



# **Civil participation in the decision-making process**

## **Fact finding visit to Italy**

28-29 May 2019

## **Report**

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## Introduction

The Conference of INGOs of the Council of Europe visits Member States to get a better understanding on how cooperation between NGOs (foundations and associations) and decision makers takes place. The exchanges during of these visits are part of a wider Council analysis of the effectiveness of various forms of civil society participation in the decision-making and the enabling environment for NGOs in the different Council of Europe member States.

The definition of NGOs that applies to the activities of the Conference of INGOs is the one used in Recommendation 2007(14) of the Committee of Ministers of the Council of Europe. According to this text, “the NGOs are voluntary self-governing bodies or organizations established to pursue the essentially non-profit-making objectives of their founders or members. They do not include political parties” (Art I.1).

In this context, the right to participation in public affairs is inherent to the ECHR system, directly associated with the right to freedom of association (art 11 of ECHR). The references regarding international standards and best practices mobilized during each fact-finding visit are as follows:

- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Recommendation CM/Rec (2007)14 of the Committee of Ministers to Member States on the legal status of non-governmental organizations in Europe;
- OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association;
- Recommendation Rec (2001)19 of the Committee of Ministers to Member States on the participation of citizens in local public life;
- Report on funding of associations, adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019);
- Guidelines for civil participation in political decision-making, adopted by the Committee of Ministers of the Council of Europe on 27 September 2017;
- Recommendation Rec (2018) 11 **of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe**
- Code of Good Practice for Civil Participation in the Decision-Making Process (2009);
- UN International Covenant on Civil and Political Rights, adopted on 16 December 1966, entry into force 23 March 1976.

The visit of the Conference of INGOs delegation in Rome took place from 25 to 26 May 2019. The delegation was composed of Anna Rurka (President of the Conference of INGOs), Anne Kraus (Vice-President of the Conference), Carla Ferstman (Member of the Expert Council on NGO Law of the Conference of INGO) and Mary-Ann Hennessey (Head of the Council of Europe Civil Society Division).

During the visit special attention was paid to the evolution of the legal environment in which the Italian NGOs operate as well as to the interactions between NGOs and public authorities.

The hosting organization, Italian Coalition for Civil Liberties and Rights (CILD), is a “network of civil society organizations that protect and expand the rights and liberties of all, through a combination of advocacy, public education and legal action”<sup>1</sup>. CILD organized two meetings with more than 20 NGOs: human rights advocacy oriented organizations, umbrella organizations representing social workers and refugees, NGOs representing the Roma population and religious minorities, NGOs advocating for women's rights and gender equality and NGOs fighting against organized crime, torture and mistreatment in prisons.

The Permanent Representation of Italy to the Council of Europe organized the agenda with public authorities. The Conference of INGOs delegation was able to exchange views with the Chamber of Deputies, hosted by the Italian PACE Delegation, with the representatives of the Department of Equal Opportunities and the National Office against Racial Discrimination (UNAR), both institutions operating under the Presidency of the Council of Ministers, with the Department of Public Administration, the National Authority for Persons deprived of Liberty, the President of the Human Rights Commission of the Senate, and with the representatives of the Ministries of Justice and of Labour and Social Policies. The visit was concluded by a meeting with the President of the Inter-Ministerial Committee for Human Rights under the Ministry of Foreign Affairs and International Cooperation.

This report will present the main findings of the delegation regarding the legal and institutional framework related to freedom of association and to the participation of Italian NGOs in the decision-making, in different areas of public policies.

## **Legal Framework for NGOs**

According to ISTAT (Italian Office of Statistics)<sup>2</sup>, in 2011, there were 301,191 active non-profit organizations in Italy. Among them, 11,264 were social cooperatives, 68,349 recognized associations, 201,004 non-recognized associations, 6,583 ecclesiastical bodies, 6,220 foundations and 14,354 other non-profit organizations. The overall number of non-profit organizations increased in 2015 to 336,275.

Italian law gives anyone the opportunity to form an association or a foundation. Article 18 of the Constitution protects this right. Associations and foundations are the most common legal form of NGOs and are regulated by the Civil Code (Part I "Of people and the family", Title II "Of legal persons", in articles 14 – 42). In addition to the classical forms of non-profit organizations, Italian law distinguishes between recognized and unrecognized associations or committees. Associations recognized as legal persons are those to which the competent authority (prefecture of the province where the entity is headquartered) has granted recognition, which is obtained by registration in the register of legal persons. Articles 14 - 35 of the Civil Code define associations and foundations: associations when the personal aspect prevails (the associates) or foundations when the patrimonial aspect prevails.

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<sup>1</sup> For more information: <https://cild.eu/en/about-us/>

<sup>2</sup> <https://www.istat.it/it/archivio/229719>

Articles 36 – 42 of the Civil Code defines unrecognized associations (without legal status) and committees (citizens' organizations that pursue a single purpose for a limited duration). In an unrecognized association, the administrators have a personal responsibility to keep the funds and must reimburse the debts of the association. “Nevertheless, even in unrecognized associations there is a measure of separation of the assets of the institution from those of its associates - so-called “imperfect” economic independence – in those debts are paid first from the common fund of the association and then by those who arranged and carried out the operation in the name and on behalf of the institution”<sup>3</sup>. It finances itself with membership fees, contributions and reimbursements of the associates (and with the commercial activity if carried out).

