



The transnational protection of fundamental rights: experiences of Italian civil society in the European civic space

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Summary

This study investigates the capacity of Italian civil society to participate in the political process at the European level by analysing the main strengths and weaknesses of some of the participatory tools offered by the European Union. It also examines the experience of some Italian civic activist organisations that have been active at the European level and made use of these tools.

The study brings to light the advantages of a more extensive action at European and transnational level and aims at fostering a deeper understanding of European participation channels in order to stimulate a more significant and impactful involvement of Italian civil society.

*The information contained in the boxes is up to date as of 2023.

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1. INTRODUCTION

This study represents the continuation of the study carried out by OBCT in 2021 as part of the *Winning the Narrative project*, entitled *The Italian civil society: from target to antidote to the crisis of democracy?* with which we returned an updated picture of the Italian context in relation to what is internationally defined as the shrinking of civic action spaces (O’Flaherty, 2017; Civicus, 2021)¹.

This first study presented a set of recommendations addressed both to policy-makers and donors, as well as to Italian civil society. Among the recommendations addressed to the latter, we stressed the importance for civic activist organisations to make greater use of the opportunities for action in the **European space**, both through some tools offered by European institutions and through the creation of transnational coalitions with organisations from other countries that are engaged in the defence of civic space.

The **shrinking space for civic action** at the national level and the growing awareness that many domestic challenges – such as migration, environmental protection and the protection of civil rights – can only be addressed across national borders have led some Italian civil society organisations to start looking at the European Union (EU) as an essential political space.

The results of the previous study highlighted that **a number of Italian civil society organisations work across domestic and international politics**: some of the civil society representatives interviewed in the summer of 2021 had in fact recognised the advantages offered by the European political space to advocate their causes on several levels: international, European and national (Chiodi et al. 2021: 87).

For instance, **transnational monitoring** – i.e., the possibility of leveraging opinions or reports of European and international agencies (shadow reports, reports of special rapporteurs of international organisations) – was brought to our attention as a useful tool to exert pressure on national governments or institutions to respect fundamental rights and to counter the sovereigntist drift that challenges the involvement of other actors in the national public sphere (Chiodi et al. 2021: 49).

Likewise, participation in **European networks** was also defined as beneficial for Italian civil society: from the point of view of political action, the large number of actors that can form alliances with at the European level allows for the exchange and sharing of political strategies, ideas and approaches (Chiodi et al. 2021:42). However, the previous research showed that Italian civil society does not fully take advantage of the European and transnational space. Two are the main obstacles for the majority of organisations:

¹ [Luisa Chiodi, Fazila Mat, Serena Epis, \(2021\) Italian civil society: from target to antidote to the crisis of democracy?, OBCT/CILD](#)

on the one hand, the difficulty in finding their way around and operating within the complex European institutional structure, which makes it difficult to identify suitable respondents, tools and strategies and requires specific competences; on the other hand, the lack of resources – human and economic – to engage in European and transnational work in a well-structured and consistent manner.

In consideration of the wave of sovereignism that is sweeping the country – combined with an alarming return to the era of delegitimisation and criminalisation of civic activist organisations – it becomes all the more important to gain a deeper insight into the functioning of the tools and channels of transnational mobilisation opened by the EU in order to defend democracy and fundamental rights.

BOX 1 - A further shrinkage of civic space for civil society in Italy?

Following the appointment of the new Italian government in October 2022, the topic of migration has once again torn the Italian and European political debate². A few weeks after taking office, the government led by Giorgia Meloni of Fratelli d'Italia faced its first diplomatic crisis, in this case involving France over the landing of the humanitarian ship Ocean Vikings belonging to the NGO SOS Méditerranée³.

In addition to causing confusion and concern in the European political space⁴, the political crisis between Italy and France has also led to a **renewed hostile climate towards humanitarian non-governmental organisations (NGOs)** active in the field of reception and solidarity: the introduction of restrictive regulations and repeated verbal attacks brings to mind the period of criminalisation suffered by Italian civil society between 2016 and 2019.

From a regulatory point of view, between October and November 2022, the new Italian government introduced two ministerial decrees to restrict the

2 [Meloni respinge rifugiati e giornalisti. Ecco il volto del governo sovranista](#), Domani, 06/11/2022

3 For more information: [L'attacco dell'Italia alle ong fermato dall'Europa](#), Internazionale, 15/11/2022
[Come siamo arrivati alla crisi diplomatica con la Francia sui migranti](#), il Post, 12/11/2022

4 [Brussels steps in as Italy and France fight over migrant boats](#), Politico, 11/11/2022

Search and Rescue (S&R) activities of humanitarian ships of two NGOs: SOS-Humanity and Doctors Without Borders. A **new decree-law** introducing ‘Urgent provisions for the management of migration flows’⁵ also came into force at the beginning of January 2023. The decree was harshly criticised not only by some major humanitarian NGOs (Emergency, Doctors Without Borders), and other civil society organisations, but also by representatives of international organisations such as the Council of Europe’s Commissioner for Human Rights⁶, who denounced its **illegitimacy** and **violation of the fundamental principles of international law**⁷.

The decree, which introduces yet another **code of conduct** for NGOs engaged in the rescue of migrants in the Mediterranean Sea with the explicit aim of countering a general threat to public safety, is a further restriction on the work of humanitarian NGOs, hindering their H&R activities in Italian territorial waters.

