The law can request the disclosure of the financial sources of newspapers and printed publications”.

¹⁰³ Art. 1 of Law 249 of 31 July 1997.

¹⁰⁴ 2020 Media Pluralism Monitor, Report on Italy, p. 13.

¹⁰⁵ Art. 41 of Legislative Decree 177 of July 31, 2005 (the “*Testo unico dei servizi di media audiovisivi e radiofonici*”).

¹⁰⁶ At least 50% of the advertising expenditures must be spent on advertisements published by newspapers and periodic press while at least 15% must be spent on advertisements broadcast by local radio and/or TV stations.

The political independence of the Italian media remains an issue. This remains the case 15 years after the regulatory framework was raised as an issue of concern by the Venice Commission¹⁰⁷ as regards political independence of the media, due to the lack of effective provisions on preventing conflicts of interest. The MPM 2020 rates Italy at medium risk in this regard and concludes that political influence continues to be felt significantly in the audiovisual sector.¹⁰⁸ To a lesser extent, this assessment also applies to the newspaper sector, due to the indirect relationships between publishers' interests and the Government, at national as well as at local level.

The laws on defamation are currently under scrutiny. Article 595 of the Criminal Code which punishes defamation with up to one year imprisonment was the subject of recent landmark rulings. In 2019, the Court of Cassation, quoting ECHR judgments against Italy, ruled that deprivation of liberty in the case of speech offences should only be contemplated in exceptional cases such as incitement to hatred and that, therefore, prison penalties for defamation runs counter to the right to freedom of expression.¹⁰⁹ In June 2020, the Constitutional Court ruled that it is for Parliament to decide on the precise balance to be struck between freedom of speech and the existing criminal law on defamation. It postponed the hearing to 21 June 2021 to allow Parliament to reflect on compliance with the constitutional principle as interpreted by the European Court of Human Rights (ECtHR).¹¹⁰

Rules on administrative transparency and access to public information are in force. The legal framework¹¹¹ ensures administrative transparency and access to public information, both on-demand and by way of obligations of publication concerning administrative activity. The Freedom of Information Act (FOIA)¹¹² recognises the freedom to access information held by the public administration as a fundamental right and establishes the principle that administrations must give precedence to the right of anyone to know and to access information owned by the public administration without having to prove any qualified interest in the matter. However, according to independent reports¹¹³, the public administration does not always fulfill its duty to reply to FOIA requests.

Physical attacks and death threats against journalists are an issue of concern. In 2019 and 2020, the Council of Europe's Platform to promote the protection of journalism and safety of journalists published 12 alerts¹¹⁴ from Italy (7 in 2019 and 5 in 2020), including several cases of physical attacks, death threats by mafia groups and verbal attacks originating from Government officials and members of staff.¹¹⁵ This leads MPM 2020 to score this

¹⁰⁷ Venice Commission opinion (CDL-AD(2005)017-e).

¹⁰⁸ 2020 Media Pluralism Monitor, Report on Italy, p. 16.

¹⁰⁹ Judgment 38721 of 19 September 2019.

¹¹⁰ Order 132/2020 of 26 June 2020. According to the ECtHR the use of prison sentences can only be justified in exceptional cases, when other fundamental rights are seriously offended, such as in the case of the spread of hate speech or instigation to violence.

¹¹¹ Legislative Decree 33/2013 (as amended by Legislative Decree 97/2016).

¹¹² Introduced by Legislative Decree 97/2016.

¹¹³ Openpolis 2019; FOIA, 2019.

¹¹⁴ Council of Europe, Platform to promote the protection of journalism and safety of journalists. The Italian state systematically replies to all alerts in a detailed manner.

