

**Use of the rule of law legal instruments in the face of mounting dissensus at a national level**

**ITALY**

***RULE OF LAW INSTRUMENTS RESPONDING TO EMERGING DISSENSUS***

*Project N°101061621*

March 2023

|  |
| --- |
| This study/report has been prepared by Milieu SRL under Horizon RED SPINEL Project N°101061621. The main author of the study/report is Raffaella D’Antonio reviewed by Marta Ballesteros.The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission. **Milieu Consulting SRL**, Chaussee de Charleroi 112, B-1060 Brussels, tel.: +32 2 506 1000; e-mail: marta.ballesteros@milieu.be; web address: [www.milieu.be](http://www.milieu.be).  |

|  |
| --- |
| ***Use of the rule of law legal instruments in the face of mounting dissensus at a national level*** |

Table of contents

[Abbreviations used 4](#_Toc131597975)

[1. Introduction: Rule of Law threats conform dissensus actions 5](#_Toc131597976)

[2. The Instruments Provided by Italian law 7](#_Toc131597977)

[3. Judicial intervention 14](#_Toc131597978)

[4. Recent Trends on the implementation of the Rule of Law facing threats from dissension actions 15](#_Toc131597979)

[5. Conclusion and New Challenges 17](#_Toc131597980)

#

Abbreviations used

1. Introduction: Rule of Law threats conform dissensus actions

*This factsheet shall analyze the existence and the use of rule of law instruments to face dissensus threatening democratic principles at a national level. Hence, it examines how national legal norms and governance instruments might react to breaches of the rule of law.*

*For the purpose of this work, dissensus is to be understood as the expression of a social, political and legal clash/conflict, which manifests itself in different national and supranational institutional and non-institutional arenas (parliamentary arenas, constitutional arenas, public sphere, technocratic and expert arenas…) driven by political, social, legal actors, including state and non-state actors, seeking to maintain liberal democracy, to replace liberal democracy or to restructure liberal democracy.*

*Examples of dissenting action can be found in populist or nationalist movements seeking to subvert democratic principles, fundamental rights, and the rule of law. In parallel, there are specific measures or rules established in each country to protect the respect of democratic principles.*

*At EU level the rule of law tool kit is composed of:*

* *Article 7 TEU to protect institutional system, fundamental rights and democratic principles including control mechanisms of citizens’ right to voting, participation to decision making, legislative initiative, access to justice*
* *The Infringement Proceeding*
* *The Preliminary Reference Procedure*
* *The Charter of Fundamental Rights*

*Tools within EU Legislation*

* *The EU Justice Scoreboard*
* *The Cooperation and Verification Mechanism*
* *The Technical Support Instrument and its precedents*
* *The Protection of the EU Financial Interests*
* *Rule of Law Conditionality Regulation*

*At national level, the existence and the use of rule of law instruments to face dissensus threatening democratic principles might be established in national Constitutions or national toolkits. Please try to identify measures that either have a similar function to those at EU level or implement the EU legislative measures at national level.*

Italy is a not federal State, but it has a certain degree of decentralization. The Italian political and legal system is based on the separation of powers between the legislature, the executive, and the judiciary. The principle of the rule of law is enshrined in the Italian Constitution, regulating the relation between the state and its citizens, including the definition of the powers of the state and the fundamental rights and duties of those living under its jurisdiction.

When exercising their legislative and executive powers, public authorities must conform to the procedures and fundamental guarantees laid down by the Constitution. No legal norm or rule can be issued by ordinary or secondary law whose content is contrary to the general principles and norms set forth in the Constitution. Such limitations, to which the rule of law apply, reduce the possibility of arbitrary exercise of legislative power and guarantee that the latter will respect the fundamental rights of the citizens.

Under EU law, the European Union has two main options to tackle rule of law violations in the Member States. It may initiate infringement proceedings or trigger the mechanism of Article 7 of the Treaty on European Union, relying predominantly on decisions by political institutions.

At a national level, potential threats to the rule of law through dissenting actions might come from different types of actors including think tanks, civil society, regional states, political parties, political representatives in constitutional/legal debates or within national parliaments. It is to be said, however, that over the past decades the main threats to democracy, fundamental rights and the rule of law in Italy has come from populist political movements that have found their way into the Italian parliament through Parliamentary elections. The Italian political Party ‘Lega Nord’ (Northern League), for instance, has attempted to introduce laws restrictive of fundamental rights and asylum rights, while increasing popular dissensus against the European Union. Similar, the populist ‘Movement Cinque Stelle’ (Movement Five Star hereafter MVS) has attempted to increase dissensus against the representatives of the state.

