

# **Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law**

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# 1 Civic space developments in 2021

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|---|---------------------|
| <b>1.1 Extraordinary Fund for the Support of the Third Sector due to COVID-19</b> |                     |
| Area  | Financial Framework |
| Topic   | Funding Landscape   |
| Impact  | Major               |

In November, the Italian Government adopted the Law Decree No. 149<sup>1</sup> introducing further emergency measures aimed at protecting healthcare and providing support to workers and companies and reduce the impact of the Covid-19 pandemic. This Law-Decree also introduced the Extraordinary Fund for the Support of the Third Sector with a financing amounting to EUR 70 million in 2021 to support civil-society organisations facing difficulties due to the ongoing epidemiological emergency and the resulting social and economic crisis. The Fund is managed by the Ministry of Labour and Social Policies. Beneficiaries of the Fund are civil-society organisations enrolled in the National Register of the Third Sector (*Registro Unico Nazionale del Terzo Settore*). The organisations willing to apply must have ceased or reduced, during 2020, the exercise of their statutory activities of general interest as a result of the measures for the containment and management of the Covid-19 epidemiological emergency.

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| <b>1.2 Social bonus for organisations providing funds to civil society</b> |                     |
| Area   | Financing framework |
| Topic  | Tax regime          |
| Impact   | Minor               |

In December 2021, the Ministry of Labour and Social Policies adopted the [Regulation on Social Bonus](#), a measure that was introduced with the Legislative Decree No. 117 of 3<sup>rd</sup> July 2017<sup>2</sup> reforming the entire Italian Third Sector. The social bonus is a refund for persons, entities and companies that provide funds to civil-society organisations and is given in the form of a tax credit with percentages

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<sup>1</sup> Decreto-legge 9 novembre 2020, n. 149, "[Ulteriori misure urgenti in materia di tutela della salute, sostegno ai lavoratori e alle imprese e giustizia, connesse all'emergenza epidemiologica da COVID-19](#)".

<sup>2</sup> Decreto Legislativo 3 luglio 2017, n. 117, "[Codice del Terzo settore, a norma dell'articolo 1, comma 2, lettera b\), della legge 6 giugno 2016, n. 106](#)".

from 50 to 65%. More specifically, the social bonus is a tax credit for payments to civil-society organisations to support the recovery of unused property and property confiscated from criminal organisations. The Government has established that the bonus can be disbursed at percentages ranging from 50 to 65% depending on the category of applicant to this measure. Namely, the social bonus is paid out as a tax credit and divided into three equal annual instalments. The credit is granted in different measures depending on the beneficiaries: Individuals: 65% tax credit for donations equal to or less than 15% of taxable income; Entities: 50% tax credit for donations equal to or less than 15% of taxable income; Companies: 50% tax credit for donations equal to or less than 5 per thousand of annual revenues. The Ministry of Labour and Social Policies will manage the social bonus in agreement with the Revenue Agency for compensation.

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| <b>1.3 Italian Courts decriminalise NGOs' rescue operations in the Mediterranean Sea</b> |  |
| Area   | Safe space and protection                            |
| Topic  | Criminalisation of humanitarian or human rights work |
| Impact   | Major  |

In 2021, some decisions of Italian Courts discharged NGOs that carried out Search and Rescue (SAR) operations in the Mediterranean Sea to rescue migrants in distress. These NGOs had been accused by Italian authorities of facilitating irregular migrations and irregular borders crossing.

The most relevant judicial decision in this field was adopted by the Judge of the Preliminary Investigation of Agrigento in December 2020, dismissing the criminal proceeding against the former captain of the Sea Watch 3 vessel, accused of aiding and abetting illegal immigration who – in 2019 – rescued 42 migrants in distress in the Mediterranean Sea and decided to disembark them in Lampedusa (Sicily) despite the Italian authorities' ban to enter the Italian territorial sea. The court acknowledged the propriety of the captain's conduct in locating the nearest place of safety and determines that Libya cannot be considered a safe place for the purpose of disembarkation<sup>3</sup>.