If the introduction of restrictive regulations hampers the field activities of humanitarian NGOs, verbal attacks by members of the government raise fears of the beginning of a **new phase of criminalisation of civil society**. An example of these defamatory attacks is a statement by the Italian Minister of Defence who, during an interview, called humanitarian NGOs ‘floating community centres’ and questioned their good intentions by claiming that the organisations seem more interested in criticising and opposing government decisions than in saving lives at sea. Not only do statements like this undermine the reputation of NGOs engaged in H&R, but they also have negative repercussions on civil society as a whole⁸.

Crosetto: “Le ong sono centri sociali galleggianti”

/ di HuffPost



HuffPost, 14 November 2022: <https://www.huffingtonpost.it/politica/2022/11/14/news/migranti-10631927/>

- 5 [Decreto legge Disposizioni urgenti per la gestione dei flussi migratori](#), Gazzetta Ufficiale, 02/01/2023
- 6 [Council of Europe: rebuke to Italy about NGOs and sea rescues. “Consider withdrawing or revising Decree Law no. 1/2023”](#), Sir Agenzia d’Informazione, 02/02/2023
- 7 [Appello della società civile al Governo: 8 mila firme contro i respingimenti collettivi](#), ASGI, 21/11/2023
- 8 Crosetto: [“Le ong sono centri sociali galleggianti”](#), HuffPost, 14/11/2022

The great resonance that the so-called Qatargate – the corruption scandal that swept through the European Parliament in December 2022 involving Italian MEPs but also two NGOs – had nationwide also affected the credibility and legitimacy of civil society: many civic organisations warned that the generalisation of misconduct and corruption to the entire sector risks spreading a negative narrative of civil society, thereby generating confusion and mistrust in public opinion about the role and function of these actors⁹.

9 [Nel Qatargate naufraga la favola buonista delle ong](#), Panorama, 14/12/2022

1.1 Study Aim and Methodology

The aim of this study is to analyse the **relationship that Italian civil society has with the European political space** in its advocacy work for fundamental rights and democracy in our country and in Europe. Our goal was to understand what challenges and obstacles Italian organisations face when they take advantage of the spaces and mechanisms of participation offered by the EU, be it interaction with European institutions or the creation of transnational networks. The study was guided by two key questions: does Italian civil society know and take advantage of the opportunities for action offered by the European space? How effective are European participatory tools for the work of civil society organisations?

In order to obtain a more comprehensive overview of the topic, we analysed the existing literature, including academic articles, reports from civil society organisations and European institutions and agencies. Between summer and autumn 2022 we also carried out **9 in-depth interviews** with representatives of Italian civil society organisations primarily working in the field of human rights, migration and LGBTQ+ community rights, which over the years have explored European and transnational mobilisation spaces, including the European Citizens' Initiative (ECI) and strategic litigation¹⁰. Lastly, this work also includes a reflection on our experiences as OBCT (Balkans Caucasus Transeuropa Observatory) in participating in European coalitions.

10 The list of organisations interviewed can be found on page 26.

2. EUROPEAN POLITICAL SPACE: OPPORTUNITIES FOR CIVIL SOCIETY

Civil society is a central actor for the functioning of liberal democracy. The organisations that are part of it – associations, NGOs, foundations, etc. – contribute to its functioning mainly because they are one of the **intermediate bodies** that link citizens and institutions by channelling the demands emerging from society towards politics but also by raising public awareness on key issues for the protection of fundamental rights. The functions performed by civic organisations also include monitoring the work of institutions (the so-called watchdog), thereby ensuring the **transparency** and **democratic accountability** of political processes. Ultimately, thanks to the participation mechanisms in place, and based on their own expertise, civic organisations contribute to the broader process of **legislation and public policy-making**.

In the EU political space, civil society operates in **three main directions**. The first **two are vertical**: from the EU to its own country and vice versa, from the national to the European context. For instance, civil society can ensure – through active monitoring – that its own country correctly implements European policies, by lobbying and reporting any delays or shortcomings in the transposition and/or implementation of legislation. On the other hand, national civic organisations also act horizontally: in collaboration – or not – with umbrella organisations that bring together realities from several member states, they can contribute to the definition of common policies, bringing local requests and demands to the supranational level. By **networking** with organisations in other countries, civil society fosters the creation of a European public space.

A research strand within European studies focuses on the role of civil society in the European political space. In recent decades, academic production has focused mainly on Brussels-based organisations, analysing their activities, strategies and ability to influence European decision-making processes (Salgado and Demidov, 2018: 57). Since the early 2000s, in the context of debates on the democratic deficit and the EU's lack of legitimacy, the attention of various academics and researchers has focused on **participatory governance** models, focusing mainly on the European Commission's efforts to involve civil society in EU policy-making.

This predominantly European perspective does not sufficiently take into account national organisations, equally relevant actors who, although operating mainly at the domestic level, quite often take advantage of '**the European road**', as defined by Salgado and Demidov (2018), to advance their own agenda and influence decision-making processes – on issues such as human rights, migration and environmental protection. The space within which national civil society organisations can operate has in fact taken on an increasingly European dimension over time, making civic activist

organisations key actors in promoting the democratic values and fundamental rights on which the EU and its member states are founded (European Civic Forum 2022).

Today, the European dimension of most policy issues can no longer be neglected, for both nationally and locally active organisations: legislative proposals of the European Commission, debates in the European Parliament, issues that are discussed by the EU Council, reports of the various Agencies and rulings of the EU Court of Justice have a direct impact on the lives of citizens and civil society is called upon to address them (Dunin-Wąsowicz 2021).