¹¹⁵ Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. *Federazione nazionale stampa italiana, Ordine dei giornalisti, Sindacato europeo dei giornalisti, Ossigeno per l'informazione e Articolo21* that referred to high-profile cases of journalists who have received systematic threats and death threats for their work.

indicator on journalistic profession, standards and protection as medium risk. Stakeholders confirmed this phenomenon and reported additional cases of threats.¹¹⁶

A Coordination Centre dealing with acts against journalists has been set up.¹¹⁷ In 2017, the Ministry of the Interior established the Centre aiming at monitoring threats to reporters and developing the necessary protection measures. The Centre represents the first initiative to set up such a safety mechanism in Europe. An ad-hoc Parliamentary Committees dedicated to “Mafia, Journalists and Information” was entrusted with the task of understanding, monitoring and evaluating the relationship between the mafia and information. Stakeholders¹¹⁸ have praised the Centre while raising concerns that less serious threats are often not followed up.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Italy is a unitary parliamentary republic with an indirectly elected President.¹¹⁹ 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, National Council for Economics and Labour¹²⁰, and the Regional Council. The Constitutional Court carries out constitutional review of laws. Several regional ombudsmen are responsible for safeguarding the freedoms and rights of persons.¹²¹ The Inter-ministerial Committee for Human Rights (CIDU) interacts with civil society, academia and all relevant stakeholders to promote and protect human rights. The National Guarantor for the rights of persons detained is an independent body tasked to monitor the places for people deprived of personal liberty.

The Government declared the state of health emergency and made use of decree-laws to tackle the COVID-19 pandemic. Measures to tackle the COVID-19 pandemic were adopted under a state of health emergency which was declared by the Government on 31 January 2020. In this context, decree-laws were adopted, providing the basis for a number of administrative measures. Decree-laws are Government acts with the value of laws adopted in case of urgency, which need to be converted into law by Parliament within 60 days or otherwise lose effect.¹²² All decree-laws regarding the pandemic were converted into law and could be challenged before the Constitutional Court.¹²³ Since the beginning of the current legislative period in 2018, 121 laws were adopted and 45 decree-laws were approved by

¹¹⁶ Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. written contribution *Ossigeno per l'informazione*, Spampinato, 2020.

¹¹⁷ Coordination Centre for monitoring, analysis and permanent exchange of information on the phenomenon of intimidating acts against journalist.

¹¹⁸ Information received in the context of the country visit and of the consultation process for the preparation of the report, e.g. written contribution *Ossigeno per l'informazione*, Spampinato, 2020.

¹¹⁹ The President is elected by Parliament, meeting in joint session, together with 58 regional electors.

¹²⁰ The National Council for Economics and Labour is also vested with the right to propose legislation in the economic and social field.

¹²¹ For more information, see <http://www.difensorecivicotoscana.it>.

¹²² Art. 77 Constitution of the Italian Republic.

¹²³ A case, still pending, has been brought in front of the Constitutional Court regarding the obligation for civil judges to participate to virtual hearings from Tribunals.

Parliament and converted in law while eight lost effect.¹²⁴ On 29 July 2020, the Government extended the emergency situation until 15 October 2020.¹²⁵

Regulatory impact assessments and stakeholders' consultations have improved, but they need to be more systematic. In September 2017, the Italian Government introduced a new set of procedures for regulatory impact assessment (RIA)¹²⁶, ex-post evaluation, stakeholder engagement and regulatory planning. However, citizen and stakeholder participation is still not completely embedded in policy definition processes. The analysis of the impact of actual and alternative laws is increasing but is still infrequent and mostly focused on economic rather than social and environmental aspects.¹²⁷ Ex-post evaluations and consultations are still not used systematically and consistently across different ministries.¹²⁸

Establishment of an independent human rights institution is under consideration. Two draft laws proposing the creation of an Independent National Human Rights Authority (NHRI) were submitted to Parliament in 2018 and are currently being examined by the Chamber of Deputies.¹²⁹ Both draft laws foresee the autonomy of the NHRI. The swift establishment of a NHRI in line with the Paris Principles would respond to recommendations from the United Nations.¹³⁰ It was also recommended that the Authority for Children and Adolescents be fully independent and autonomous and that its resources be increased.¹³¹

The Constitutional Court has adopted internal rules to encourage an increased participation of civil society and the general public in its proceedings. The deliberation of January 2020¹³² introduced the institute of *amicus curiae*, the possibility to hear experts, and codified the case law on the intervention of third parties in proceedings. Measures were also adopted to ensure the continued functioning of the Court during the Covid-19 pandemic, while limiting physical presence. The appointment procedure of Constitutional Court members aims at ensuring a diverse composition, including members nominated by judges, Parliament, and the President of the Republic in equal proportions.