At the beginning of 2022, the same Court dismissed also similar charges against the vessel Mare Jonio pertaining to the NGO "Mediterranea Saving Humans"<sup>4</sup>. In May 2019, the vessel rescued 30 migrants in distress at sea and refused to deliver

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<sup>3</sup> The press release of the NGO "Sea Watch" is available [online](#). The Court's full decision has not been made public, yet.

<sup>4</sup> The press release of the NGO "Mediterranea Saving Humans" is available [online](#). The Court's full decision has not been made public, yet.

them to Libyan authorities, disembarking them instead in Lampedusa. According to the Court, the NGO acted in a state of necessity and in fulfilment of its duty to rescue, established under national and international law. The court also added that Libya cannot be considered a place of safety, a safe haven, given the conditions in which several thousand asylum seekers, migrants and refugees are being arbitrarily detained, subjected to torture and inhuman and degrading treatment, in violation of their human rights.

## 2 Examples of civil society contributions to the rule of law

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|---------------------------------------|----------------------|
| <b>2.1 Italian climate proceeding</b> |                      |
| Topic                                 | Strategic litigation |

In December 2021, the first judicial hearing was held before the Ordinary Court of Rome of a strategic litigation process on climate change<sup>5</sup>. The parties are the Italian State (represented by the Presidency of the Italian Government) vs 203 complainants (17 children represented by the holders of parental responsibility, 162 citizens and 24 civil-society organisations). The strategic litigation was initiated by the environmentalist NGO "A Sud". The general objective of the judicial initiative is to ask the Court to declare that the Italian State is responsible for failing to combat the climate emergency and that the efforts it has made are insufficient to meet the temperature reduction targets set by the Paris Agreement, which results in the violation of numerous fundamental rights.

Among the arguments of the lawsuit is the relationship between human rights and climate change and the need to recognise a human right to a stable and safe climate. The specific requests made by the applicants to the court are: - declare that the Italian State is responsible for failing to combat the climate emergency; - condemn the State to reduce greenhouse gas emissions by 92% by 2030 compared to 1990 levels, applying the principle of equity and the principle of common but differentiated responsibilities (Fair Share), i.e. taking into account Italy's historical responsibilities in greenhouse gas emissions and its current technological and financial capacities.

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| <b>2.2 NGOs' access to immigration detention centres</b> |  |
| Topic  | Feeding into and supporting the work of independent authorities and bodies |

In April 2021, with the decision No. 360/2021<sup>6</sup>, the Administrative Court of Piedmont annulled the decision of the Prefect of Turin which forbade the access of the Association for Legal Studies on Immigration (*Associazione per gli Studi Giuridici sull'Immigrazione* – ASGI) to the Detention and Return Centre (*Centri di Permanenza per il Rimpatrio* – CPR) of Turin. ASGI had requested the access to the facility as organisation representing the rights and interests of foreign citizens,

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<sup>5</sup> See the [website](#) of the campaign "Giudizio Universale" leading to the strategic litigation case.

<sup>6</sup> Tribunale Amministrativo Regionale per il Piemonte, [sentenza 360/2021](#), pubblicata il 6/4/2021.

for the purposes of guaranteeing and protecting the rights of foreign citizens, and of monitoring and research, in accordance with and implementing its own statutory purposes. The refusal of the Prefecture, on the basis of the opinion of the Ministry of the Interior, was based not only on general reasons of public order and safety, but also on the assumption that the association ASGI did not belong to the category of persons who would be allowed access to the CPR. This is an important ruling because the Court has addressed the issue of the existence of the legitimate interest of civil-society organisations to have access to the CPRs in order to exercise activities for the protection of fundamental rights of persons who are subject to severe limitations of their personal freedom. More generally, the Regional Administrative Court, with this judgment, implicitly excludes that CPRs, which are used for the administrative detention of certain categories of asylum seekers and of foreign citizens irregularly present in the territory and subject to expulsion orders, can be places covered by a grey area inaccessible to civil society.