Focusing only on Brussels-based NGOs therefore means settling for a biased picture of the role of civil society in the European space. Adopting a broader perspective that also takes into account national organisations makes it possible to understand how the EU influences and transforms the repertoire of civil society action as well as how civil society contributes to improving the democratic quality of the Union itself.

Among the studies that offer a first analysis of the relationship between national civil society and the European space, Odasso (2018) presents an analysis of the views about the European Union that emerge among civil society activists by distinguishing three categories: instrumental, pro-European, Euro-sceptical. When the view adopted is **instrumental**, the EU allows for circumventing possible obstacles encountered at the national level: for instance, if national governments are reluctant to listen to the demands coming from the civic sector, organisations become more inclined to take action at the European level, regarding the EU institutions as an actor capable of putting pressure on national governments. The **pro-European** view is typical among those who, while dealing primarily with local/national issues, see their work within the broader EU context. These are often younger activists who have developed language skills and the ability to use new technologies and media. But there are also those who have a **Euro-sceptical** view and distrust the European political dimension, seeing it as a space for a narrow elite of experts, where ideals and values are theoretical discourses that are rarely reflected in concrete policies; the management of migration flows is often brought up as an example of the failure of European solidarity (Odasso 2018).

Among the representatives of civil society organisations we interviewed, the three views identified by Odasso can be found to varying degrees, although in all cases they are people who do not refrain from using the tools offered by the EU. In our report we focus on a specific issue - which has not been much investigated in literature to date - concerning the concrete ways in which civil society uses the mechanisms of European participation to pursue its demands as well as the obstacles it encounters when operating transnationally.

3. SOME EUROPEAN EXPERIENCES OF ITALIAN CIVIL SOCIETY

In recent years, in a traditionally pro-European country such as Italy, even among civil society organisations a more detached, instrumental or even Euro-sceptical attitude towards the European Union has spread, generated by disappointments with the policies adopted in fields such as migration but also by various difficulties in delivering results at EU level.

On the other hand, the interviews conducted with representatives of Italian civil society organisations also reveal a shared awareness that today the European space constitutes the “**least scope for civic action**”, as one of our respondents put it (int. 7). The institutional developments of the last decades, among others, have strengthened the EU’s position in the field of human rights protection, making the European political and legal space crucial for civil society organisations dealing with issues such as migration, civil rights and anti-discrimination.¹¹

The generational change is also a factor that is contributing to giving a more European and transnational scope to the work of Italian civil society: “*many young people have joined the association (...). This generational turnover allows us to have people with a different vision, a more European vision. We are seeing an internal exchange of knowledge and skills between those who have been in the association for a long time – and perhaps have a more typically Italian vision – and those who were born in the 1990s and have a different vision*” (int. 3).

In a context of growing difficulties at the national level, Italian civil society is more and more testing the opportunities and participatory tools offered by the EU’s multi-level structure in order to achieve, through transnational lobbying and advocacy efforts, policy changes also at the national level¹².

In the following sections we will present some of the European-level activation tools that Italian civil society has used in recent years, highlighting their potential or arguing possible weaknesses: the use of European law to bring forward **strategic litigation**; participation in a **European Citizens’ Initiative** (ECI); participation in

11 Between the end of the 1990s and the beginning of the 2000s, the Treaties of Amsterdam (1999), Nice (2003) and Lisbon (2009) led to a progressive expansion of the EU’s competences in the field of human rights. Moreover, since 2007, the EU Charter of Fundamental Rights has officially become a binding legal instrument for all member states. Consequently, the Court of Justice of the EU also interprets its mandate more broadly, extending it to human rights issues.

12 The EU’s institutional set-up introduces different authority levels other than the national level and Italian civil society has the possibility of engaging with them. See Ruzza (2021).

consultations with the Rule of Law Mechanism; and **transnational advocacy** efforts through the building of coalitions between European organisations.

3.1 Strategic litigation: the new frontier for the defence of fundamental rights

According to some of our respondents, **strategic litigation** represents a real ‘new frontier’ for civil society. On several occasions, it has proven to be the most effective strategy for achieving concrete results (Chiodi et al. 2021: 50–51).

In recent years, a number of Italian civil society organisations have started to exploit the principle of the **primacy of European law** over national law by filing appeals before national courts and using the preliminary ruling procedure to go as far as the Court of Justice of the EU (CJEU) in order to reaffirm the centrality of the principles underpinning the European legal system, including the protection of minorities and the inviolability of fundamental rights.

As one of our respondents reported: *“through strategic litigation (...) in recent years we have succeeded in obtaining the amendment of some discriminatory regulations, even reaching the Court of Justice of the European Union”* (int. 3). These words are echoed by another respondent: *“the EU rules and the work done by the Court in Luxembourg have greatly helped the condition of migrants in our country”* (int. 2).

For civil society organisations that focus on litigation, the EU’s regulatory body is fundamental, because it provides binding rights and duties that every member country is obliged to respect. In strategic litigation cases, discrimination often arises because of a **conflict between national and European law**, but also due to **non-compliance** or **delays in the transposition or implementation** of EU law by national institutions.

Decidere di avviare un’azione legale non è sempre una strada semplice e diretta; al contrario, come ha sottolineato un nostro interlocutore *“il lavoro attraverso il contenzioso strategico è spesso un lavoro per tentativi, perché i diritti si conquistano anche con delle vittorie intermedie o addirittura con delle sconfitte”* (int. 3).