In the case of a recognized association, the public deed, thanks to the prior control on legality made by a notary, allows the entity to acquire legal personality by registration in the register of legal persons: this results in a complete separation of the assets of the association from those of the individual members, as well as of other persons.

The committee is an organization based on an associative relation, with a closed structure, restricted to "promoters" only. All members are personally and jointly responsible for safe keeping the funds of the committee and their use (in absence of recognition), regardless of the type of activities carried out individually. A committee finances its activities through the creation of a patrimony that does not derive from the contributions of its members, but from contributions from external subscribers to whom it is addressed with a specific program presented publicly. The purpose of the committee consists of the promotion or implementation of a single initiative or specific event (also periodically repeated over time).

In 1997, the recognition of the status of public utility for the not-for-profit organizations (ONLUS - *Organizzazione non lucrativa di utilità sociale*) was established, allowing them to benefit from a variety of tax exemptions. “An entity wanting to use the acronym “Onlus” after its name must be governed by a memorandum or statute drawn up by the public deed or by a notarized or registered private deed. In addition, that deed must of necessity contain the terms provided by the law, such as the stipulation that there must be a democratic structure, a ban on distribution of profits and the obligation to use them for the purposes of social utility cover by the law: social work, social care and health, charity, education, training, amateur sport, protection of the weak, promotion and appreciation of artistic works, nature and the environment; promotion of culture and art; protection of civil rights; scientific research of particular social interest”<sup>4</sup>.

### ***Reform of the Third Sector***

The legal framework for NGOs, associations, foundations, volunteering not-for-profit organizations, giving a social assistance or with charitable purposes in Italy, is to a great extent defined by regulations related to the “third sector”. Registration of NGOs is very complex in Italy, as it is the competence of diverse bodies. In general, three ministries are concerned by

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<sup>3</sup> <https://www.notariato.it/en/associations>

<sup>4</sup> Ibid.

Third Sector operations: for the major part for the Ministry of Labour, then the Ministry of Finance (for the tax regulations) and the Ministry of Justice (reporting and transparency).

A reform aiming to provide general principles for a harmonization of the third sector started in 2016. Law No. 106 of 6 June 2016 gave “Mandate to the Italian Government for the reform of the Third Sector, of Social enterprises and of the universal civil service” (*Legge 6 giugno 2016, n. 106 “Delega al Governo per la riforma del Terzo settore, dell’impresa sociale e per la disciplina del servizio civile universale”*)<sup>5</sup>. According to this Law, the “third sector” includes all private subjects and bodies engaged in the promotion of solidarity and socially useful activities through voluntary actions and the exchange of goods and services. Trade unions, political parties, professional associations and banking foundations are consequently excluded from this definition.

The reform includes:

- A review of the Civil Code regarding associations and foundations.
- The reorganization and harmonization of tax reliefs and regulations applicable to the third sector entities. For example, - the review of the definition of a non-commercial entity for tax purposes, - rationalizing tax benefits - new measures for raising venture capital, and, - more generally, the funding of the third sector.

According to Randazzo and Giovine,

“At the beginning of August 2017, the implementing decree introduces the “Code of the Third Sector” was published in the Italian Official Journal. Throughout its 104 articles, the decree tries to reduce the normative fragmentation of the legal regulations of the sector, by gathering most of them below the common status of “Entities of the Third Sector”. According to the exchange of views with the representatives of the Ministry of Labour and Social Policy, the Code of 3rd sector differentiates between the obligations of small and those of large NGOs. The Code of the Third Sector includes the definition of the activities of common interest, which they should exclusively or primarily perform, in order to be admitted to a single national register. This register combines diverse types of existing regional registers of the Third Sector is imposed by the decree”<sup>6</sup>.

The register will be public.

The Ministry of Labour and Social Policies has the ultimate power and responsibility to monitor, oversee, and control third sector entities. In addition, two other types of government oversight agencies are created: the National Control Organization and the territorial control bodies.

The decree obliges the organizations to change their statutes according to the law, and to register in the new register within 2 years (from the entry into force in 2017). Even if the criteria of registration were known, at the time of the visit of the delegation, the register had not yet been

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<sup>5</sup> The Law is available at: [www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2016-0606;106](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2016-0606;106).

<sup>6</sup> Roberto Randazzo and Emiliano Giovine of R&P Legal comment on the recent approval of the decree reforming the Italian Third Sector <https://esela.eu/news/landmark-reform-third-sector-italy>

established, despite the fast approaching deadline. The authorities had planned to establish a second transitional provision to operate until the new register would be put in place. NGOs are not obliged to register, however, only those entities complying with the requirements set by the Code of the Third Sector and admitted to the corresponding national register will be entitled to receive fiscal incentives and facilitation set for the entities of the Third Sector.

Another important change introduced by the third sector reforms concerns “social enterprises” (Legislative Decree no. 112/2017). These enterprises can be incorporated as companies and in this case, they will be entitled to distribute dividends within certain limits. Any private entity (for profit or not-for-profit) can choose to be a social enterprise if it complies with the requirements of scope defined in the decree. Consequently, under this designation, one can find different forms of organizations (as associations, foundations and social cooperatives can qualify as social enterprises, together with limited liability companies and corporations). The Companies’ Register has a specific rubric dedicated to social enterprises.