Yet, in Italy, there is no established rule of law toolkit to address threats to the rule of law within the national system. The protection and respect of the rule of law and fundamental rights is embedded in the Italian Constitution. Threats to the rule of law are normally addressed within the power conferred to the Constitutional Court and the judiciary. Laws that violate the rights, rules and definition of powers set forth in the Constitution may indeed be declared invalid by the Italian Constitutional Court.

1. The Instruments Provided by Italian law

*The principle of the rule of law includes the principle of legality, which implies a transparent, accountable, democratic, and pluralistic process for enacting laws and respect of fundamental rights and equality before the law; legal certainty and prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review.[[1]](#footnote-1)*

*Please explain how these principles are protected in national law. Please focus on key examples of the use of constitutional/legislative/governance instruments in situations of mounting dissensus. In section 2.5, please focus on the role, if any, of national courts.*

Protection against threats to democratic principles

*This section should be devoted to any attempts to affect the institutional structure or balance of powers.*

Over the past two decades, Italy has experienced an increase in populist political movements of right or extreme right faction which have attempted, to different extent, to interfere with the institutional and democratic asset of the Italian system.

These are the coalition of Berlusconi-led Forza Italia ( hereafter FI), which governed in Italy together with Alleanza Nazionale ( hereafter AN) and Lega Nord (Northern League led by Matteo Salvini) between 2001–2006 and then in 2008–2011; the MVS and Lega Nord coalition in 2018–2019, and the current right-wing coalition of Fratelli D’Italia (Lead by the actual Italian Prime Minister Giorgia Meloni), Lega Nord and Forza Italia. These parties displayed radically different forms of populism, and changed their stance over time,[[2]](#footnote-2) however, they all displayed a certain degree of dissensus against limits to the executive power and the democratic structure of the Italian State.

The former deputy Prime Minister Matteo Salvini, for instance, marked a ‘period of democratic regression initiated by his demagoguery, which uses the federal government as a tool to incrementally manipulate the Italian democracy from within[[3]](#footnote-3). By way of example, in 2015 Salvini called its followers on twitter to murder a judge, and in 2018 he attempted to place Prof. Paolo Savona, a declared Eurosceptic, as Ministry of Finance which could have risked passing Ministerial Decrees infringing upon European budget rules. Salvini’s policy positions indeed align with that of most far-right and Eurosceptic populists within Europe and remains supportive of other leaders that actively undermine the rule of law as Viktor Orban.

Similarly, in March 2018, Giorgia Meloni, now Prime Minister of Italy and leader of Fratelli d’Italia ( whose deepest cultural roots lie in neo-fascism ) sought, through a proposed law on Constitutional revision, to enshrine in the Constitution the principle that Italian law always had precedence over European law and to amend the Italian Constitution by envisaging the direct election of the President of the Republic. The proposed law on Constitutional revision[[4]](#footnote-4) also sought to centralize in the President of the Republic both the control of the Government and of the Parliament, thereby threatening the checks and balances among the legislative and executive power. Specifically, the proposed law on Constitutional revision would have allowed the President of the Republic to chair the Council of Ministers; to appoint the Prime Minister; and be able to appoint and dismiss Ministers. According to constitutional scholars, the proposed law was susceptible to lead Italy into an authoritarian regime, where the President of the Republic loses his role as guarantor of the Constitution and the Parliament risk being subject to the will of the political party to which the President of the Republic is Member. While the proposed draft law on Constitutional revision did not pass into law (see explanation below), the new Prime Minister Meloni has very recently reopened debates concerning the direct election of the President of the Republic and Constitutional amendments similar to the law on constitutional revision proposed in 2018. While it is too early to assess the true impact of the recent election of Meloni as Prime Minister over the Constitutional asset of the Italian State, to date Italy has resisted democratic backsliding primarily thanks to the democratic guarantees foresaw in the Italian Constitution.

Specifically, Italy has a system of representative democracy, whereby the people exercise sovereign power through the election of the National Parliament (Article 1 Constitution). Yet, popular sovereignty is not exhausted in the national parliament, but is also expressed through the investiture of the representative bodies of territorial autonomies (regions, provinces/metropolitan cities, municipalities)[[5]](#footnote-5). The representative nature of the Italian system does not, however, exclude the presence of some direct democracy institutions, including the right of petition and, above all, the referendum.