Italy has a vibrant and diverse civil society. However, concerns were raised as regards the complexity of the registration process for NGOs¹³³ and delays in the implementation of the law harmonising rules on the non-profit sector.¹³⁴ A negative narrative also affects the environment in which NGOs active in the migration and asylum field operate¹³⁵ and the civic space is considered as narrowed.¹³⁶ The Council of Europe¹³⁷ recommended repealing laws

¹²⁴ *Senato della Repubblica, Statistiche sull'attività legislativa, XVIII Legislatura; and Camera dei Deputati, Attività dell'Assemblea - Progetti di legge deliberati dall'Assemblea.*

¹²⁵ Decree law n. 83 of 30 July 2020 extended the emergency measures.

¹²⁶ Guidelines on public consultation – <http://open.gov.it/linee-guida-sulla-consultazione-pubblica/>.

¹²⁷ Public Administration Characteristics in Italy, 2019, p. 532

¹²⁸ OECD, Indicators of Regulatory policy and governance.

¹²⁹ Draft Proposal C. 855 of 3 July 2018 and Draft Proposal C. 1323 of 30 October 2018.

¹³⁰ United Nations Committee on the Rights of the Child Concluding observations on the combined fifth and sixth periodic reports of Italy (2019).

¹³¹ See previous note.

¹³² *Norme integrative per i giudizi davanti alla Corte costituzionale*, 8 January 2020.

¹³³ Conference of INGOs of the Council of Europe, Civil participation in the decision-making process, Fact Finding Mission to Italy, May 2019.

¹³⁴ See previous note.

¹³⁵ UN OHCHR, Mission report Italy 2019.

¹³⁶ See the rating given by CIVICUS. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹³⁷ Conference of INGOs of the Council of Europe, Civil participation in the decision-making process, Fact Finding Mission to Italy, May 2019.

and policies impeding NGOs from carrying out their legitimate work, while the UN recommended to guarantee the rights and freedom of action of civil society, and raised concerns on smear campaigns against NGOs active in the migration and asylum field.¹³⁸

¹³⁸ United Nations Committee on the Rights of the Child Concluding observations on the combined fifth and sixth periodic reports of Italy (2019).

Annex I: List of sources in alphabetical order*

* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

Anti-Corruption Authority (2019), ‘National Council’s verdict concerning ANAC’s authority on the matter of revolving doors’ (<<Sentenza del Consiglio di Stato sulle competenze dell’ANAC in materia di pantouflage>>). http://www.anticorruzione.it/portal/public/classic/Comunicazione/News/_news?id=1cf74b9f0a77804237e6dc1369ece3ce.

Anti-Corruption Authority (2020), Reporting act No. 6, 27 May 2020 on revolving doors (Atto di segnalazione n. 6 del 27 maggio 2020 concernente proposte di modifica alla disciplina del pantouflage di cui all’art. 53, comma 16-ter, del decreto legislativo 30 marzo 2001, n. 165. <https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/Atti/attiDiSegnalazione/2020/AttoSegnalazione.n.6.2020.del.448.2020.pdf>.

Centre for Media Pluralism and Media Freedom (2020), 2020 Media pluralism monitor. <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2020>.

Chamber of Deputies, Activities of the Assembly: Bills approved by the Assembly.

CIVICUS, Monitor tracking civic space: Italy. <https://monitor.civicus.org/country/italy/>.

Constitutional Court (2020), Supplementary rules for judgments before the Constitutional Court.

Constitutional Court, Ordonnance no.132/2020.

Council of Europe, Platform to promote the protection of journalism and safety of journalists: Italy. <https://www.coe.int/en/web/media-freedom/italy>.

Council of Europe: Committee of Ministers (2010), Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities.

Council of Europe: Committee of Ministers (2016), Resolution CM/ResDH(2016)358 of the Committee of Ministers on length of proceedings in administrative cases.

Council of Europe: Committee of Ministers (2018), Resolution CM/ResDH(2018)353 of the Committee of Ministers on length of proceedings in criminal cases.