The NGOs active in development aid outside of Italy should be registered on a special development cooperation register. The NGOs active in humanitarian aid provided to migrants have access to a specific fund. Duly registered third sector entities may access the Fund created for them by Law No. 106 of 2016. Non-commercial activities are exempted from income tax liability.

There is a database of associations of migrants with 1,400 associations. The Ministry of Labour and Social Policy underlined that they try to support a bottom-up approach and to make a difference, taking into account the size of the organization.

## **Participation in Decision-making Process**

According to the representative of the Ministry of Public Administration, the involvement of NGOs in the OGP Actions Plans has been gradual. The first plan was led without any NGO engagement. The second plan initiated contacts with NGOs – a form of consultations, however it could not be considered an open process. The Ministry of Public Administration holds a position of moderator for the interactions between NGOs and the administration. The 3rd Plan (which ended in 2018) established a more open Multi-stakeholder Forum “Open Government Forum”, which included about 100 organizations which met three times during the implementation phase of the third Action Plan. Italian authorities consulted civil society organizations mainly for the development of the action plan: “The consultation process during the implementation has remained a limited and centralized process, with little engagement and participation from the civil society”.<sup>7</sup>

The guidelines on public consultation in Italy provide the general principles in order to allow that public consultation processes can lead to informed and quality decisions and are as inclusive, transparent and effective as possible. The document was produced through a participatory process that involved the Open Government Forum. The Guidelines were under public consultation from 5 December 2016 to 12 February 2017. Since 12 May 2017, the

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<sup>7</sup> <http://open.gov.it/>

permanent collection of consultation initiatives aims to collect all relevant data relating to public consultations and will allow for analysis of the evolution of the consultation processes and the quality of participation in the Italian public administration (in line with the principles set out in the Guidelines)<sup>8</sup>.

### ***Access to information***

In 2016, Italy adopted Legislative Decree n°97/2016 allowing individuals to implement their rights to access information (freedom of information act, or FOIA) held by the public administration. However, the law does not impose any sanction on those public bodies which, contrary to the law, refuse to disclose information. The monitoring exercise conducted on the basis of 8,000 requests shows that between 2017 and 2018, around 75% of the requests were not answered at all by public bodies, 1/3 of the instances in which the public administration refused to disclose information were deemed to be illegitimate and in most cases, the responses received could be considered as devoid of any legal basis<sup>9</sup>. There appears to be a need to simplify the management of information disclosure obligations in order to facilitate citizens' and stakeholders' access to information: "Moreover, two years after the adoption of the FOIA, the need emerged to further encourage the use of generalized civic access developing mechanisms to facilitate its use by citizens and help administrations manage requests more effectively and efficiently"<sup>10</sup>.

In a meeting with all stakeholders, including the Public Administration Ministry, all agreed that the consultation activities by Italian central and local public administrations are carried out only sporadically and with different quality levels. The delegation was made aware of this Ministry's intention to establish an online platform for consultation, which should be launched soon as an open source process (inspired by Madrid + Barcelona model). It is aimed to be a user-friendly space for consultation with citizens, and to provide external actors with easy access to decision-making on behalf of the Italian government. In time, this platform is intended to be extended to all levels of administration.

### ***Interactions with the Parliament***

The exchange of views with the representatives of the Parliaments was instructive. The MPs shared their expectations about the NGO sector and their experiences of direct and indirect engagement with NGOs.

Formal hearings are the most used method for thorough examination of certain topics on the Parliamentary agenda. At the level of parliamentary groups and committees, informal interactions with NGOs may also take place. One of the MPs explained the results of her meetings on a daily basis with patients' associations as well as various organizations for handicapped people. In her opinion, legislators should hear from constituents directly affected

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<sup>8</sup> <http://open.gov.it/linee-guida-sulla-consultazione-pubblica/>

<sup>9</sup> CILD

<sup>10</sup> 4<sup>th</sup> OGP Action Plan for Italy

by the measures covered by the legislative process. She recounted her experience of the previous legislature, in which she served on several defence committees; nearly all NGOs were present to help to solve important problems. Several other MPs expressed concern that NGOs are surpassing their role by challenging public policy. Others recognised the important role of NGOs to influence social and cultural change, which can have an even more important function than legislative reform. However, the delegation was concerned by the general attitude expressed by the parliamentarians taking part in the meeting, which was characterised by mistrust or lack of understanding about the motives of NGOs, in particular regarding criminal activities, transparency and foreign terrorist funding conveyed through NGOs. The delegation learned during the meeting with the representative of the Ministry of Justice that, according to the law of decree 34/2019, NGOs are subject to the same transparency requirements as political parties (i.e. submitting their budget to the relevant parliamentary committee) if they donate 5,000 euros or if they contribute for the equivalent value to political parties' initiatives by providing services in favour of political parties, political movements or to persons holding a position in the government or other elected office. Foundations, associations and committees are also subject to the same transparency requirement even if they are not registered in the 3<sup>rd</sup> Sector National Register and if the board or management committee is formed by at least 1/3 of members of political parties or / and political movements, persons who hold (currently or in the last 6 years) the position of MP, or the position of local councillor in a town with more than 15,000 inhabitants<sup>11</sup>.