Popular sovereignty, and the assemblies representing it, is generally formed within the Parliament according to the majority principle. To counterbalance risks to unlimited majority power and protect the democratic principle, the Italian Constitution foresees mechanisms aimed at guarantying the respect of Constitutional rules, minorities and fundamental rights. These include:

* the monitoring role of the President of the Republic over the respect of the Constitution by the Government and the Parliament;
* the enhanced procedure of constitutional revision;
* the review of constitutional legitimacy of laws and acts having force of law by the Constitutional Court (see section 2.5);
* the referendum, by which, under certain conditions and following certain procedures, citizens can decide on the repeal of a law or an act having the force of law (hereafter ‘repealing referendum’);
* the right to petition;
* the independence of the judiciary (see section 2.4).

In Italy, the **President of the Republic** perform the function of Constitutional guarantor of the acts having force of law of the Government. Furthermore, he elects and has veto power over the members of the Government (the Ministries) on the basis of lists presented by the elected Parliament. The veto power on the list of Ministers has rarely been used by the Presidents of the Republic. However, in 2018 President Mattarella vetoed the nomination of Prof. Paolo Savona on the basis that the Eurosceptic positions expressed by Prof. Savona were susceptible to undermine the Constitutional recognized primacy of EU law within the national system, thereby leading to Italy’s exit from the eurozone without explicit popular consent.

While Meloni’s proposal to amend the Constitution did not reach the majority necessary within the Parliament to become a draft law, in practice the Italian Constitution foresees an enhance procedure for the adoptions of laws modifying the rights and guarantees enshrined therein, thereby enhancing protection of democracy and the rule of law against possible democratic backsliding. Thus, any attempts to unilaterally modify the Constitution, would have been counter-balanced by the role of the President of the Republic and the enhanced procedure of constitutional revision.

The **enhanced procedure of constitutional revision** is a procedure established by Article 138 of the Italian Constitution which requires stricter majorities than the ordinary legislative procedure to prevent the Constitution from being amended. Laws revising the Constitution and other constitutional laws shall indeed be adopted by each House (the Senate and the Chamber of Deputies) in two successive deliberations at intervals of not less than three months and shall be passed by an absolute majority of the members of each House in the second vote. If a qualifying 2/3 majority is not reached, but an absolute majority is reached in both chambers, the law is published in the Official Gazette. Within 3 months from the publication in the Official gazette, a constitutional referendum can be requested, so that the text is submitted to popular approval. In this case, it will be up to the people to decide whether to approve or oppose the entry into force of the constitutional law amending the Constitution. Recently, the enhanced procedure of constitutional revision has resulted in the Constitutional Referendum no 261/2020 concerning a cut in the number of the elected MPs within the Parliament. Specifically, in 2020 a draft constitutional law provided for a drastic reduction in the number of MPs (from 630 to 400 for the member of the Chamber of Deputies and from 315 to 200 for Senators) by amending Articles 56 and 57 of the Constitution and thereby aligning the number of MPs with other Member States of the EU. The constitutional reform was proposed by the ‘yellow–green’ coalition supported by the MVS and Lega Nord and was highly contested within the members of the Parliament since it was meant to be the result of a populist anti-establishment campaign. Critics of the amendment argued that cutting the number of lawmakers would reduce representation thereby threatening democracy against only marginal savings for taxpayers. Hence, considering the highly sensitive and contested matter, the Constitutional Referendum, which resulted in favour of the adoption of the law, ensured citizens participation in the choice to unilaterally reform the democratic representativeness of the Parliament.

Aside from political attempts to threaten democratic principles, in Italy dissenting actions might also come from different types of actors including civil society which can follow the procedures recognised under the Italian legal system to ensure the respect of democratic principles and legality. Yet, while far right wind-populist movements have attempted to modify the Constitutional guarantees of the State, civil society actions have played a pivotal role in enhancing fundamental rights or environmental protection through exercising their **right to petition**. Article 50 of the Italian Constitution indeed allows citizens to participate in the political life by demanding legislative measures or setting forth general needs. In 2014, one of the most prominent Italian environmental NGO *Legambiente*  and Libera (the association that solicits and coordinates civil society against all mafias) have promoted an online petition asking the Senate to quickly approve a law on environmental crimes in the Italian Criminal Code in light of the proved relationship between organized crime and illicit trafficking of waste and the low penalties associated at the time to environmental crimes. The political pressure arising from environmental gross-roots movements and the petition demanding to strengthening the environmental rule of law in Italy resulted in the adoption of the law in 2015[[6]](#footnote-6).

