

RESILIO Country Report Italy



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1. Introduction

The following report analyses the state of the rule of law in Italy, with a specific focus on the resilience to different shocks in the contemporary period. It adopts the RESILIO model and concentrates on institutional resilience as part of the systemic dimension (with a short reference to the judicial and constitutional resilience), the role of the media within the subsidiary dimension (with a brief investigation of the political party system and the civic resilience) and finally presents a short discussion of Italy's economic situation as a component of the contextual dimension of rule of law. The report uses academic contributions, media sources, and NGO documentation.

Although the analysis is focused mainly on the recent years – and in particular the actions by and reactions against the current Giorgia Meloni's government – the remainder of this section will provide the reader with a brief overview of the historical context of Italian democracy.

Italy is a parliamentary democracy and a founding member of the European Union (EU) and other international organisations. After two decades of fascist dictatorship (1922-1943) and World War II, the country nevertheless remained a liberal democratic regime following the 1946 institutional referendum – in which Italian citizens chose a republic over a monarchy – and the first free and fair elections in 1948 under the new constitution.

However, Italian political history has been also characterised by significant flaws in the state of the rule of law, even in its first decades. The difficulties in replacing most of the post-fascist administrative and bureaucratic elites,¹ and a fragmented political landscape – torn between the two Cold War blocs (Italy had the largest Communist Party of all Western European states)² – contributed to the severe instability of Italy's first electoral cycles. Between 1948 and 1994, the power and political influence of the Christian Democracy (*Democrazia Cristiana*, DC) party was consolidated under uninterrupted decades of government and despite different coalition formulas (first the DC governed alone or with centrist parties; with socialist parties in the 1960s; with other parties in the 1980s, etc.). This is what scholars call the Italian 'First Republic.'³ This permanent presence of the same actors in office, coupled with strategic rotation in key posts such as ministers and heads of public bodies and agencies, was favourable to the development of a pervasive corruption system, in particular since the 1980s.⁴

The 'Second Republic,' born after the collapse of the DC, centrist, and socialist parties after many corruption scandals in the early 1990s, was profoundly influenced by and shaped around – both politically⁵ and culturally⁶ – the figure of Silvio Berlusconi and his personalist party Forward Italy (*Forza Italia*, FI). Having emerged in the previous decades as a powerful entrepreneur in construction and private television,⁷ Berlusconi suddenly entered politics and won the parliamentary elections in 1994. Although the first FI-led government lasted only for some months, Ber-

lusconi's party and the centre-right coalition (including the successor of the fascist party Italian Social Movement, *Movimento Sociale Italiano*, MSI, called National Alliance, *Alleanza Nazionale*, AN, and the regionalist League, *Lega Nord*) managed to hegemonise the political landscape, with electoral victories in 2001 and 2008. During those years, Italian rule of law was continually undermined by the actions of Berlusconi's governments, such as a particularly harsh politicisation of judicial bodies who were investigating the companies connected to the Prime Minister.⁸ That significantly contributed to the stalemate of many of anti-corruption measures started in the previous decade, such as against conflict of interest.⁹

The political landscape – split between Berlusconi's coalition and the centre-left coalition composed of the remainders of the Communist and Christian-Democratic parties – was nonetheless disrupted again in 2013, with the abrupt and unforeseen emergence of the populist Five Star Movement (*Movimento 5 Stelle*, M5S) led by the comedian Beppe Grillo.¹⁰ The M5S presented voters with an original platform based on the fight against corruption and opposition to the two centre-right and -left blocs, which were allied during the previous 'technocratic' government of Mario Monti and the dramatic economic crisis of the country and the Eurozone (2011-2013).¹¹ Following the Monti government, the Parliament approved some important laws against corruption.¹² From 2013 to 2018 however, the grand coalition made by the centre-left Democratic Party (*Partito Democratico*, PD) and some splits from FI overshadowed the most courageous actions against corruption, in particular against conflicts of interest and for stricter legislation of public contracts, which is often the subject of criticism by EU institutions.¹³