Representatives of NGOs expressed the general view that the impact of international foreign funding is overestimated. In their view, only a few NGOs rely on international funds. Nevertheless, negative rhetoric used by certain public officials unjustifiably causes damage to the entire NGO sector. The media has not helped by repeating such toxic narratives, without providing the opportunity to civil society to express publicly a counter perspective, which has indirectly supported increased mistrust and contributed to the campaign against NGOs initiated by some public officials.

## **Interactions between public authorities and NGOs in the context of migration policy**

### ***Legal framework***

The Italian legal framework concerning asylum and migration is complex and in constant flux. Certain laws which arose in discussions with NGOs as well as public officials, and which the delegation perceived as particularly problematic, are set out below.

In 2017, "Italy adopted the law n°46/2017 eliminating the possibility for asylum seekers to appeal a first instance court decision on their application before the Court of Appeal, making

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<sup>11</sup> Italy does not have a specific law or regulation on political parties, except the one covering public financing. Political parties are recognized in the Constitution, however, according to Pacini, Maria Chiara and Piccio, Daniela Romée (2012) it had little implications for their regulatory framework.

the appeal possible only through the Supreme Court”<sup>12</sup>. This amendment reduced the procedural guarantees afforded to asylum seekers and removed from the courts the obligation to hear from asylum seekers in person. This has had a detrimental impact. According to Legislative Decree n° 286/1998, the irregular entry and stay are considered as a crime<sup>13</sup>. The controversial security Law (n° 132/2018) approved by the Italian parliament in December 2018 targeting asylum rights removed “residence permits for humanitarian reasons” one of the oldest categories of humanitarian protection. In consequence, asylum seekers lose access to integration services until their application is granted. A new “special permit” was introduced for a much narrower group that comprises: victims of domestic violence, trafficking and severe exploitation; those with serious health issues; those fleeing natural disasters; and those who commit acts of civic valour.

During the time of the visit, the specific Decree Law (N°53) was under discussion. It was approved on 14 June 2019 providing for “urgent provisions on public order and security”. This Decree allowed the Minister of the Interior to limit or prevent the transit and docking of vessels in Italian territorial waters if these pose a threat to public security. Captains and owners of vessels who violate this ministerial ban could be sanctioned with penalties of up to € 50,000, and vessels could be seized. Given the fact that the majority of rescue operations are undertaken by NGOs, and taking into account the rhetoric used by certain senior government ministers in the context of migration, this law was likened to a “declaration of war against the NGOs who are saving lives at sea”<sup>14</sup>.

The new government and coalition set up in September 2019 has started its work with a new political agenda on immigration policy. There are a lot of expectations towards the new government, both from Italian NGOs and the international community, including the COE’s Conference on INGOs. Namely, there is an expectation of a more friendly approach to rescue NGOs, a deeper dialogue with them and with EU on the Dublin regulation.

### ***Several Narratives and Situations relating to NGOs Helping Migrants***

According to certain MPs, the Italian system of reception of migrants has received more than 2 billion Euros. According to the opinions of certain MPs with whom the delegation had occasion to meet, such a large budget implies a connection to criminality. Several MPs raised the disappearance of migrant minors as a serious problem and the suggestion was made that NGOs providing assistance to relief and rescue operations are linked to trafficking and smuggling operations. During the visit, it was explained that several isolated cases were under investigation by the public prosecutor. However, the understanding of the delegation was that the majority of these had been closed for lack of evidence. Despite this, according to several MPs, it was necessary to further regulate NGO activities in this domain to allow the State to better supervise or control what was going on, on boats and elsewhere. Many of the MPs with whom the delegation met expressed the view that NGOs working in rescue operations could

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<sup>12</sup> CILD (March 2019). Join Submission to the Universal Periodic Review of Italy, 3<sup>rd</sup> cycle, 34<sup>th</sup> session.

<sup>13</sup> Ibid

<sup>14</sup> <https://www.theguardian.com/world/2019/jun/15/italy-adopts-decree-that-could-fine-migrant-rescue-ngo-aid-up-to-50000>

develop a self-regulation approach<sup>15</sup>, which would help put an end to the perception of linkages to organized crime networks.