Protection against threats to the principles of legality and abuse of power

In Italy, the success of populist parties can be traced back to a political dissatisfaction of the Italian administrative and political system and economic and social problems existing within the Country. [[7]](#footnote-7) The rise of the ‘yellow-green’ coalition lead by MFS and Lega North resulted in Salvini’s attempts to intensifying administrative control over politically sensitive matters such as immigration, or to escalating Euroscepticism within society.

Salvini’s political action has indeed been characterized by attempting to suspend administrative asylum procedures till the EU agreed on fair distribution of refugees and has blocked boats loaded with rescued migrants from docking in Italian ports. Specifically, on three occasions between 2018 and 2019, the ships Diciotti Gregoretti, and Open Arms were refused authorization to dock in Italian ports by Salvini (at the time Ministry of the Interior) notwithstanding the difficult physical and mental conditions of the migrants onboard. Salvini’s action created a fracture within the political discourse and among supporters of Italy’s sovereignty and control of national boarders, and those supporting rescuing migrants at sea for humanitarian reasons.

Yet, the pillar of the dissenting reactions arising from these events was whether Salvini had acted within the limits of the powers conferred to him by law.

In Italy, checks and balances between the legislative and executive power and the respect of the principle of legality is ensured through the protection granted by the Constitution. While the Italian Constitution does not contain an express formulation of this principle, the latter is indirectly referred to in various articles including:

* Article 24, 97, 113 Constitution concerning the legality principle and the power of the Public Administration (hereafter PA).
* Article 25 Constitution and Article 1 and 199 of the Criminal Code, concerning the legality principle within criminal law.

In administrative law**,** the principle of legality provides a guarantee against the unilateral activity of an executive power which must therefore necessarily be predetermined by the legislator. The scope of the public administration's discretion must in fact be well defined by the limits set by public law rules and by the Constitution, which the public power cannot derogate from, not even in the pursuit of a general interest (Article 97 Constitution).[[8]](#footnote-8) This principle founds further implementation through Article 1 of the law on administrative proceedings (Law 241/1990) providing that administrative activity shall pursue the ends determined by law and in Articles 24 and 113 of the Constitution.

Within the context of actions of Ministers, Article 9 of the Italian Constitution provides that Ministers and the president of the Council of Ministers, even if they have ceased to hold office, are subject, for crimes committed in the exercise of their functions, to the ordinary jurisdiction, subject to authorization by the Senate of the Republic or the Chamber of Deputies. The authorization by the Senate of the Republic or the Chamber of Deputies can be denied only if it is deemed that the Minister or the Prime Minister acted in the interest of the State or public interest.

The Tribunal of Ministers is a specialized section of the district court competent for crimes committed by the President of the Council of Ministers and by Ministers in the exercise of their functions (the so-called ministerial offences). Against Salvini’s actions to block the ships Diciotti Gregoretti, and Open Arms the Tribunal of Ministers has opened investigations for abuse of power and abduction of migrants at sea. While the case Diciotti and Gregoretti have been dismissed by the Chamber of Deputies[[9]](#footnote-9) and the public prosecutor[[10]](#footnote-10) respectively, Salvini is currently facing criminal charges and 15 years of detention for the case Open Arms.

To that extent, in Salvini’s attempts to interfere with the principle of legal certainty through arbitrary exercise of power found its counter-limits through the judicial review of ordinary courts and of the Constitutional Court (see section 2.4). Furthermore, in Italy the principle of legality and protection against the abuse of power of the public administration is ensured through the jurisdiction of Reginal Administrative Tribunals.

Protection against threats to Fundamental Rights

*This section should cover political, civil and social fundamental rights, including environmental rights*.

The Italian Constitution (Article 2) recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where the human personality is expressed, as enshrined in the EU Charter and in the European Convention on Human Rights.

Yet, in Italy the rise of the ‘yellow-green’ coalition has resulted in the introduction of restrictive laws on immigration and asylum rights, thereby undermining the fundamental human rights of those attempting to enter in the Italian costal boarders. The so called Decreto Sicurezza and Decreto Sicurezza bis (Security Decree and Security Decree bis)[[11]](#footnote-11) restricted access to the Italian borders for humanitarian reasons and increased the number of offences related to illegal immigration by sea.

Furthermore, according to the [Media Pluralism Monitor’s](https://cadmus.eui.eu/handle/1814/74694) (MPM) 2022 report, media pluralism and freedom from political interference in Italy has been threatened by the high concentration of media ownership in all sectors of media production and the online platforms market. In 2020, the President of the Italian Press Association has also reported an increase in the attacks and intimidation carried out against journalist; alleged wiretapping of at least 15 journalists working on migration issues as part of a public prosecutors’ investigation into relations between NGOs and traffickers and a general deterioration of the freedom of press and information. Lastly, the MPM report on Italy highlighted increased instances of SLAPPs (strategic lawsuits against public participation) with the perceived aim of silencing journalists who write on issues of public interest and a lack of legal safeguards against them.