The same applies to the post-2018 panorama, when the M5S won the parliamentary elections and formed a government as senior partner together with Matteo Salvini's League, transformed from an ethno-regionalist into a nation-wide radical-right populist party.¹⁴ To limit the rise of the League,¹⁵ after the separation between its secretary Salvini and the Prime Minister and the new head of the M5S, Giuseppe Conte, the second Conte government – this time between the M5S, PD and other centre and leftist parties – was formed in 2019. However, most of its focus was concentrated on counteracting the severe outbreak of COVID-19 in the country. Afterwards, the second Conte government's measures designed to fight against corruption and enforce the rule of law embedded in the Italian National Recovery and Resilience Plan (with projects related to

the Next Generation EU Recovery Funds) were progressively re-designed by the new Draghi government (2021-22).¹⁶ Mario Draghi (former President of the European Central Bank) re-admitted Berlusconi's FI and the League into governmental ranks.

In the last parliamentary election in 2022, with the downsizing of the M5S and the PD, the centre-right coalition regained its dominance at the head of the government, with a new predominant position of Brothers of Italy (*Fratelli d'Italia*, FdI, a far-right party composed of former members of AN/MSI, FI, DC and others) within the centre-right coalition of the FI, the League and a cartel of small centrist parties.¹⁷ When Meloni was sworn in as (the first female) Prime Minister in late 2022, significant fears over the perils and dangers of the most right-wing government in Italian republican history spread within the country and across Europe.¹⁸

The following paragraphs detail some of the government's recent policies on the rule of law as well as the main factor of resilience, though the lens of the RESILIO model.

2. Analysis of the country case along RESILIO model

2.1 Most important systemic factor: institutional resilience

Under Italian constitutional law, public administration appointments are regulated by public competition (Art. 97.4 Constitution). Therefore, at least at its low- and middle-level ranks, Italian public administration tends to remain insulated from the rapid changes of government, which contributes to the stability of the overall institutional architecture.¹⁹ However, despite its robust and longstanding democratic setup, Italy's public institutions have also suffered – in particular in recent decades – from a chronic shortage of personnel and lower levels of impartiality of public administration or transparency, coupled with citizens' lower confidence in administrative entities. Furthermore, this is also encouraged by a reduced turnout in and renovation of many public posts, which particularly affects the younger generation. This is combined, at the top-levels, with increased government involvement in appointing heads of the most important public agencies such as in the energy sector, which often encourages corruptive practices.²⁰ It is no coincidence that even in the pathbreaking investigations into the quality of Italian democracy, the rule of law has been considered an area in which Italy continuously underperforms in relation to other libe-

ral democracies in Europe and beyond.²¹

Regarding the functioning of public administration more specifically, the NGO Openpolis has revealed how in its first 100 days, the Meloni government adopted a clearly top-down and 'decisionistic' approach, despite enjoying a consistent majority in the parliament, by using instruments such as decree-laws²² and confidence votes, and privileging laws originating from the government over parliamentary initiative.²³ Furthermore, in the restructuring and politicised renaming of Italian ministries,²⁴ the Meloni government has tended to multiply public personnel. This had led to an increase in nominees in the public sector which are available for the current majority, even *after* the so-called 'spoils system' period regulated by law (the selection or confirmation of administrative leaders on a fiduciary basis once a new government is formed).²⁵

Another source of criticism concerning institutional resilience is the alleged and unsolved conflict of interest which, after the death of Berlusconi in 2023, still affects many politicians from Meloni's coalition. For instance, the FdI Minister of Defence Guido Crosetto was previously directly affiliated to or advisor of the most important military companies in the country. Similarly, the Minister of Tourism, Daniela Santanché (also FdI), has been interrogated in parliament in relation to her activities (and bankruptcy proceedings) related to her family's seaside-sector companies.