Of the NGOs' consulted by the delegation, the common opinion was that the legal framework regarding migration has worsened significantly. The time spent by migrants in CPRs centres (Repatriation Centers or *Centri di Permanenza per i Rimpatri*) has been lengthened. The network of reception centers had drastically downsized. Service providing NGOs (and those who work in reception centers) underlined that they felt unable to criticize public authorities and are required to stay quiet in order to be allowed to continue with their work. Relations with immigration officers are difficult and delicate because of the cumbersome procedures. Some of the NGOs called upon all organizations to work more cohesively to provide a safe space for protection, where migrants can find shelter. The recent governmental decree removes the permission to remain for some of those migrants who were denied the formal refugee status, but who are unable for a variety of reasons, to return home. Consequently, there will be more people illegally present in Italy, as "ghosts", legally invisible and without access to basic services: "The end of humanitarian protection will lead to around 130-140,000 immigrants losing their permits by 2020. This means 60,000 new irregular immigrants in addition to the 70,000 ones within the current situation"<sup>16</sup>. Those to whom protection has been denied cannot leave Italy without passports or sufficient money to pay for a flight home (where that is an option), either. The lack of places and the general unavailability of reception centres provoked the creation of informal settlements and camps, which operate outside of the set legal parameters. The NGOs which help migrants in this "illegal" context are under significant pressure. Their humanitarian assistance work is criminalized, they are subjected to slander by judicial authorities and in consequence, the privacy and security of the activists is undermined. Despite their humanitarian role, they are threatened by police as aiding illegal immigration. The migrants helped by these NGOs are threatened and persecuted as well. Two examples were given to the delegation: people waiting for between four to twelve hours at migrants' services without water/food and people sent away from the police office without support or referrals although they urgently needed a shelter. The ability for the individual activists and the NGOs they support to defend themselves in court has been hampered because of the lack of funds. Some of these individuals and groups have been subjected to repeated investigations, which very often is closed for lack of evidence. The continued criminalization of their work in the absence of evidence to sustain charges constitutes a form of harassment, which NGOs believe is simply an attempt to hinder their humanitarian mission.

Many religious organizations have played a vital role in helping NGOs working with migrants. They receive an important amount of public money (donations - income tax contributions)

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<sup>15</sup> Code of good conduct.

<sup>16</sup> "According to Matteo Villa, a researcher from the Institute for International Political Studies (ISPI), it was the most common form of protection granted to foreigners in the country from 2014 to 2017. Out of 130,000 applications filed last year, 25% were granted humanitarian protection; 52% were rejected; 8% were granted refugee status; another 8% were granted subsidiary protection; and 7% were granted other types of protection. Under the decree law on security and immigration, this type of protection will no longer be granted. The rationale for this decision is that the definition of humanitarian protection is too uncertain, leaving "too wide a margin for extensive interpretation" and creating too many "fake refugees" who are "running from no war", as Salvini has repeatedly stated" (Claudia Torrisi, 2018).

which they then redistribute to smaller NGOs through calls for project proposals. The Catholic Church is very powerful and has given positive signals to the society to help migrants. However, many people are still afraid to volunteer or to help the helpers, because of the hate speech prevalent in the media, among certain elements of the government and in public opinion. There is a perception of impunity for those who threaten migrants and the NGOs that assist them, neither of which are protected by the police.

A very instructive meeting was held with the staff of the Office of the Garantore for people deprived of liberty<sup>17</sup>, a collegial independent authority safeguarding the rights of persons deprived of their liberties. This Office “is increasingly attentive to prevent situations that may evolve in a lack of protection of the individual rights of restricted persons, rather than the even-though-inevitable reaction to detrimental behaviours, which have already occurred”. In this sense the Office of the Garantore is part of the International National Preventive Mechanisms (NPM) operating under the auspices of the Optional Protocol to the UN Convention Against Torture. The Office constitutes the only independent human rights protection mechanism in Italy and Mr Mauro Palma, chairman of the Guarantor's Office, has received the respect and strong support of NGOs. Regarding migration, already in 2017, the office published a critical report on the situation of Italy's migrant Centers for Residence and Repatriation (CPR), considering them to be "in poor material and hygienic conditions," and lacking a system for registering critical events, such as a system for reporting violations. In 2017, there were 119,369 migrants, including 13,121 women and 17,337 children<sup>18</sup> in the CPRs.

The Garantore Office has a positive collaboration with NGOs. Often, NGOs provide information, which is then taken up by the Garantore Office. They are involved in the follow-up of visits and are considered as experts, as appropriate. The office offers the possibility of being an “expert” (subject to certain criteria) concerning deprivation of liberty, in order to monitor (or to prepare) a visit. The experts help the Office to understand the situation before the visit of the place of detention. The Office receives claims or allegation, which then need verification. They also cooperate with NGOs in respect of training initiatives. role in monitoring and responding to the critical situations which arose when rescue boats were blocked at the port without being able to disembark the migrants, who in this situation were deprived of liberty without any legal procedure. On 30 August 2019, when the “Mare Jonio” ship with 98 people rescued persons on board was stuck in the Central Mediterranean at the mercy of the weather, under the jurisdiction and responsibility of Italy, the Garentore wrote to Prime Minister Giuseppe Conte in order to solicit a solution and to guarantee the free movement of the migrants

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<sup>17</sup> “Been established by a decree-law at the end of 2013, the National Guarantor becomes operational only in March 2016, after the President of the Republic had appointed its Board and set up its Office. A set of laws has defined it an independent mechanism, which a) carries out a nonjudicial control on all places restrictive of personal liberties, b) can start a process on its own, while attempting to intervene ex-ante in situations and contribute in overcoming current issues, c) provides recommendations in a cooperative manner”. Mauro Palma, Daniela de Robert, Emilia Rossi (2017)

<sup>18</sup> Mauro Palma (Chairman), Daniela de Robert (Board Member), Emilia Rossi (Board Member). National Guarantor for the Rights of Persons Detained or Deprived of Liberty. Rapport to the Parliament 2017. <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/1088d69568724f247aefcfdebf948596.pdf>

and crew. In his letter, the Guarantor reiterated that “never the freedom of people can become an instrument of political pressure and reaffirming the value of the centrality of the person.”<sup>19</sup>

The national Guarantor uses his authority by addressing the relevant Ministries and to visit the places of detention, including the “hotspot”, which while not a classical place of “deprivation of liberty,” is nevertheless a recognised place of detention as the individuals concerned were prevented from movement for weeks at a time.