The decision to take legal action is not always an easy and straightforward path; on the contrary, as one of our respondents pointed out, *“working through strategic litigation often consists of **trial and error**, because rights are also gained through intermediate victories or even defeats”* (int. 3). As is evident from the testimony of those who have engaged in this type of work over the years, there are two ways in which strategic litigation can be conducted: through individual cases, or through collective action. An example of strategic litigation based on individual cases concerns the right to the birth allowance or so-called ‘baby bonus’. According to Italian law, only Italian citizens, citizens of an EU member state or non-EU citizens residing in Italy with a long-term residence

permit could apply for this benefit. All holders of a different residence permit, such as a single work permit, were thus excluded¹³.

By denouncing the contrast of the national regulation with the **European Directive EU/2011/98** – which establishes the single residence and work permit and guarantees all foreigners legally residing in an EU country equal treatment with regard to social benefits – the lawyers of the Association for Juridical Studies on Immigration (ASGI) have brought the issue to the attention of judges in various Italian cities, achieving success before various courts: “(in the case of the birth allowance) the cases initiated were really a lot (...). In the end, all those who filed lawsuits obtained the benefit, but it makes no sense that a family support benefit was only granted to those who decided to file a lawsuit” (int. 2).

In this specific case, as our respondents pointed out, the **judges** played a very important role in adopting a homogeneous approach in the face of the inconsistency between the Italian and European systems, making the Community rule prevail over the national one in the name of the right to equal treatment of workers in the European area: “The odd thing was the homogeneity of decisions by judges, which is generally unusual when it comes to conflict between Italian and European rules. This was indeed a case of non-application of the national rule on a very large scale” (int. 2).

In the case of a collective action, on the other hand, the associations legitimately entitled to act ask the judge to take a measure that concerns all subjects in the same situation. This path has been pursued in reference to another family support benefit, the so-called ‘nursery school bonus’. As with the birth allowance, the Italian regulations limited access to the benefit to foreign families with long-term resident status only, thus entering into conflict with the above-mentioned EU directive/2011/98. After an appeal filed by ASGI, the Court of Milan ordered – with a ruling in 2020 – the immediate non-application of the limitations provided for by the Italian law for conflict with EU law, thus extending the right to all foreigners regularly residing in Italy¹⁴.

In some circumstances, by taking a national case as far as the European Court of Justice, it is possible to obtain a ruling valid for the entire European area, as with the dispute on the right to the single and universal allowance for children abroad. In order to access the allowances, Italian law permitted Italian workers to include children living abroad in their household, but denied this right to foreign workers. In 2020, the Court of Justice of the EU found that this law conflicted with two European directives (Directive 109/2003 and Directive 2011/98), reaffirming the right to equal treatment for workers from an EU

13 For more information on the strategic litigation case concerning the birth allowance, please refer to ASGI’s review of articles: <https://www.asgi.it/tag/bonus-bebe/>

14 [Bonus asili nido: il Tribunale di Milano mette fine alla discriminazione degli stranieri](#), ASGI, 16/11/2020

Member State and foreign workers. As one of our respondents pointed out: “*having been issued by the Court of Justice of the EU, the ruling, which originates specifically from the Italian case, establishes a right at European level and is binding on all other member states*” (int. 4)¹⁵.

Undoubtedly, as one respondent pointed out, it may happen that neither national nor European regulatory provisions can provide the legal basis for civil society to appeal. With regard to family assistance measures, for example, the decree implementing the enabling act 46/21¹⁶, which came into force in March 2022, establishes that the universal single allowance can be granted, among others, to foreigners holding a long-term permit, a single work permit and to holders of international protection, i.e. political asylum or subsidiary protection. As explained by one of the lawyers involved, holders of special protection¹⁷, an increasingly numerous group in Italy, who are not protected by any EU directive, are excluded from this benefit because: “*The EU directive has always given member states the freedom to introduce forms of protection beyond subsidiary protection or political asylum for refugees. Obviously, the Italian state was very careful not to do so, and as a result these people were left out*”¹⁸ (int. 2).

In other cases, the strategic litigation of Italian associations leverages the legal path of the European Court of Human Rights (ECHR) in Strasbourg, which is not an institution of the EU but of the Council of Europe (CoE) and can be accessed after passing all levels of judgement at the national level. In this case, it involves asking the Court to assess the compliance with human rights for specific cases, which Italy and 46 other CoE member states have committed to protect.

Italian civil society has achieved important results in this area as well; this has been accomplished through the use of strategic litigation to which individuals can refer to obtain individual reparations. Over the years, Italy has emerged as one of the European countries that does not provide any form of recognition for same-sex couples. In the absence of an egalitarian marriage law, Italian civil society has followed the judicial path to obtain recognition of the right to form a family, ultimately turning to the ECHR, which, in the Oliari et al. vs. Italy judgment, condemned Italy for violating the fundamental rights of LGBTQI+ persons¹⁹.

15 [La Corte di Giustizia UE ripristina l'uguaglianza tra famiglie del/della lavoratore\(trice\) italiano/a e straniero/a](#), ASGI, 25/11/2020

16 [Legge n.46/2021: Delega al Governo per riordinare, semplificare e potenziare le misure a sostegno dei figli a carico attraverso l'assegno unico e universale](#).

17 E.g. social protection, victims of domestic violence or labour exploitation and holders of childcare permits. For more details see: <https://www.asgi.it/notizie/assegno-unico-universale-modificare-le-norme-che-escludono-migliaia-di-stranieri/>

18 The respondent refers to [2004/83 relativa alle Condizioni da soddisfare per ottenere la concessione dello status di rifugiato o di beneficiario di protezione internazionale](#).

19 [Sentenza di Camera - Oliari e altri c. Italia](#), Council of Europe, 21/07/2015.