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| <b>2.3 Access to documents</b> |   |
| Topic                          | Monitoring the legality and proportionality of laws, measures and practices |

For many years, the Association for Legal Studies on Immigration (*Associazione per gli Studi Giuridici sull'Immigrazione* – ASGI) – often in partnership with other civil-society organisations and/or legal practitioners – has filed formal requests of access to public documents (*accesso agli atti*) that had not been publicly released. In doing so, the Associations argued its specific interest in accessing the documents as organisation protecting the fundamental rights of foreign citizens. In 2018-2019, ASGI filed 37 requests concerning the bilateral agreements between Italy and third Countries<sup>7</sup>; the requests received by the rescue coordination centre in Rome by migrants' vessels in distress; the purpose of the Italian and EU funds destined to border enforcement; the use of Italian and EU funds destined to the management of detention centres in Libya. In 2019, the Association asked and obtained the access to the documents redacted by the Ministry of Foreign Affairs concerning the Country of Origin Information (COI) of the Countries listed by the Ministry as safe countries of origin for asylum seekers<sup>8</sup>. In 2021, ASGI also obtained from the Police Headquarters of Rome the number and nationalities of foreign citizens returned during the period September 2020-June 2021<sup>9</sup>.

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<sup>7</sup> ASGI (2019), [L'accesso civico alle attività delle ONG italiane in Libia, i rendiconti e gli accordi di subappalto](#), 2 July 2019.

<sup>8</sup> ASGI (2020), [Accesso civico ASGI: ecco le Schede dei Paesi di origine "sicuri"](#), 17 January 2020.

<sup>9</sup> The data provided by the Police Headquarters of Rome is available at ASGI's [website](#).

## 3 Other relevant developments

### 3.1 Permanent Board for the economic, social and territorial partnership for the National Recovery and Resilience Plan

The National Recovery and Resilience Plan (*Piano Nazionale di Ripresa e Resilienza*) was presented by the Italian Government on 30 April 2021 and approved by the EU on 13 July 2021<sup>10</sup>. The Plan also includes the establishment of a Permanent Board for the economic, social and territorial partnership (*Tavolo permanente per il partenariato economico, sociale e territoriale*). The Board was officially set up with Art. 3 of the Law-Decree No. 77 of 31 May 2021<sup>11</sup>. The list of members of the Board was approved with a Decree of President of the Italian Government of 14 October 2021<sup>12</sup>. The Board is made of 32 members including: Civil society organisation(s), such as the National Third Sector Forum (*Forum Nazionale del Terzo Settore*) which gathers most Italian civil-society organisations, including those representing people with disabilities; National authority/authorities: Government, Italian regions, Italian municipalities; Conference of Italian Universities Deans; Trade unions, associations representing employers. The Board is aimed at establishing an effective cooperation and partnership mechanisms involving public institutions at all levels of governance, civil-society organisations and other organisations representing workers and employers, as well as research and education institutions. The Board is an advisory body: during the period meetings of the Board, its members can provide the Control Board with opinions and information that are relevant for the effective implementation of the National Plan for Recovery and Resilience. The frequency of the meetings has not been established, yet. The Board's members were effectively appointed in October 2021.

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<sup>10</sup> [Piano Nazionale di Ripresa e Resilienza](#), 30 aprile 2021.

<sup>11</sup> Decreto-legge 31 maggio 2021, n. 77, "[Governance del Piano nazionale di ripresa e resilienza e prime misure di rafforzamento delle strutture amministrative e di accelerazione e snellimento delle procedure](#)".

<sup>12</sup> Decreto del Presidente del Consiglio dei Ministri 14 ottobre 2021, "[Istituzione del Tavolo permanente per il partenariato economico, sociale e territoriale](#)".