## **Equal Opportunities and the Fight Against Discrimination**

According to the Equal Opportunities Department, there are two thematic fields of cooperation with NGOs: the fight against violence and the fight against trafficking. The department explained to the delegation that it consulted with and invited to the round table the representatives of formal umbrella NGOs (networks), major national organizations, rather than smaller or individual NGOs. This, in its view, was the most efficient way to engage NGOs, though as the delegation explained, this may omit certain important voices from the table. According to the public officials with whom the delegation spoke, dialogue with NGOs is not always as easy as they had hoped, but they consider their methods of engagement to be the most appropriate approach. It was also explained to the delegation that inside the Department, there are different approaches and diverse methods of interactions with NGOs, focused on more formal and structural forms of cooperation. Concerning the Istanbul Convention (on violence against women), the strategic national action plan has been prepared and it is foreseen that NGOs will be crucial counterparts in the fulfilment of this strategy. The political authorities established a Steering Committee in November 2018 by formal decree, composed of public officials at the central and local and regional level of administration, trade unions and specialized NGOs (by invitation only). There have been three working meetings since that time devoted to the elaboration of national guidelines for operators in contact with alleged perpetrators. This process has been considered as successful by authorities.

The opinion expressed by the NGOs met by the delegation was more critical about this particular approach. A Round Table on domestic violence had indeed been set up by the department of equal opportunities. However, women's rights oriented NGOs underlined that there were too many participants present during the consultation meeting (around 70) which limited significantly the opportunities for the NGOs to provide substantive input and to engage in a real dialogue with officials. The topics needed further and deeper discussion with more space for NGOs in order to better avoid the “alibi” effect. More generally, the NGOs noted a difference between the then-current and the previous government, where cooperation in the area of legislative reform had been possible and the results of such cooperation could clearly be seen (through the modification of certain provisions deemed problematic by NGO experts). More recent government consultations have been more formal, superficial and focused more on procedure than on substance.

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<http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/351eccc5854dcdc00e2df1fb79ef06d0.pdf>

During the visit, women's rights activists underlined their concerns about ongoing divorce reform which seeks to prevent family separation and divorce and ensure equal parental rights, even in situations of violence. The "divorce draft law" proposed by senator Simone Pillon provoked a huge demonstration in 2018, in 60 cities in Italy. "The bill requires all couples wanting a divorce with legally minor children ~~who are~~ to go through an obligatory mediation process that they have to pay ~~for out of~~ from their own pocket.

They must use a professional mediator to outline a parenting plan which chooses residence, schooling and holiday arrangements. It must meet shared custody measures that force children to spend at least 12 days a month with each parent and classes them as a resident at both parents' addresses instead of one, as is the current situation"<sup>20</sup>.

The department was also preparing a new Action Plan to combat trafficking. It was planned that a Technical Steering Committee which was established in April 2018 would meet at the end of June 2019 to write a first draft of the new Action Plan. Certain NGOs are recipients of funding provided by the department, also in order to run shelter centres. The selection of funding recipients is operated through competitive calls for proposals, based on a common agreement on standards.

Regarding Italian migration policy, certain public officials with whom the delegation spoke, indicated that there is likely to be an increase in discrimination as a result of the "Salvini decree" and public rhetoric which surrounded it. It seems evident that the 2018 decree which made access to justice more difficult for migrants and also removes the possibility to use residence permits as valid documents to access health services and schools would increase the number of victims of discrimination. Even with the recent changes in government, and the impact on legislation and policy going forward, the toxicity from past campaigns may have a long-term effect. Nevertheless, the delegation was not informed of any specific data, reports of incidents of discrimination or cases of non-supported victims. The NGOs working in this area are actively encouraging the department to find a proper solution.

### ***Gender-Based Discrimination***

Some of the NGOs met by the delegation related their experience as a part of UNAR and their long-standing cooperation with that body. UNAR – the National Anti-Racial Discrimination Office, is an independent equality institution, "destined by the Italian State to guarantee the population the right of an equal treatment, regardless of their ethnicity or race, age, religious belief, sexual orientation, gender identity or disability. The Office was established in 2003 (decree law n. 215/2003) due to a community directive (n.200/43/CE), requiring each Member State to activate a system purposely dedicated to oppose all forms of discrimination". In order to offer a concrete aid, the Contact Centre UNAR was established. It is a free and multilingual service directed at victims and witnesses of discrimination which is able to collect reports,

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<sup>20</sup> Maya Oppenheim. Wome Italy's divorce law reforms endanger domestic violence victims and pose grave threat to women's rights, prominent lawyer warns. Independent. Thursday 15 November 2018 18:30. <https://www.independent.co.uk/news/uk/home-news/italy-divorce-law-reforms-domestic-violence-victims-simone-pillon-protests-a8635806.html>

accusations and testimonies regarding acts of discrimination and provide information, orientation and support to prevent and address them<sup>21</sup>. Since 2016, UNAR has a specific online tool to address hate speech and it is a trusted flagger with Google, Facebook giving him a possibility to ask for removing discriminatory content within 24 hours.