In terms of public service ethos, it is important to remember that the structures of some key ministry administrations, such as Defence, Interior Affairs, and External Affairs, are not part of the governmental spoils system described above. In these cases, political influence over these bodies is limited and a culture of democratic institutionalism can endure within public administration. However, in recent years and specifically under the last government, some competencies, in particular relating to migration, were withdrawn from the Ministry of Interior and External Affairs to other ministries (Transport), which granted the government more direct control on key issues.²⁶

Yet, public administration is not only restricted to the ministries. One further issue that is widely considered as a fundamental part of the rule of law framework (although perhaps not sufficiently emphasised in the RESILIO model) is to what extent democratic and rule of law institutions are effective in those places where the state shows its 'toughest face': prisons. According to the Antigone asso-

ciation, Italian prisons are overcrowded – with most detainees serving short-time sentences or still awaiting trial – and generally very dangerous, with a dramatic rate of 84 suicides in 2022 (the highest number since 1990).²⁷ One case exemplifying the troubles of the penal system is that of Alfredo Cospito, an anarchist convicted after a 2006 non-fatal bomb attack on a Carabinieri barracks, who has been on hunger strike for almost six months in protest at his solitary confinement (a measure originally designed for mafia bosses). The government and Minister of Justice refused to re-consider his sentence (the case is still ongoing at the moment of writing). In one of the latest decrees approved in September 2023, the government also tightened up the punishments for underage and juvenile crimes, jeopardising one aspect in which Italy was often regarded as a model of best practices, such as re-education of minors.²⁸ With these dramatic conditions, criticised by the European Court of Human Rights, detainees' conditions are a stain on Italy's rule of law.

One further systemic component of rule of law resilience concerns the functioning of the judiciary and its independence from political influence. In Italy, there is a strong politicisation of administrative and legal courts, due in particular to the legacy of the Berlusconi mindset.²⁹ In the 1990s, judges were often seen as democratic 'heroes' against 'villainous' politicians.³⁰ However, in recent years, the frequency of corruption scandals within judicial bodies – such as those related to nepotism and clientelism – has seriously undermined the democratic credentials of the judiciary. The Meloni government's new Minister of Justice, Carlo Nordio, has initiated a discussion on the broad reform of the judicial sector, in particular to eliminate the crime of abuse of office, other anti-corruption measures introduced in the last ten years which the new government deems too radical, and also to limit the collection and diffusion of wiretaps.³¹ This reform is currently still under discussion, and if approved, it will have a major impact on Italy's rule of law.

Finally, to conclude with a short discussion of constitutional resilience, Italian democratic institutions have often been described as immune to change, which can entrench the country's resilience to shocks and pressures. However, in this regard, another source of concern might derive from the constitutional reform (effective as of the 2022 elections) which has cut the number of MPs (Chambers of Deputies and Senate of the Republic) by one third. Justified to speed up parliamentary procedures, this reduction has been criticised for downsizing parliamentary checks

and balances over the government and increasing party leadership control over individual parliamentarians.³² Nonetheless, a main factor of resilience related to checks and balances and horizontal accountability remains the activism of the Constitutional Court, whose landmark decisions declared two electoral laws in 2014 and 2017 as unconstitutional. However, the Court's past activism may be balanced with a more prudent and cautious interpretation of its role, in particular if this involves overruling the government in office. Similarly, another constitutional guarantee is exercised by the President of the Republic, who sometimes opposes laws approved by parliament or otherwise threatens their blockage with public remarks. Nonetheless, even for this figure, it is difficult to remain a democratic watchdog without being perceived as a political actor.³³ Finally, in the first week of November 2023, Meloni's Council of Ministers proposed a new constitutional reform. This bill, which will most probably be submitted to a referendum if it is not approved by two thirds of the members of both chambers of the Italian Parliament, would introduce the direct election of the Prime Minister, reduce the powers of the President of the Republic and constitutionalise a majority bonus in the electoral system. The opposition and many legal experts have expressed strong criticism of this bill,³⁴ whose parliamentary process should be closely monitored in the coming months.

2.2. Most important subsidiary factor: media resilience

Italian media is free and fair and diversified with many public (RAI) and private television and radio stations and newspapers. There is no restriction on freedom of speech or limits to journalists' freedom. However, as monitored by Reporters Without Borders,³⁵ Italian media suffers from a structural crisis and dependence on public support or private credit to survive. In turn, this might limit journalists' willingness to investigate sensitive issues or go against their editors. More specifically concerning Italian television, it is well known that the quality of Italian media (even the public media) has suffered serious threats from Berlusconi's company Mediaset, the largest Italian commercial broadcaster media. Founded in the 1980s, it has imposed a narrative based on sensationalism, the sexualisation of female bodies, a good amount of fake news, and not-so-subtle support for the patron's family, all which have influenced and shaped the actions of other channels.