Council of Europe: Conference of the INGOs of the Council of Europe (2019), Civil participation in the decision-making process: fact finding visit to Italy.

CEPEJ (2020), Study on the functioning of the judicial systems in the EU Member States: Italy.

Council of Europe: Venice Commission (2005), Opinion on the compatibility of the Laws “Gasparri” and “Frattini” of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media adopted by the Venice Commission at its 63rd Plenary Session.

Council of Europe: Venice Commission (2010), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service - Adopted by the Venice Commission - at its 85th plenary session.

Council of Europe: Venice Commission (2017), Opinion on the act on the public prosecutor’s office [of Poland] as amended, Adopted by the Venice Commission at its 113th Plenary Session.

Council of State and Bar Associations (2020), Memorandum of understanding on remote hearings. https://www.giustizia-amministrativa.it/documents/20142/1869446/PROTOCOLLO+INTESA+-+UDIENZA+DA+REMOTO+EX+ART.+4+D.L.+28_2020_signed.pdf/d9a07203-3281-3b24-49ed-54fecc6b64f7.

Council of the European Union (2013), Council Recommendation of 9 July 2013 on the National Reform Programme 2013 of Italy and delivering a Council opinion on the Stability Programme of Italy.

Council of the European Union (2014), Council Recommendation of 8 July 2014 on the National Reform Programme 2014 of Italy and delivering a Council opinion on the Stability Programme of Italy.

Council of the European Union (2015), Council Recommendation of 14 July 2015 on the 2015 National Reform Programme of Italy and delivering a Council opinion on the 2015 Stability Programme of Italy.

Council of the European Union (2016), Council Recommendation of 12 July 2016 on the 2016 National Reform Programme of Italy and delivering a Council opinion on the 2016 Stability Programme of Italy.

Council of the European Union (2017), Council Recommendation of 11 July 2017 on the 2017 National Reform Programme of Italy and delivering a Council opinion on the 2017 Stability Programme of Italy.

Council of the European Union (2018), Council Recommendation of 13 July 2018 on the 2018 National Reform Programme of Italy and delivering a Council opinion on the 2018 Stability Programme of Italy.

Council of the European Union (2019), Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Italy and delivering a Council opinion on the 2019 Stability Programme of Italy.

Court of Cassation (2019), Statistical yearbook of 2019.

Court of Cassation (2020), Statistical yearbook of 2020.

Court of Cassation, judgment of 19 September 2019, no. 38721.

Directorate-General for Communication (2019), Flash Eurobarometer 482: businesses' attitudes towards corruption in the EU.

Directorate-General for Communication (2020), Special Eurobarometer 502: corruption.

Directorate-General for Employment, Social Affairs and Inclusion (2019), Report on measuring the performance of public administrations (EUPACK).

European Commission (2020), The EU justice scoreboard.

European Court of Human Rights, judgment of 2 September 1997, *Abenavoli*, application no. 22461/93.

European Court of Human rights, judgment of 12 May 1999, *Ledonne*, application no. 35742/97.

European Court of Human Rights, judgment of 11 July 2002, application no. 28957/95.

European Network of Councils for the Judiciary (ENCJ) (2019): Independence and Accountability of the Judiciary – ENCJ Survey on the independence of judges, 2019. <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/Reports/Data%20ENCJ%202019%20Survey%20on%20the%20Independence%20of%20judges.pdf>.

First President of the Court of Cassation (2020), Report on the state of justice in the year of 2019.

Freedom of information Act (FOIA), 2019.

GRECO (2017), Fourth evaluation round – evaluation report on Italy on corruption prevention in respect of members of parliament, judges and prosecutors.

GRECO (2018), Fourth evaluation round – compliance report on Italy on corruption prevention in respect of members of parliament, judges and prosecutors.

High Council for the Judiciary (2017, 2018), Guidelines for drafting procedural acts.

High Council for the Judiciary (2019), Resolution on asset disclosure obligations for ordinary magistrates.

<https://www.csm.it/documents/21768/87331/circolare+anagrafe+patrimoniale+%28delibera+13+novembre+2019%29/546a7348-e1d2-3c87-c13e-4db105cae7a1>.