While measures to address dissensus action against media pluralism susceptible to undermine the right to information and press freedom will be better examined in section 4, it is to be pointed out that in Italy protection against threats to fundamental rights and freedom from arbitrary exercise of power or any dissenting action attempting to restructure liberal democracy finds its counter-limit in the supervisory work of the Constitutional Court and the judiciary (see section 2.5 below). In Italy, indeed, no laws can be adopted in violations of the fundamental rights and freedoms embedded in the Constitutions and any interference to citizen’s rights must be provided by law and pursuit a legitimate objective (such as, for instance, the protection of public health).

Furthermore, in Italy anyone may bring cases before a civil, criminal, or administrative court of law in order to protect their rights. Defence is indeed an inviolable right at every stage and instance of legal proceedings (Article 24). Being a Party to the European Convention on Human Rights, citizens complaining about a violation of a fundamental human right may also bring a case to the European Court of Human Rights after having unsuccessfully exerted the internal (national) legal remedies.

Aside from the role of the judiciary in the protection of fundamental human rights, Italy has established human rights monitoring bodies. The Inter-ministerial Committee for Human Rights (CIDU)[[12]](#footnote-12) is the coordinating national institution interacting with civil society, academia, and all relevant stakeholders to ensure reporting and follow-up on human rights issues. Established with Ministerial Decree 15 February 1978 no 519, the CIDU aims to support the Italian Government in fulfilling Italy’s main obligations under the numerous agreements and conventions adopted at international level in the field of the protection and promotion of human rights. Furthermore, the CIDU performs acts as focal point for the monitoring bodies of the international organisations of the United Nations, the Council of Europe, and the European Union. Hence, the CIDU prepares the periodic reports that Italy must submit to the respective international monitoring bodies verifying the status of implementation of the recommendations that the aforementioned bodies formulate following particular examinations or visits to the country. The CIDU also reports on its work to Parliament, in an Annual Report and through regular hearings of its President.

The Italian legal system provides a legal framework for the balancing of rights and interests of the Italian society as a whole, with the popular legislative initiative, expression of the right to participate in the political life. The power granted to citizens to instigate the legislative process is embedded in Article 71 of the Italian Constitution and  it is not an institution of participatory democracy since the sole will of the electorate does not in itself produce legal effects. In practice, the Parliament is not obliged to rule on popular initiative proposals and there are not mechanisms that guarantee significant forms of procedural priority. Between 1979 and 2014, 260 proposals were presented to the Parliament and 1.15% become law. The supervision of the Parliament over the popular legislative action indeed allows to balance between citizens ‘right to participate (and to express their dissensus through legislative proposals) and the democratic principle to which the Parliament is the ultimate expression.

Protection of Judicial Independence

In Italy, the structure of the justice system is set out in the Constitution, which enshrines its independence and impartiality. As it will be explained below, the Italian judiciary appears sufficiently protected from direct political pressure. However, threats to the rule of law as it regards the division of powers among institutions of the State have recently come not from the executive of legislative power but from the judiciary itself. Observers have indeed warned about improper internal influences of the Superior Council of the Judiciary over matters related to promotion of judges and internal distribution of cases[[13]](#footnote-13).

Specifically, the principle of impartiality of judges is ensured in Italy by the provisions of the Constitution concerning the prohibition to institute ex officio proceedings (Article 24(1)); the establishment of judges by law (Article 25(1)); the prohibition to set up extraordinary (or special) courts (Article 102, Constitution). The independence of the judiciary is instead enshrined in Article 101 of the Italian Constitution. Accordingly, ‘judges are subject only to the law’.

In Italy, and thanks to its organizational structure of self-governance, the judiciary is institutionally free from outside interference. To protect judicial independence, Article 105 of the Italian Constitution indeed provides that all decisions concerning judges (e.g. promotions, transfers, discipline etc.) shall be taken within the exclusive competence of the Superior Council of the Judiciary (Consiglio Superiore della Magistratura; hereafter: CSM) predominantly composed of magistrates elected by judges (two third) and by the Parliament (one third). The President of the Republic, the First President of the Court of Cassation, and the Prosecutor General at the Court of Cassation are ex officio members of the CSM. Appeals against decisions of the CSM can be brought before the Supreme Court of Cassation (disciplinary decisions) or administrative courts (decisions on career, professional evaluation, or transfer).