Given that the television market is dominated by the RAI and Mediaset duopoly, Italy has not performed well in terms of media independence and diversity. The presence of hegemonic actors in broadcast television is also replicated in the newspapers, which are divided between (1) a constellation of publications affiliated to Berlusconi's group and other right-wing allies, (2) Urbano Cairo's group (the owner of another popular television channel, La7, and the most important Italian newspaper, *Il Corriere della Sera*), and (3) the GEDI group (with *La Repubblica*, *La Stampa* and others, which are owned by the Agnelli-Elkann family, who also lead the famous automobile manufacturer FIAT). Within this landscape, the main newspapers or websites that are not affiliated to the right-wing coalition or part of strong private groups are mostly experiencing financial problems as well as structural and editorial crises. Accordingly, the working conditions for investigative journalists are complicated. To a certain extent, this can also apply to writers and public commentators who express radical criticism of the current government, in a framework of draconian defamation law. The best known case is that of Roberto Saviano, one of the most respected and famous Italian writers – whose investigations into the 'Ndrangheta has meant he has been living under police protection since 2006 – who has been fined €1,000 after a trial for defamation, having defined Meloni and Salvini as 'bastards' for their opposition to rescuing people from the Mediterranean.³⁶ These structural problems and specific cases demonstrate that the situation deserves close monitoring.

On the matter of political resilience, Italian political parties, in particular after the end of the "First Republic", have often been controlled by strong leaderships and thus leave limited margins for citizens' involvement. This has been the case since Enrico Letta (PD) government's 2014 abolition of public funding for parties, which was originally designed to limit corruption. The only way to publicly finance political parties today is through tax declaration, via which an individual can donate a portion of their personal income tax to a specific political party. However, this legislation mostly privileges big and already rich political parties.³⁷ Overall, the Italian party system is characterised by extensive polarisation between different parties and high volatility within coalitions. Furthermore, the frequent changes to the electoral system do not help structure a clearly predictable competition between the different alliances: as a consequence, instead of offering credible alternatives to the electorate, Italian parties often find themselves in a never-ending electoral campaign.

Finally, concerning the subsidiary factor of civic resilience, the mobilisation of Italian citizens is still higher compared to that of other democracies. However, while Italians often participate in demonstrations and initiatives, they tend to vote less frequently. The declining turnout for all recent (national, regional, or local) elections is particularly evident in the south of the country and among poorer voters.³⁸

2.3. Most important contextual factor: economic resilience

Italy is a prosperous country: its GDP amounted to US\$ 2.108 trillion in 2021, the third largest economy in the EU. Italy is known globally for its excellence, particularly in culture, tourism, food, and fashion, not to mention the automobile industry. Therefore, its strong economic structure and wealth are important components of the country's democratic regime and rule of law resilience.

However, inequalities between individuals and groups are present in the country and are arguably increasing, in particular but not only in the South. According to the Italian National Institute of Statistics (ISTAT), around 25% of the population is at risk of poverty and social exclusion.³⁹ Furthermore, Italian salaries have declined or stagnated since the 1990s (the only EU country), due to the combined impact of temporary and low-paid jobs and the absence of a legal minimum wage.⁴⁰ Even after the economic recovery following the COVID-19 pandemic, this economic stalemate led the working class and lower strata more generally to pay the highest price for inflation in the Eurozone, as well as after the beginning of the Russian full-scale invasion of Ukraine and the resulting energy crisis (the indexation of salaries was eliminated in the 1980s).