A round table was officially established by decree in October 2018. UNAR made a public call for 48 NGOs and 43 independent local LGBT divisions to build a permanent consultation forum to support UNAR's policies. According to officials with whom the delegation met, the Round Table worked on a national Action Plan and established a first list of points for action, based on proposals from NGOs. However, according to the NGOs with whom we consulted, while the Round Table involved LGBTI organizations, the consultation focused exclusively on information campaigns, and not on legislation<sup>22</sup> where the greatest concerns remain. The NGOs underlined the increasing number of hate crimes and hate speeches meted out against the LGBTI community. They urged Parliament to adopt a specific law concerning homo/bi/trans phobia.

Gender-based discrimination is an important concern, as in other countries. Gender-based discrimination in the workplace was raised during the delegation's consultations. There is a special agreement with the Department for gender health to improve access by transgender individuals to data and collect more effectively the data about the situation of transgender persons in the workplace.

An important survey with ISTAT (National statistics Institute) will be realized in particular about discrimination on sexual orientation and gender identity at work. In order to fight against institutional discrimination where it exists, UNAR uses persuasion and its power to influence in order to inform and educate all public bodies, including the office of the prosecutor, regarding hate speech and only hate crime. In partnership with the ministry of justice and interior, UNAR established an even more efficient inter-institutional group called "CONTRO" to address this problem.

### ***Situation of NGOs working with Roma, Sinti and Travellers***

According to data collected by the Council of Europe, the presence in Italy of Roma, Sinti and Travellers is estimated between 120,000 to 180,000 persons. According to the mapping conducted by Associazione 21 luglio in 2017, "in Italy there were 148 formal settlements, inhabited by approximately 16,400 people, and 2 reception centers accommodating about 130 individuals. This is a unique situation in Europe"<sup>23</sup>. The observations adopted by the United Nations Human Rights Committee in March 2017 as well the Council of Europe Committee of Ministers Resolution (CM/ResCMN(2017)4 on the implementation of the Framework

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<sup>21</sup> <http://www.unar.it/cosa-facciamo/?lang=en>, <http://www.unar.it/cosa-facciamo/contact-center/?lang=en>,

<sup>22</sup> In 2016, Italy adopted the law n°76/2016 allowing civil union and providing a specific regulation on the same-sex couples except the possibility to adopt the child, including the biological partner's child.

<sup>23</sup> ASSOCIAZIONE 21 LUGLIO ONLUS (2019). Submission to the UN Committee on the Rights of the Child in response to the Italian Government's Replies of Italy to the List of Issues. Eighteenth Session. 14 January – 1 February 2019  
[https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ITA/INT\\_CRC\\_NGO\\_ITA\\_33324\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ITA/INT_CRC_NGO_ITA_33324_E.pdf)

Convention for the Protection of National Minorities recommended that Italy should take action and improve the legislative guarantees in the protection of Roma, Sinti and Caminanti rights.

On April 8, 2016, UNAR publicly communicated the launch of the National Roma Platform for dialogue purposes between institutions and Roma and Sinti communities in order to stimulate the involvement and co-operation between institutions and organizations representing Roma and the associations operating in the sector, with specific regard to Roma youth. “Its secondary goal is to facilitate the establishment of networks and to promote networking among NGOs and Roma federations[...]. UNAR has been engaged in a preliminary and very sensitive exercise (in consideration of the fragmentation and other divisions within the Roma associations), namely the selection and definition of representativeness-related criteria for RSC participation. All the activities to set up the Platform have been fine-tuned following consultation with all key stakeholders to be involved: they are about 60 associations, facilitated by the Office in submitting the registration applications to the UNAR Registry (as provided for in Art. 6 of the Legislative Decree No. 215/2003) placing equal responsibility within the representative associations which are involved in tackling discrimination. The kick-off meeting of the above Platform was held October 17, 2016 with the participation of 30 young Roma, Sinti and Caminanti representatives, all committed activists, fully integrated into society”<sup>24</sup>.

The collaboration between public authorities and Roma NGOs does not seem sufficient. The NGOs advocating for Roma, Sinti and Travellers rights, according to their own opinion, have no influence on the policy agenda or political decision-making. In this context, it is very difficult to reach a positive outcome. The people affected (or their advocates), organizations ie Roma community are not involved in the development of governmental strategies concerning the Roma. In this respect, European standards are not being applied. NGOs sometimes note unrealistic situations and regulations which members of the Roma community regularly face. For instance, Roma cannot sign a rental contract, without a fixed job.

The battle against anti-Roma activity and the fight against hate speech remains a major issue. The violence faced by Roma is substantial. Verbal assaults on the Roma community in public is a daily occurrence, and physical violence is also on the rise. The murders in recent years of Roma people have been reported as crimes of racial hatred. The use of public transport in the city has become a risk for the Roma community, especially for women. The “anti-Gypsy” rhetoric is also widespread in schools, exposing Roma children to hate speech and segregation. The Associazione 21 Lugio set up the National Observatory on Hate Speech against Roma which monitors daily more than 100 sources and registers the hate speech promoted by politicians and elected officials, citizens and formal organizations. There are not many civil society organizations which have the resources to participate in the international campaigns to fight against anti-Gypsyism in the public sphere and in the media.