High Council for the Judiciary and National Forensic Council (2018), Memorandum of understanding regarding preliminary examination of appeals, organisation of works, clarity and conciseness of acts in appeal proceedings.

High Court of Cassation, General Prosecutor's Office, General's Office at the High Court of Cassation and National Bar Association (2020), Memorandum of understanding regarding digitalisation of procedural acts at the Court of Cassation.
http://www.cortedicassazione.it/cassazione-resources/resources/cms/documents/protocollo_Cassazione_CNF_Procura_Generale-con_firma_digitale.pdf.

Resolution of High Council for the Judiciary (2020) on ItalgireWeb Archive of Merit Decisions - Operational indications of 19 June, 2019.

National Anti-Corruption Authority (2020), Annual activity report 2019.
<http://www.anticorruzione.it/portal/public/classic/Attivitadocumentazione/Pubblicazioni/RelazioneParlamento/relazioni?id=ebd7f2f20a7780421a927869bf5987c8>.

National Council (2019), Verdict 7411, 29 October 2019. https://www.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza/?nodeRef=&schema=cds&nrg=201900038&nomeFile=201907411_11.html&subDir=Provvedimenti.

Observatory on Journalism.

OECD, Indicators of Regulatory policy and governance. <http://www.oecd.org/gov/regulatory-policy/indicators-of-regulatory-policy-and-governance-2019-italy.pdf>.

Open Government Forum (2017), Guidelines for public consultation in Italy. <http://open.gov.it/linee-guida-sulla-consultazione-pubblica/>.

Openpolis 2019.

Public Administration Characteristics in Italy, 2019, The Public Administration in the EU 27: An insight in the characteristics, capacity and performance of EU Public Administrations, 2019.

Regional Ombudsman for Tuscany, website of the Regional Ombudsman for Tuscany.
<http://www.difensorecivicotoscana.it/default?nome=chi-e&idc=67>.

Resolution of the High Council for the Judiciary on the organisation of the Prosecutor's Office of 16 November 2017, amended on 18 June 2018 and further clarified as to the organisational programmes with resolution 4 December 2019.

Resolution of the High Council for the Judiciary on the property register of the magistrates of 13 November 2019.

Resolution of the National Association of Magistrates of May 2018.

Guidelines of the High Council for the Judiciary of 13 May 2020 for local level judicial council, including regarding transparency, and powers of enquiry related to professional appraisals, well as for promotions.

Senate Act no. 1662. <http://www.senato.it/leg/18/BGT/Schede/Ddliter/52664.html>.

Senate of the Republic (2018), Statistics of legislative activity.

Spampinato (2020), Oxygen for information.

Transparency International, Country profile: Italy. <https://www.transparency.org/en/countries/italy>.

UN Committee on the Rights of the Child (2019), Concluding observations on the combined fifth and sixth periodic reports of Italy.

UN Convention Against Corruption II Review Cycle Country Report on Italy.
https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2019_11_22_Italy_FinalCountry_Report.pdf.

UN Convention Against Corruption 8th CoSP resolution n.10.
https://www.unodc.org/UNCAC/COSP/session8/Advance_unedited_resolutions.

UN Office on Drugs and Crime (2019), Country review report of Italy: Review by the United States of America and Sierra Leone of the implementation by Italy of Chapter II (articles 5-14) and Chapter V (articles 51-59) of the United Nations Convention against Corruption for the review cycle 2016-2021.

UN Office of the High Commissioner for Human Rights, Mission report Italy 2019.
<https://www.ohchr.org/Documents/Countries/IT/ItalyMissionReport.pdf>.

Virtual country visit to Italy in the context of the 2020 Rule of Law Report.

Annex II: Country visit to Italy

The Commission services held virtual meetings in June 2020 with:

- Anti-Corruption Unit of the Financial Police
- Association Article 21
- Association Oxygen for the information
- Association of European Journalist
- Communications Regulatory Authority
- Council of State
- High Council for the Judiciary
- High Court of Cassation
- Ministry of Justice
- National Anti-Corruption Authority
- National Antimafia and Counter-Terrorism Directorate
- National Association of journalists
- National Federation of the Italian press
- Office of the Prosecutor General at the High Court of Cassation

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

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU