

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

**Italy**

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# **1 Five most significant civic space developments in 2020**

## **1.1 Access to information / Civil dialogue / Consultations / Participation in decision-making. The Italian Constitutional Court opens to consultation with civil-society organisations and experts**

On 8 January 2020, the Italian Constitutional Court<sup>1</sup> adopted a resolution allowing experts, NGOs and civil society organisations to submit opinions and information collection to the Court to provide additional evidence and elements that can be useful to judicial authorities to adopt their decisions on relevant issues that belong to the field of competence of the proponents. This additional information must be delivered to the Court through short written opinions.

## **1.2 Access to information / Civil dialogue / Consultations / Participation in decision-making. LGBT organisations achieve the establishment of a Permanent Consulting Board to foster rights and inclusion**

On 13 May 2020, the Ministry of Equal Opportunities and Family signed a Decree<sup>2</sup> establishing a Permanent Consulting Board for the Promotion of the Rights and the Protection of LGBT people (*Tavolo di consultazione permanente per la promozione dei diritti e la tutela delle persone LGBT*). The Board is chaired by the Ministry of Equal Opportunities and Family, and the participants include the Anti-discrimination office of the Italian Government (*Ufficio Nazionale Anti-discriminazioni razziali a difesa delle differenze* – UNAR) and the representatives of 66 LGBT associations and civil society organisations. The aim of the Board is to ensure the cooperation and dialogue between public institutions and LGBT organisations, fostering the exchange of information, knowledge, best practices and promoting the adoption of actions and measures that contribute to an inclusive social environment.

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<sup>1</sup> The Court's press release is available at:

[www.cortecostituzionale.it/documenti/comunicatistampa/CC\\_CS\\_20200111093807.pdf](http://www.cortecostituzionale.it/documenti/comunicatistampa/CC_CS_20200111093807.pdf).

<sup>2</sup> The Decree is available at: [www.unar.it/wp-content/uploads/2020/05/Decreto-Tavolo-LGBT.pdf](http://www.unar.it/wp-content/uploads/2020/05/Decreto-Tavolo-LGBT.pdf). It was further integrated with a Decree of 20 May 2020, available at: [www.unar.it/wp-content/uploads/2020/05/Decreto-integrativo-Tavolo-LGBT.pdf](http://www.unar.it/wp-content/uploads/2020/05/Decreto-integrativo-Tavolo-LGBT.pdf).

### **1.3 Financing of civil society work / Taxation / Charitable or public benefit status / Foreign funding. Italian Government considers the necessities of civil-society organisations coping with the impact of the Covid-19 emergency.**

Several measures were adopted to support civil society organisations during the Covid-19 emergency<sup>3</sup>. The Law-Decree No. 18 of 17 March 2020<sup>4</sup>, introduced some emergency measures to support civil-society organisations in coping with the negative backlash of the pandemic. These included the possibility for the employees to benefit from the redundancy fund and the temporary suspension of tax payments. The Law-Decree No. 34 of 19 May 2020<sup>5</sup> enhanced the role and the resources available to civil society organisations, aimed at coping with the social and assistance emergencies caused by Covid-19. More specifically, the Law-Decree fostered the cooperation between civil society organisations and public administrations: for instance, an agreement was established by the State-regions conference, promoting a pilot experiment for 2020-2021 for the support of social and health services at local level. This experiment must involve not only local healthcare departments, but also civil-society organisations and volunteers active at local level and is aimed at promoting health and social inclusion of social marginalized groups. Moreover, additional EUR 100 million were earmarked for 2020 to be destined to the Fund for the projects and activities of the third sector (*Fondo per il finanziamento di progetti e di attività di interesse generale nel Terzo settore*). Art. 246 of the Law-Decree introduced specific support measures for civil society organisations operating in Southern Italy. More specifically, EUR 120 million was destined for the period 2020-2021 to civil society. More organisations whose activities support the weakest social groups particularly affected by the consequences of the Covid-19 emergency. This contribution was later extended to organisations operating in Lombardy and Veneto, the two regions most affected by the epidemic.

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<sup>3</sup> All these measures are described in detail in a document issued by the Chamber of Deputies on 22 October 2020, available at: [www.camera.it/temiap/documentazione/temi/pdf/1105128.pdf](http://www.camera.it/temiap/documentazione/temi/pdf/1105128.pdf).

<sup>4</sup> Decreto-legge 17 marzo 2020, n. 18, "Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19", available at: [www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg](http://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg).

<sup>5</sup> Decreto-legge 19 maggio 2020, n. 34, "Misure urgenti in materia di salute, sostegno al lavoro e all'economia, nonché di politiche sociali connesse all'emergenza epidemiologica da COVID-19", available at: [www.gazzettaufficiale.it/eli/id/2020/05/19/20G00052/sg](http://www.gazzettaufficiale.it/eli/id/2020/05/19/20G00052/sg).