According to the NGOs we consulted, the Ministry of Equal Opportunities has established a toll-free telephone number to make it easier to report cases, but the phenomenon is not monitored at the national level and there is no strategy to counteract it. The initiatives / projects

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<sup>24</sup> Committee on the Elimination of Racial Discrimination. Twenty-first periodic report submitted by Italy under article 9 of the Convention, due in 2019. Date received: 6 February 2019.

established with NGOs and funded by the EU, such as DiscrIKamira<sup>25</sup>, are important but cannot replace a long-term national strategy and cooperation with national NGOs to address the problem. Segregation, discrimination and forced eviction remain important issues in Italy.

In 2017, the Associazione 21 luglio registered a total of 230 forced evictions of Roma and Sinti people in Italy. The report published in 2018 by the same association, entitled "The margins of the margin" shows 195 documented forced evictions throughout Italy, with 90 taking place in the North and 80 in central Italy, and the rest happening in the South. Just before the delegation's visit, in Naples, more than 400 persons were evicted, including Italians living there for more than 10 years and displaced to a simple field. The association tried to do mediation, but nothing changed.

## Conclusion

The visit was concluded by the meeting the President and representatives of the Inter-Ministerial Committee for Human Rights under Ministry of Foreign Affairs and International Cooperation<sup>26</sup>. This body, existing for more than 40 years, has a long standing cooperating with civil society sector which representatives are included in the preparation of the reporting, in accordance with their specific competences and experience. They are also involved in conferences and events organized by the CIDU in cooperation with relevant Administrations as well as in online consultations for the compilation of national plan of actions. This meeting allows the delegation to give a short feedback about the visit and speak about the situation of the NGOs in Europe. The delegation is very grateful to the Ministry of Foreign Affairs and the Permanent Representation of Italy to the Council of Europe for hosting and the program of the visit which, in a substantial way, contributed to the knowledge and recognition of the existing expertise in the NGO sector in Italy as well its essential place in the design, implementation, and evaluation of the public policies. As the report shows, in some areas of public policy or within some democratic institutions progress should be made. But it is essential to emphasize the constant effort and progress already made by a number of governmental institutions, as shown by the exchange of views with the Minister of Public Administration and the Department of Equal Opportunities. The delegation had the honour to meet the public officials committed to their work and human rights.

It seems very important that the new government prioritize the dialogue with NGOs, seize their expertise and experiences to develop the content of the policies and legislative changes very needed on some sensitive issue related to the migration policy.

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<sup>25</sup> DiscrIKamira Project is funded by the General Directorate of Justice of the European Commission. <https://discrikamira.eu/?lang=en>

<sup>26</sup> Inter-ministerial Committee for Human Rights (acronym in Italian, CIDU) was established in 1978, at the Ministry of Foreign Affairs and International Cooperation of Italy ([www.cidu.esteri.it](http://www.cidu.esteri.it)). By an inter-ministerial and participatory approach, CIDU is the National Mechanism for Reporting

## **Recommendations**

### ***To public authorities:***

- To ensure that NGOs are able to operate fully, and support that operation, in the interests of democracy, human rights and rules of law.
- To ensure a safe space for the exercise of freedom of association, in accordance to international standards, and to guarantee this right, both in law and in practice, regardless of the domain in which they operate and irrespective of whether the mission of the NGO aligns with the politics of the day. In the current context, it implies the urgent need to reject and repeal some laws, provisions, policies and practices which impede NGOs from carrying out their legitimate work.
- Abolish the criminal offence regarding the NGOs and the activists providing humanitarian aid and rescue operations along the Mediterranean route.
- To recognise formally that NGOs undertaking humanitarian work should not be subjected to criminal sanction, nor should their work be impeded by administrative sanctions.
- To continue to ask for more solidarity from other EU countries.
- To take an active approach to address hate speech, against vulnerable people and the NGOs that help them.
- To reinforce the protection, the rights of migrants, asylum seekers and refugees and make the legislation comply to the international human rights standards and humanitarian law.
- To finalise the reform of the 3<sup>rd</sup> Sector by opening the functional register and propose the legal support to the smaller NGOs to comply with the new regulations
- To make public consultations more strategic-oriented, including some co-drafting processes to be open for NGOs' proposals to establish the agenda of the consultative meetings.
- To make accountable all public and elected officials who disseminate a hate speech in the public space, including media, towards ethnic minorities, migrants, refugees and asylum seekers, NGOs.

### ***To NGOs:***

- To strengthen the monitoring and collection of the data about threats, intimidations, discrimination, hate speech coming from public or elected officials.
- To keep public and private institutions accountable.
- To take opportunities to contact the Conference of INGOs and its Expert Council on NGO Law for legal opinion or assessment of the situation which undermine the rights to freedom of association (and associated rights).
- To make good use of the Council of Europe guidelines, recommendations and opinions and disseminate them in Italy.

### ***To the Conference of INGOs:***

- Follow the situation of NGOs in Italy and the evolution of the enabling environment in which they operate.

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