Yet, the CSM has acquired considerable influence over the decisions of the executive and legislative powers concerning matters affecting judicial system. The expansion of the powers of the CSM has taken place through a liberal and expansive interpretation of the powers granted to the CSM to promoting, protecting and defending judicial independence[[14]](#footnote-14). Hence, the CSM has extended its power related to the organization and functioning of the courts; education and training; and opinion concerning legislative initiatives. Furthermore, in Italy judges organised themselves in political association normally reflecting the political movements existing within the State.

A major concern regarding the CSM elections is that judge-members are elected not on merits but based on affiliation to a particular association. In such context, in 2019 members of political associations within the CSM have faced challenges in relation to allegations of corruption concerning the appointment of high-level prosecutors and attempts to politically influence the outcome of politically sensitive criminal investigations[[15]](#footnote-15). The inherent autonomy of the judiciary from external interference has however resulted in the instigation of internal investigation which led to the resignation of five members of the CSM: to the expulsions and new elections of the CSM and to disciplinary proceedings. Furthermore, to fight corruption within the judiciary and upheld the rule of law on 7 August 2020 the Government proposed a draft law reforming the High Council (see in this respect, section 4.2).

The internal structure of the CSM and the self-organization powers to it mandated by law hence provide a strong counter-limit against any external influence attempting to restructure the independence and impartiality of the judiciary.

1. Judicial intervention

As explained above, in Italy the principle of the rule of law and the protection of fundamental human rights are enshrined in the Italian Constitution. When exercising their legislative and executive powers, public authorities must conform to the procedures and fundamental guarantees laid down by the Constitution. No legal norm or rule can be issued by ordinary or secondary law whose content is contrary to the general principles and norms set forth in the Constitution.

In Italy, there is no established rule of law toolkit to address threats to the rule of law within the national system. Yet, since the protection and respect of the rule of law and fundamental rights is embedded in the Italian Constitution, the Constitutional Court has the role to monitoring and set aside any normative or administrative acts of public authorities adopted in violations of the fundamental rights and principles of the State.

Recently, the Constitutional Court has been pivotal in setting aside ordinary laws passed by the Parliament in violation of protected fundamental rights. The rise of the ‘yellow-green’ coalition between the Northern League and the MVS, represented by the first Conte government (2018-2019), has led, as mentioned above, to the introduction of restrictive laws on immigration and asylum rights, invoked as political strategy to capitalise resentment of right-wing movements against immigration and the European Union.

As explained above, the so called Decreto Sicurezza and Decreto Sicurezza bis[[16]](#footnote-16) restricted access to the Italian borders for humanitarian reasons and increased the number of offences related to illegal immigration by sea. However, the Constitutional Court set aside several provisions for violation of Article 3 (equality before the law) of the Constitution. Specifically, the Constitutional Court found that the censured rules did not facilitate the pursuit of the territorial control declared by the Security Decree and made it unjustifiably more difficult for asylum seekers to access services that should be guaranteed to them.

The role of the judiciary in protecting the rule of law and monitoring that the checks and balances between power are respected is, however, not limited to the Constitutional Court. In Italy, Administrative Courts can hear cases related to abuse of administrative power, while civil and criminal courts can hear cases related to human rights abuses. By way of example, and as explained above, the former Minister of the Interior and Leader of Lega Nord, is currently under criminal investigation for unlawfully denying the NGO Open Arms, with 147 refugees rescued at sea, to land in Lampedusa and illegitimately depriving them of personal freedom. The judicial intervention followed the increased right-wing populist action and propaganda carried out in 2018 by Lega Nord against immigrants and asylum seeker.

1. Recent Trends on the implementation of the Rule of Law facing threats from dissension actions

*This section examines developments across the Member States, both positive and negative, in two key areas for the rule of law: the anti-corruption framework and media pluralism and whether inter-institutional cooperation and support mechanisms to strengthen the rule of law have been implemented. In your research, please focus on measures taken to address dissenting actions.*

*As a starting point, please read the 2022 Role of Law Report for your Member State.[[17]](#footnote-17)*

*Please note that the Italian Report briefly analyses, among other instruments, the Technical Support Instruments. While it might not be an expected point in the reports, it could bring interesting points for the analysis of the relationship between the rule of law instruments at EU and national level. Should you find TSIs relevant for this section, please only refer to projects related to the rule of law.*

Anti-Corruption

The 2021 Corruption Perceptions [Index](https://www.transparency.org/en/cpi/2021/index/ita) ranks Italy 17th in the European Union and 42nd globally. The 2022 [Eurobarometer on Corruption](https://europa.eu/eurobarometer/surveys/detail/2658) shows that 89% of respondents consider corruption widespread in their country and 32% of respondents feel personally affected by corruption in their daily lives[[18]](#footnote-18).