#### **1.4 Criminalisation of humanitarian or human rights work / Administrative harassment / Strategic Lawsuits Against Public Participation (SLAPP). Legislative reform introduced governing the activities of NGOs' vessels carrying out SAR operations in the Mediterranean Sea.**

In Italy, the Law-Decree No. 130 of 21 October 2020<sup>6</sup>, introducing – among other measures – legislative dispositions reforming the asylum and immigration discipline, was approved, and converted with amendments into Law No. 173 of 18 December 2020. Among other issues, the Law-Decree reformed the legislative discipline governing the activities of NGOs' vessels carrying out SAR operations in the Mediterranean Sea. Previous in-force legislation attempted to drastically reduce the role of NGOs in this field, imposing severe financial and criminal sanctions of the captain and on the crew, including the confiscation of the vessels. With this Law-Decree, NGOs' vessels can be forbidden the possibility to disembark in Italian ports only if solid reasons of public safety exist or in case of violation of anti-trafficking legislation. This prohibition of disembarking does not apply to SAR operations if they are promptly communicated to the Coordination Centre and to the flag State of the vessel, and if the authorities' instructions are respected. The violation of the prohibition to disembark is punished with a financial sanction of EUR 10,000-50,000 and with up to two years of detention. All administrative sanctions were abolished. Moreover, the possibility of confiscating the vessel was abolished as well.

#### **1.5 Other: Participation in judicial proceedings/Representation of crimes victims. The CJEU confirmed that civil-society organisations can represent the victims in judicial proceedings and request a financial compensation for the damage**

In a judgement delivered on 23 April<sup>7</sup>, the European Court of Justice (CJEU) held that statements made by a lawyer during a radio program, saying he would never recruit a “homosexual” or wish to use the services of such persons, fall within the material scope of EU Directive 2000/78 (‘the anti-discrimination directive’). The case was brought before national Courts by *Rete Lenford Avvocatura Per I Diritti LGBT* (Lawyers For LGBT Rights), an association of about 150 lawyers founded in 2007 to take representative action on the behalf of LGBT people before national and international jurisdictions, and to ensure enforcement of LGBT rights in Italy. The Italian Court of Cassation had suspended the proceeding and decided to refer it to the CJEU on two grounds: i. Whether a civil-society organization is entitled to promote a judicial action, requesting a financial compensation on behalf of the victim(s) of discrimination episodes; ii. Whether the lawyer's statements are to be considered free expression of thought or a discrimination at the workplace. For the purposes of this

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<sup>6</sup> Decreto-legge 21 ottobre 2020, n. 130, “Disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonché misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della libertà personale”, convertito con modificazioni dalla L. 18 dicembre 2020, n. 173, available at:

[www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2020-10-21&atto.codiceRedazionale=20G00154&elenco30giorni=false](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2020-10-21&atto.codiceRedazionale=20G00154&elenco30giorni=false).

<sup>7</sup> JUDGMENT OF THE COURT (Grand Chamber), 23 April 2020, Case C-507/18, available at::

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=225526&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=11187460>.

report, it is worth reporting that the CJEU decided that “the answer to the first question is that Directive 2000/78 must be interpreted as not precluding national legislation under which an association of lawyers whose objective, according to its statutes, is the judicial protection of persons having in particular a certain sexual orientation and the promotion of the culture and respect for the rights of that category of persons, automatically, on account of that objective and irrespective of whether it is a for-profit association, has standing to bring legal proceedings for the enforcement of obligations under that directive and, where appropriate, to obtain damages, in circumstances that are capable of constituting discrimination, within the meaning of that directive, against that category of persons and it is not possible to identify an injured party”.

## 2 Example(s) of promising practice

In Italy, on 17 April a public appeal was launched by religious and non-religious civil society organisations, stressing the importance of adopting economic measures in response to the Covid-19 emergency that take into account social inequalities. The petitioners asked the Government to actively involve civil society organisations in the decision-making process aimed at designing the recovery measures. Moreover, the organisations asked the Government to recognise the crucial role played by civil society organisations at local level, creating in every municipality local networks involving the organisations and municipal authorities, aimed at developing measures and actions to promote welfare and assistance<sup>8</sup>.

In Italy, the Ministry of University and Research launched a public consultation for the definition of the National Research Programme 2021-2027 (*Programma Nazionale per la Ricerca 2021-2027* - PNR). This initiative is aimed at involving for the first time the stakeholders – academia, public and private research organisations, national authorities, local and regional authorities, business companies, associations, trade unions, research foundations, civil society organisations – and invite them to submit observations and proposals. The public consultation was carried out through an online questionnaire accessible from 11 August until 11 September 2020. The information emerging from the questionnaire will be used by Ministerial authorities to develop the PNR 2021-2027<sup>9</sup>.

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<sup>8</sup> Appello della società civile per la ricostruzione di un welfare a misura di tutte le persone e dei territori, 17 April 2020, available at: [https://static.acli.it/wp-content/uploads/PDF/Appello%20della%20Societ%C3%A0%20Civile\\_18aprile2020%20%282%29.pdf](https://static.acli.it/wp-content/uploads/PDF/Appello%20della%20Societ%C3%A0%20Civile_18aprile2020%20%282%29.pdf).

<sup>9</sup> MIUR (2020), Programma Nazionale per la Ricerca 2021-2027: aperta la consultazione pubblica, 11 August 2020, available at: [www.miur.gov.it/web/guest/-/programma-nazionale-per-la-ricerca-2021-2027-aperta-la-consultazione-pubblica](http://www.miur.gov.it/web/guest/-/programma-nazionale-per-la-ricerca-2021-2027-aperta-la-consultazione-pubblica).