Although family law is not a competence of the European Community, and the member state has the right to autonomously define its own legislation in this field, having to protect the right to free movement of citizens in order to ensure the functioning of the single market, there is a need to guarantee equal rights also in other areas, among which the right to the protection of family life for same-sex couples with children who move to another member state.

The issue is now on the agenda in the Italian domestic political debate after the Ministry of the Interior blocked those municipalities that, in the absence of specific national legislation, had taken a step forward by offering the possibility of obtaining the transcription of birth certificates and thus of filiation relationships of same-sex parents at the local civil registrar's office²⁰.

In the meantime, a rejection decision by the European Court of Human Rights (ECHR) was also issued; a number of same-sex and different-sex couples had appealed to the ECHR in order to obtain the automatic transcription in the Italian registry office of children born abroad through surrogacy. The ECHR rejected the appeals on the grounds that Italian law provides for the right to so-called 'stepchild adoption', thus pointing to the existence of a solution that protects the child's right to a family but also the state's right to prohibit the practice of surrogacy²¹.

As our respondents have repeatedly pointed out, strategic litigation is a long and complex process where the organisations are required great commitment, in terms of the skills and time needed and hence the overall resources to be allocated to the case in question. Moreover, it is clear that without the political will to address the issues raised by civil society through legal action, it is not possible to bridge regulatory gaps (as in the case of special protection holders), nor is it possible to solve the problems that the country has systematically failed to address, as in the case of prison overcrowding. On this issue, after years of improvement, thanks to the Torreggiani ruling in 2013 that we also discussed in the previous report (Chiodi 2021:51-52), we have returned to an emergency situation.

Nevertheless, it is clear that by expanding the legal basis and the institutions to which appeal can be made, the European space increases the opportunities for legal action to protect fundamental rights. Finally, in those countries where the operation of the rule of law is guaranteed, litigation also becomes a means of advocacy when rulings endorsing the plaintiffs' arguments are obtained. It is clear that civil society organisations need to deploy articulated strategies combining legal litigation for the protection of fundamental rights with public awareness work to ensure that parliament introduces legislation where it is lacking and that relevant institutions guarantee its implementation.

20 [La procura di Padova ha impugnato gli atti di nascita di 33 figli di coppie omogenitoriali - Il Post](#)

21 <https://www.ilsole24ore.com/art/maternita-surrogata-legittimo-no-trascrizione-via-e-l-adozione-AEfoEunD>

3.2 Popular legislative initiatives as an advocacy tool

The **European Citizens' Initiative (ECI)** is an instrument of participatory democracy that can be used by European civil society and on which many expectations have been raised. This was introduced by the Lisbon Treaty to give citizens the opportunity to shape the European political agenda and to submit legislative proposals to the Commission on issues within the competence of the EU. From a procedure point of view, in order to submit an ECI, it is necessary to collect at least 1 million signatures of European citizens within a 12-month period; the regulation also takes into account the variety of countries in the EU and their different sizes, establishing a structured mechanism for collecting signatures that ensures a representation of at least 7 countries and quotas of signatories proportional to the number of MEPs elected in each member state²².

Italian civil society committed to expanding its political action at the European level has contributed on several occasions to the European ECIs. *The ICE We are a welcoming Europe, let us help!*²³ is an interesting case because it concerns the issue of shrinking civic space. This initiative, launched in February 2018, aimed to push the Commission to clarify the provisions of **Directive 2002/90/EC**²⁴ and make explicit the distancing of the European institutions from the criminalisation of solidarity towards migrants that was spreading in various member states²⁵. Promoted by organisations from 18 EU countries and coordinated by the Brussels-based NGO Migration Policy Group, the campaign was fairly successful at the European level but failed to collect the million signatures needed to present the initiative to the Commission.

In Italy, civil society was able to mobilise national public opinion in favour of the initiative: more than 140 organisations contributed to the campaign, collecting a total of 65,200 signatures, between online forms and paper forms distributed during the 12 months in Italian cities, i.e. more than 10,000 more than the minimum threshold required for Italy²⁶. As the interviews revealed, the success of the Italian national committee was due to the existence of a coalition that had been previously built around another national campaign on migration issues, namely *Ero straniero. L'umanità che fa bene*²⁷.

22 [Iniziativa dei cittadini europei; Allegato 1, numero minimo di firmatari per stato membro](#)

23 [Siamo un'Europa che accoglie, lasciateci aiutare!](#), Unione Europea

24 [Direttiva 2002/90/CE volta a definire il favoreggiamento dell'ingresso, del transito e del soggiorno illegali](#)

25 More information on the specific proposals made by the initiative can be found here: <https://www.migpolgroup.com/index.php/portfolio-item/welcoming-europe/>

26 ["Siamo noi l'europa che accoglie"](#), Legambiente, 20/02/2019 ;

27 The campaign started in 2017 to promote a popular initiative law to amend the so-called Bossi-Fini law. The campaign managed to collect around 90,000 signatures to present the popular initiative law, which was filed in parliament in October 2017 (Interview 5). The draft law lost its validity after the end of the 17th legislature, however the coalition continued and still continues to work to improve the management

The participation in the European campaign of so many civic activist groups proves once again the composite nature of Italian civil society – as emerged from the first report (Chiodi et. al. 2021) – but also the spreading awareness of the importance of acting transnationally. As one of our respondents pointed out: *“When the promoter of the campaign contacted us, we immediately accepted. This was partly because we already had the network and the experience of collecting signatures and we were also happy at the idea of being able to do an action at European level, and also because at that time the European dimension with regard to migration policies was fundamental. In short, we felt that looking at the national legislation but also trying to change the European legislation was **an almost obligatory step**”* (int. 5).