Corruption in Italy has been a strongly perceived problem, susceptible to undermine the stability of the State and the rule of law. Yet, over the past decades Italian legislation on corruption and bribery has notably developed and nowadays a legal and institutional anti-corruption framework is broadly in place. Today, the prevention and fight against corruption is shared between several authorities, including the National Anticorruption Authority (ANAC); the Anti-corruption Unit of the Financial police (Guardia di Finanza); specialised police and prosecution services and the Financial Intelligent Unit within the Bank of Italy.

Established in 2012, ANAC is the independent authority in charge with the prevention of corruption within the public administration in cooperation with the district anti-mafia directorate composed of prosecutors specialised in countering infiltration of organised crime within public administration. Over the past years, the powers and capacity of the National Anti-corruption Authority have been strengthened as regards its preventive role to fight corruption.[[19]](#footnote-19)

In 2019, Italian lawmakers implemented Law 3/2019 (known as *‘Legge Spazza Corrotti’* or ‘Sweep-the-Corrupt’ law), a law specifically designed to counter corruption through harsh penitentiary treatment.

As latest development to fight corruption within the judiciary, on 7 August 2020 the Government proposed a draft law reforming the CSM. The proposed draft law includes an increase in the number of the Council’s members and a new disciplinary panel. Moreover, it adopts new rules to increase transparency in the appointment of high-level judges and prosecutors and tightening the requirements for magistrates to engage in political activity. It is to be noted, however, that stakeholders have raised concerns that some provisions of the draft law on the reform of the CSM and the justice system could result in an undue influence on judges. To that extent, the in its latest Rule of Law Report on the situation in Italy, the Commission has recalled that the new draft should not compromise efficiency over judicial independence[[20]](#footnote-20).

Media Pluralism

In Italy, press freedom is enshrined in the Italian Constitution (Article 21). Law n. 47 of 8 February regulates the written press while the Italian Audio-visual Media Law regulates audio-visual communications. The Authority for Guaranteeing Communications (AGCOM) is the independent monitoring body of the Italian public service media while a specialised Coordination Centre monitors acts of intimidation against journalists.

To address some of the issues raised above (see section 2.3), Italy has recently adopted the Legislative Decree no 208/2021 (amending the Italian Press Law) transposing the AVMS Directive (EU) 2018/1808 and enhancing the independence of the audio-visual media service while strengthening the monitoring powers of AGCOM. Furthermore, Legislative Decree no 208/2021 redefined the precise services which public service media shall guarantee and the procedures through which the concession of public radio, television and multimedia service is granted.

Nevertheless, the 2022 Rule of Law Report on media pluralism highlighted a further increase of attacks against journalists particularly during COVID-19 while there have been no amendments to the existing Press Law to address the problem of SLAPs.

To that extent, while action have been taken to address dissenting action susceptible to undermine the freedom of press and the right to information, in Italy media pluralism still remain an issue.

Technical Support Instruments (TSI)

In order to help national authorities in improving their capacity to design, develop and implement reforms, including those covered by recovery and resilience plans, the European Parliament and the Council adopted on 10 February 2021 a regulation establishing a [Technical Support Instrument](https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/technical-support-instrument/technical-support-instrument-tsi_en). The Instrument may finance a broad range of technical assistance actions referring to policy areas related to cohesion, competitiveness and others, with specific emphasis on digital and just green transitions[[21]](#footnote-21).

Italy has so far benefited from 60 projects financed by the TSI, through which it addressed a broad range of policy areas, including fiscal reform, infrastructure planning, green transition, labour market reform, public administration reform and the national digital strategy.

In Italy, projects financed by the TSI had a particular focus on the public administration reform and anti-corruption measures. As it regards the public administration sector, Italy is collaborating with the European Commission to improving the exchange of information between different levels and departments of the public administration to enhance the administrative capacity to implement reforms necessary to strengthen the rule of law within the national system. Furthermore, with the second round of the TSI, the Commission will support Italy with 16 projects in the areas of, inter alia, digital public administration, health, gender mainstreaming and inequalities, migrant integration, and public finance.

1. Conclusion and New Challenges

Over the past two decades, Italy has experienced an increase in populist political movements of right or extreme right faction which have attempted, to different extent, to interfere with the rule of law asset of the Italian system. Lega Nord and Fratelli d’Italia, in particular, have attempted to increase Euroscepticism among the population, to pass laws infringing upon asylum rights and to increase control over public administration.