On that point, many observers have noted the Meloni government's policies that have further worsened conditions for the poor and unemployed. In its first budget law in 2022, the government introduced a flat tax of 15% for those earning less than EUR 85,000 per year, increased the limit of cash payments from EUR 2,000 to 5,000, and decided to drastically cut the basic income (*'reddito di cittadinanza'*, approved during the first Conte government) for most of its beneficiaries who are deemed 'able to work.'⁴¹ On this point, all those aged between 19 and 59 without disabled persons or children in their family did not receive their allowance as of September 2023: of the 2.3 million people who received this benefit in 2022, it has been calculated that almost half of them were left without

at the time of writing.⁴²

To touch briefly upon public discourse and social resilience, there is vibrant public debate in Italy, with many associations for rights and freedom (such as Antigone, which monitors the conditions of detainees)⁴³ and the rule of law (such as Openpolis, which specialises in public administration transparency matters, among those mentioned before in this paper).⁴⁴ However, reports by these and other associations tend to be largely ignored by major media outlets.

3. Impact of crises on the rule of law: migration in focus

Since the 1990s, the arrival of asylum seekers on Italian seashores has generated major consequences for Italy's party and political systems. Per the 2002 Bossi-Fini Law, Italy has a very restrictive migration legislation, which makes it difficult (if not impossible) to legally enter Italy from non-EU countries without a work permit obtained *before* reaching the country. With the exception of the 2014 Mare Nostrum mission, in which the Letta government mobilised the Italian army to find and rescue refugees, Italy's response towards refugees arriving from its Mediterranean neighbours has often been harsh and securitised. In fact, its responses have also prioritised reaching agreements with militias in Libya (and with authoritarian governments Tunisia, cf. the conclusion, or in early November 2023 with Albania to displace refugees' identification procedures outside the Italian territory) or patrolling North African shores rather than approving new migration legislation that respects human rights and favours an equitable distribution of asylum seekers across Italy and other EU countries. Moreover, between 2018 and 2019, Salvini's 'Immigration and Security' decrees eliminated one of the instruments that guaranteed humanitarian protection to asylum seekers. Salvini, then Minister of Internal Affairs, personally refused or delayed the disembarkation of many refugees rescued by NGOs and the Italian coast guard.

Although these decrees were modified during the second Conte government, the Meloni administration has approved further restrictions. In particular, the government has refused to increase the capacity of reception centres in its territory – where asylum seekers are identified and helped to prepare applications for international protection – while it has approved a measure to extend the permanence in

pre-expulsion centres for those who cannot obtain refugee's status (as of September 2023, refugees can avoid detention if they pay a deposit of around EUR 5,000).⁴⁵ Furthermore, the government has only moderately increased the annual number of work permits for foreigners willing to come to the country. These measures demonstrate possible breaches of international law and endangers Italy's rule of law resilience. The government has also continued criminalising and discouraging NGOs from rescuing lives in the Mediterranean, often providing harbours to disembark in remote parts of the country far from the Strait of Sicily. Following the tragic shipwreck in a small village on the shore of Calabria (Cutro, late February 2023), Meloni's Council of Ministers even passed a new decree to tighten up the consequences for the felony of 'illegal migration' and other restrictions to the special protections for asylum seekers and refugees.

One further contentious point directly connected to rule of law is the 'state of emergency' in relation to migration, declared by the Meloni administration in April following a press conference. However, the government announced and appointed a specific 'migration emergency' commissioner prior to approving the relative decree (which was publicised around ten days after its announcement). As many reports have pointed out,⁴⁶ it is unclear to what extent the emergency powers of the commissioner already belonged to the exclusive competencies of government ministries.

Moreover, together with the harsh politicisation and securitisation of Italian politics, the media framing of migration as a recurrent 'crisis' (or 'invasion') might contribute to further endangering the consolidation of the rule of law in Italy. In particular, the practice of applying lower standards of legal protection to vulnerable groups (such as non-citizens or non-resident migrants) and a strong, top-down approach to decision-making might have repercussions for the entire political community and the overall status of the rule of law in the country.

While it is difficult to identify sources of resilience against government actions in this field, we can nonetheless argue that grassroots organisations for refugee rights have been active in denouncing the government's recent discriminatory policies. While the PD, other parties of the centre-left coalition and the M5S denounced 'illegal migration' and mimicked right-wing rhetoric in the past, both party leaderships have more recently tried to hold the current government to account in parliament on these

controversial issues. One final resilience factor might lie in the activism of individuals within the public administration: for instance, some police officers and coast guard members openly criticised the government and its ministries following the shipwreck in Cutro.