From an organisational point of view, in order to be able to launch and carry out an initiative on a European scale, civil society organisations also need to be able to invest energy in the creation of national coalitions capable of working together at the European level. Participating in an ECI means being willing and able to team up with coalitions in other European countries: *“it’s like running a relay race: if all the teammates run fast but there is no good teamwork, the baton may fall and you lose the race”* (int. 7).

The system of signature collection for an ECI based on national minimum quotas means that the result in each country is crucial for the success of a popular legislative initiative at European level. However, this system has an impact on the possibility of creating strong transnational coalitions: although we need everyone’s contribution to achieve a result, we act as citizens, organisations and coalitions from member countries and not as European citizens, organisations and coalitions in a transnational alliance.

With respect to the experience of the ECI in question, while our respondents mentioned the **vertical connection** with the Brussels-based promoter organisation, they complained about an **almost total lack of collaboration at horizontal level**: *“We did not know exactly which other realities were involved and we did not even know how they were operating in the various countries”* (int. 7). The need to safeguard fair representation from various member states in order to prevent the larger ones from imposing their initiatives on the smaller ones, helps to explain the obligation to have minimum quotas of signatures per country involved. However, this is a disincentive to building transnational relations as it puts the burden of signature collection on national committees and only maintains vertical coordination between Brussels and national coalitions.

It could be argued, therefore, that it is the **very nature of the EU instrument**, conceived like other aspects of European multilevel governance from a national–state perspective,

of migration flows in our country. For more relevant information, refer to the website: <https://erostraniero.radicali.it/>.

that discourages, at least in part, the emergence of new transnational alliances (Alemanno 2023). It comes as no surprise that “*the network of organisations that grew up around the ‘Ero Straniero’ campaign continued to work even after the end of the signature collection and the presentation of the popular initiative law, while unfortunately the same cannot be said of the European network that grew up around the ECI We are a Welcoming Europe*” (int. 5).

Another weakness highlighted by our respondents is the fact that the ECI mechanism, as it was conceived, considerably limits the direct effectiveness of the citizens’ initiative and turns it into a kind of recommendation to the European legislator: “*It is clear that one cannot directly change regulations, directives, etc., but can only suggest changes. It can’t be compared to a popular initiative draft law in Italy. (The ECI) is rather a sort of recommendation that one makes to the European legislator without the possibility of directly changing the regulations through a referendum as happens with a popular initiative law in Italy*” (int. 5).

The path from an ECI to possibly adopting a new European rule – or amending an existing one – is **long and uncertain**: even if a million signatures are collected in seven member states and the initiative is submitted to the Commission, there is no constraint that requires the Commission to accept the citizens’ proposal and start the legislative process that also involves the Council and the European Parliament. To date, few ECI have succeeded in having a popular legislative initiative adopted, which has led to a greater scepticism that this instrument can really foster bottom-up participation in the construction of the European public sphere.

Although civic mobilisation did not lead to the desired results in terms of changes in legislation, some of our respondents believe that participating in the European campaign was nonetheless important. *We are a Welcoming Europe* was the first ECI focused on the issue of migration in Europe that was able to create, in a remarkably tough moment for civil society and on a delicate and divisive issue, what one of our respondents described as “*a movement of ideas, a **common purpose** within European civil society working in the field of reception. (...) The result was the establishment of an inter-European network that was extremely valuable (...). It made me feel a European citizen like never before since I’ve been working on these issues*” (int. 1).

During the years of the migration emergency and in a context of widespread hostility, the mobilisation of European civil society contributed to creating an image of a **solidary Europe** capable of reporting and reacting to the attempts of delegitimation and criminalisation that it was experiencing. It also contributed to producing a **counter-narrative** on the issue of migration that clearly contradicted the prevailing securitarian and closed-minded approaches.

Therefore, working on raising public awareness remains a crucial task for civil society, both in Italy and in Europe. As some of our respondents put it: *“I believe that the campaign mainly served to bring forward a different narrative on migration and reception. Unfortunately, I don’t believe it has actually contributed to changing things in the short term. The good thing though is that initiatives like ICE exist and are promoted because they provide a different narrative”* (int. 1); *“It is necessary to work to change the narrative when dealing with all issues, but even more so when it comes to migration and reception. otherwise we don’t stand a chance”* (int. 7).

3.3 Transnational Advocacy with the CASE Coalition

Italian civil society can also take advantage of the EU’s multi-level governance for advocacy activities, i.e. initiatives aimed at influencing policy-makers in order to steer policy choices in a given area towards a position that is aligned with their own worldview or to the interests of particular vulnerable groups and/or specific minorities. Various activities can be ascribed to advocacy work, e.g. media campaigns, publication of analyses and reports, participation in consultations and/or parliamentary hearings to provide input into the formulation of public policies under review.

Within the multilevel structure of the EU, effective advocacy often requires action at both national and European level. In this section we look at the advocacy experience of civil society in protecting press freedom and, more specifically, in response to so-called **SLAPPs (Strategic Lawsuits Against Public Participation)**, an increasingly common phenomenon throughout Europe.

Also known as ‘gag lawsuits’, these legal actions exploit the law to intimidate and silence voices criticising those in a position of power (Rosà 2020).

Targeted against journalists, civil society representatives, activists and human rights defenders, gag lawsuits pose a threat not only to **public participation** and **freedom of expression**, but also to the **rule of law** and the functioning of democracy.