 While it early to assess the true impact of the recent election of Meloni as Prime Minister, to date Italy has rule of law backsliding primarily thanks to the work of the judiciary and the guarantees foresaw in the Italian Constitution.

Furthermore, Italy has recently passed legislation to strengthen the fight against corruption and increase the governance of public administration.

Nevertheless, recent trends show that freedom of press and media pluralism still remain a major issue in Italy.

1. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0158&from=EN> [↑](#footnote-ref-1)
2. [file:///C:/Users/salvatore/Downloads/resilience-without-resistance-public-administration-under-mutating-populisms-in-office-in-italy.pdf](file:///C%3A/Users/salvatore/Downloads/resilience-without-resistance-public-administration-under-mutating-populisms-in-office-in-italy.pdf) [↑](#footnote-ref-2)
3. See <https://www.democratic-erosion.com/2020/02/12/democratic-backsliding-in-italy-and-the-rise-of-matteo-salvini/> [↑](#footnote-ref-3)
4. <http://documenti.camera.it/leg18/pdl/pdf/leg.18.pdl.camera.716.18PDL0015210.pdf> [↑](#footnote-ref-4)
5. See Constitutional Court judgment no 106/2002 [↑](#footnote-ref-5)
6. Law n 68 of 22 May 2025 published in the Official Gazette no 122 28 May 2015. [↑](#footnote-ref-6)
7. G. Di Federico, ‘Judicial Independence in Italy’ (2012) in A. Seibert-Fohr (eds.), Judicial Independence in Transition: Strengthening the Rule of Law in OSCE Region available at [https://www.europarl.europa.eu/document/activities/cont/200804/20080403ATT25664/20080403ATT25664IT.pdf last accessed 02/03/2023](https://www.europarl.europa.eu/document/activities/cont/200804/20080403ATT25664/20080403ATT25664IT.pdf%20last%20accessed%2002/03/2023). [↑](#footnote-ref-7)
8. See also the Constitutional Court sentence no 115/2011 available at <https://www.forgionegianluca.it/PROCEDIMENTI_AMMINISTRATIVI/DOTTRINA/FONTI/2011_ccost_115_principio_legalita_sostanziale.php> [↑](#footnote-ref-8)
9. The Chamber of Deputies held that Salvini acted, on that occasion, in the interest of the State. [↑](#footnote-ref-9)
10. The public prosecutor decided not to prosecute due to lack of evidence. [↑](#footnote-ref-10)
11. decreto-legge 4 ottobre 2018, n. 113, coordinato con la legge di conversione 1º dicembre 2018, n. 132 Gazzetta Ufficiale 3 dicembre 2018, n. 281 [↑](#footnote-ref-11)
12. See <https://cidu.esteri.it/comitatodirittiumani/it/> [↑](#footnote-ref-12)
13. <https://democracy-reporting.org/en/office/EU/publications/italys-election-and-the-rule-of-law> [↑](#footnote-ref-13)
14. See G. Di Federico, ‘Judicial Independence in Italy’ (2012) in A. Seibert-Fohr (eds.), Judicial Independence in Transition: Strengthening the Rule of Law in OSCE Region available at <https://www.europarl.europa.eu/document/activities/cont/200804/20080403ATT25664/20080403ATT25664IT.pdf> last accessed 02/03/2023. [↑](#footnote-ref-14)
15. See in this respect COM Staff Working Document (SWD(2020) 311 final, 2020 Rule of Law Report

Country Chapter on the rule of law situation in Italy available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0311&from=EN> last accessed 28/02/2023. [↑](#footnote-ref-15)
16. decreto-legge 4 ottobre 2018, n. 113, coordinato con la legge di conversione 1º dicembre 2018, n. 132 Gazzetta Ufficiale 3 dicembre 2018, n. 281 [↑](#footnote-ref-16)
17. <https://commission.europa.eu/publications/2022-rule-law-report-communication-and-country-chapters_en> [↑](#footnote-ref-17)
18. See also https://democracy-reporting.org/en/office/EU/publications/the-eu-rule-of-law-report-2023-our-key-items-for-the-commission-to-watch-out-for [↑](#footnote-ref-18)
19. Report 2020 [↑](#footnote-ref-19)
20. <https://commission.europa.eu/publications/2022-rule-law-report-communication-and-country-chapters_en> [↑](#footnote-ref-20)
21. See <https://reform-support.ec.europa.eu/supporting-reforms-italy-tsi-2022_en> [↑](#footnote-ref-21)