4. Conclusion

Despite a solid and robust democratic history, Italy still suffers significant flaws concerning rule of law resilience. This report has underlined its most important defects and sources of resilience related to the institutional, media, and economic dimensions, with brief mentions of other components. At the time of writing (late September 2023, updated in mid-November 2023), most of the measures approved by the Meloni government analysed in this report raise serious concerns about the further degradation of Italy's rule of law.

Despite being one of the countries facing the most EU infringement procedures (largely related to climate and economic policies),⁴⁷ EU relations with the new government have been largely co-operative, even on the subject of migration. In summer 2023, the President of the EU Commission Ursula von der Leyen accompanied Meloni on her visit in Tunisia, in an effort to link International Monetary Fund loans with an EU/Italy-Tunisia cooperation to block asylum seekers *before* coming to the European shores (the evolution of this agreement is ongoing).

In fact, similarly to more advanced cases of democratic backsliding – such as Hungary – it is the internal aspects of resilience (in the state administration, media landscape, and economic sector) rather than external actions against incumbent governments that are the most crucial elements to cement the rule of law and democracy. It remains to be seen to what extent Italy's rule of law will continue to be resilient to these shocks, and the internal and external consequences of its possible decline.

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About the author

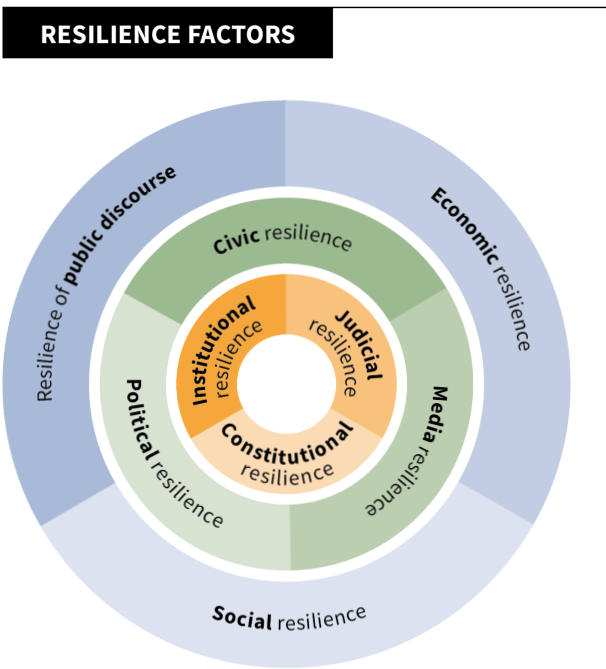
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About the project

RESILIO aims to identify institutional and societal factors that make the rule of law more resilient, thus adding a constructive contribution to academic and policy debates. It draws on a “thick” definition of the rule of law, understood as closely connected to democracy and fundamental rights. The resilience of the rule of law means that the rule of law can experience hazardous events or incremental threats without losing its core function, structure and purpose.

About the paper

This paper is part of the **RESILIO Country Report series**. It is a collection of compact analyses that assess the source of rule of law resilience in each EU member state by examining the most prominent resilience factors, using the analytical framework of the RESILIO model.



RESILIO offers a multi-layered model of the rule of law resilience. Systemic dimension (orange) reflects upon the resilience of the legal setup; subsidiary dimension (green) looks at the phenomena and tendencies present in societies as possible facilitators; and contextual dimension (blue) analyses the broader habitat, determined by structural and systemic variables like economic growth, social cohesion, and general political climate. RESILIO also takes into account the horizontal effects of unpredicted and unprecedented crises that can affect all dimensions of rule of law resilience with different intensity.

While each factor is necessary for a resilient rule of law, they are only sufficient in combination.

The considerations in this paper are compatible with the developed conceptual model of the resilience of the rule of law. They focus on **social resilience** as a contextual factor strengthening the rule of law.

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