In recent years, European civil society has increasingly mobilised to counter this phenomenon. In response to the murder of Maltese investigative journalist Daphne Caruana Galizia in 2017 – who had 47 defamation lawsuits pending against her – a number of NGOs from various EU countries began to coordinate their efforts by building an anti-SLAPP platform, which in March 2021 led to the official birth of **CASE – Coalition Against SLAPP in Europe**. This alliance now consists of more than 90 participants, including civil society organisations, think tanks, trade unions, activists and human rights defenders from across Europe²⁸.

28 [La comunità internazionale per la libertà di stampa condanna l’omicidio della giornalista Daphne Galizia](#), OBCT, 23/10/2017; [CASE – Coalition Against SLAPP in Europe](#)

Today, the CASE coalition is an important **forum for countering SLAPPs** in Europe: through regular meetings and briefings, activists and journalists who are victims of gag lawsuits can share experiences. This enables the identification of good practices in addressing gag lawsuits that can be applied in various contexts. The first European conference dedicated to SLAPPs, co-organised by CASE and the *European Centre for Press and Media Freedom* in October 2022 in Strasbourg, was an important moment of dialogue and confrontation between journalists, civil society representatives, activists, human rights defenders, politicians and representatives of European institutions²⁹.

Thanks to **advocacy** work and efforts to raise public awareness and involve institutions, the European coalition succeeded in bringing the issue of gag lawsuits to the attention of EU decision-makers and the Council of Europe³⁰. Within the European Parliament, CASE's campaign was supported by a number of MEPs, including Tiemo Woelken and EP President Roberta Metsola, who promoted an initiative procedure (INI - Own-Initiative Procedure) adopted in November 2021 in which the EP advocated new rules to limit the use of grievance lawsuits³¹.

The European Commission also proved receptive to the requests coming from civil society; the commitment of Vice-President and Commissioner for Values and Transparency Vera Jourova was instrumental in this regard³². As far back as October 2020, the European Commission included combating SLAPPs among the priorities of its work programme for the following year³³. Driven by the parliamentary initiative, between the end of 2021 and the beginning of 2022, the European Commission launched a public consultation on gag lawsuits with the aim of gathering material and information useful for proposing appropriate measures. In April 2022, the Commission finally presented a package of measures to counter SLAPPs: a recommendation and a **draft directive**, the latter now to be discussed and adopted by the two co-decision-makers - Parliament and Council - according to the ordinary legislative procedure³⁴.

The submission of the draft directive is also the result of **advocacy work on the European institutions** by the members of the CASE coalition, who for years have been engaged in lobbying, awareness-raising and communication activities, producing and making available on their website research, reports, mapping, lists of pro bono lawyers and other useful resources to counter the phenomenon of SLAPPs.

29 [Contro le SLAPP, la prima conferenza europea](#), OBCT, 07/11/2022

30 The Council of Europe has announced the adoption of a recommendation on SLAPPs in the course of 2023. Although it will be non-binding, the recommendation's added value will be the possibility of addressing a broader pool of states (the CoE in fact includes 49 states, 32 of which are non-EU members): [La Segretaria generale dichiara che occorre rafforzare le norme per affrontare le minacce di azioni legali e di procedimenti giudiziari miranti a limitare la libertà di espressione, Consiglio d'Europa, 20/10/2022](#).

31 [Relazione del Parlamento Europeo](#), 20/10/2021

32 ["Per noi sarà la legge di Daphne": la Commissione Europea contro le querele bavaglio](#), OBCT, 29/04/2022

33 [Programma di lavoro della Commissione Europea per il 2021](#), Commissione Europea, 19/10/2020

34 [Azione dell'UE contro l'abuso del contenzioso nei confronti di giornalisti e difensori dei diritti umani \(SLAPP\)](#)

While the draft directive is undoubtedly a significant first result, the start of the legislative process necessarily requires a renewed pressure on the European co-decision-makers to prevent the Commission's draft directive from stalling or being scaled down. This risk has become even more evident this year after the Swedish-led European Council released a compromise proposal that threatens to substantially change the original text³⁵.

The activities of the CASE coalition are not limited to the European dimension, but also extend to the national dimension through the **working groups** that are active within the member states by helping to monitor cases of abuse of rights and to raise awareness among politicians and the public. In fact, civil society organisations will be responsible for ensuring, as a first step, that national representatives support the draft directive in the EU Council and, subsequently, that governments transpose and implement the legislation once it is adopted.

The Italian working group, coordinated by OBCT, currently brings together more than ten civil society organisations active in different fields - such as press freedom, environmentalism and protection of the rights of the LGBTQ+ community. The diversity of the group's members makes it possible to have a wide range of competences: some work on legal issues, some are experts in awareness-raising campaigns, others in political advocacy and research: the added value of the Italian group lies in the combination of different realities whose competences complement each other for the sake of a common goal, i.e. the protection of freedom of expression.

The national group also serves as a **bridge between the internal and the European dimension**: thanks to its existence, the various Italian civil society organisations that do not participate in the European coalition are regularly informed about developments, legislative and otherwise, taking place at EU level; on the other hand, for the European coalition, the national groups are essential to reach the territorial associations that can provide data from the field and thus guarantee a continuous update on developments in local contexts.

The creation of coordination groups within countries is therefore a way of responding to the increasingly urgent need for dialogue and coordination between European civil society and those engaged at national level, in an attempt to strengthen advocacy and make awareness-raising actions more impactful. In this case, the presence of national organisations that can act as a '**bridge**' to ensure dialogue and exchange between the two dimensions is essential.

35 [I governi boicottano la legge europea contro le querele temerarie](#), Domani, 17/03/2023

However, this type of work between the national and the European is not devoid of obstacles: active participation in the European coalition and the national group requires a significant commitment on the part of civil society organisations, both in terms of time and resources. In this specific instance, in our direct experience with OBCT we are able to offer our contribution in support of the Italian advocacy group thanks to our participation in the parallel *Media Freedom Rapid Response* (MFRR) initiative co-funded by the European Commission for the protection of press freedom in Europe³⁶.

Italian civil society can only carry out advocacy work on the basis of the EU directive only with regard to transnational SLAPPs. Because of the **limited scope of competences** attributed to the EU by the member states in the field of press freedom, the draft directive that the European co-decision-makers are discussing concerns only **transnational SLAPP** cases, i.e. those involving at least two member states. The age-old issue of the limited scope of EU competence in the area of media freedom allows member states to prevent the involvement of European institutions in protecting one of the pillars of liberal democracy, which is the foundation of the EU itself.

National groups are called upon to do double duty: on the one hand they must ensure proper adoption of the European standard for transnational lawsuits, and on the other hand they need to pressure national governments to adopt consistent measures for domestic SLAPP cases. The experience of the CASE coalition is therefore an example of transnational advocacy where civil society manages to create a bridge between the European and national levels to pursue a common interest, in this case the need to protect a fundamental right such as freedom of expression from the growing practice of gag lawsuits. At the same time, it reveals the limits of European advocacy in fields where the EU has limited competence, as is the case with media freedom, which along with other highly critical public policies, is still a field in which member states are not yet eager to surrender their national sovereignty.

3.4 Consultations and the Rule of Law Mechanism

Among the instruments and opportunities that civil society can exploit at the European level are, for instance, the European Commission's public consultations. Both when drafting new legislative proposals and when preparing ad hoc monitoring reports on the compliance of member states with fundamental principles, the Commission organises public consultations aimed at collecting the opinions and comments of European citizens and all interested parties.

³⁶ [Media Freedom Rapid Response](#)

In the present study, we considered as a case study the annual consultations on the new Rule of Law Mechanism, one of the pillars of liberal democracy and one of the founding values of the EU (Box 2). Civil society can leverage the EU's rule of law mechanisms for advocacy and for monitoring institutional work while raising public awareness on the importance of safeguarding fundamental rights.

BOX 2 - The mechanisms for protecting the rule of law in the European Union

The rule of law is one of the fundamental values underpinning the EU (Art. 2 TEU). Pursuant to this principle, every democratic country should provide for a '**check and balance**' system that prevents the government in office from exercising executive power in an arbitrary manner. The pillars of this system include: an independent judiciary, an anti-corruption system, the protection of freedom of expression and the press, and the protection of civic space.

The EU has several instruments - judicial and non-judicial - at its disposal to ensure compliance with the rule of law in its member states. The most powerful instrument is **Article 7 of the Treaty on European Union (TEU)**, which provides both preventive and sanctioning measures (e.g. suspension of voting rights in the European Council) that can be activated against a member country that violates the fundamental values of the EU³⁷. Article 7 is also known as the 'nuclear option' to emphasise role of last resort, which is clearly not a viable option. In the light of an alarming weakening of democratic standards in some member states, over the past decade the EU has made efforts to adopt less drastic instruments in order to intervene and protect the rule of law when required.

In 2014, the European Commission introduced the so-called **Rule of Law Framework**, a procedure that provides for a dialogue between the Commission and member states with the aim of resolving possible threats to the rule of law beforehand and thereby avoiding the activation of Article 7³⁸. In 2016, it was adopted for the first time against Poland. However, it did not have the desired deterrent effect and the following year the Commission was forced to request -

37 [Articolo 7 TUE](#)

38 [Quadro sullo stato di diritto dell'UE](#)

again for the first time – the activation of Article 7³⁹. Subsequently, the European Parliament for its part initiated the Article 7 procedure against Hungary in 2018, after years of continuous attacks on democratic principles and fundamental rights⁴⁰. However, both attempts ran aground when faced with the unanimity rule in the European Council and the mutual solidarity between the governments of the two countries, which through crossed vetoes blocked the activation of the nuclear option.

In 2019, the Commission therefore launched a new **Rule of Law Monitoring Mechanism** with an annual review cycle across all member countries⁴¹. The results of this initiative were three **reports on the rule of law**, published in 2020, 2021 and 2022 respectively.

In 2020, the European Parliament also presented a legislative initiative demanding the introduction of a single binding mechanism to replace and consolidate the various existing instruments for the protection of the rule of law; however, this proposal was not accepted by the Commission⁴².

39 [Rule of Law in Poland: Commission](#).

40 [European Parliament resolution of 12 September 2018](#)

41 [Il Meccanismo per lo stato di diritto, Commissione Europea](#)

42 [The Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights, 2020/2072\(INI\)](#), Parlamento Europeo; [The Establishment of an EU mechanism on democracy, the rule of law and fundamental rights](#), Legislative Train Schedule, 20/03/2023

As part of the **monitoring cycle** and in preparation for the annual reports, the Commission keeps track of the national contexts through a series of consultations and visits to the member states with both the relevant institutions and the various stakeholders. Civil society organisations can also actively participate in the consultations and take advantage of this opportunity to draw the attention of the European Commission to possible limitations and gaps in the national context.

Some Italian civil society organisations have used the Rule of Law Mechanism to take action not only at the national level, but also at the European and transnational level, for instance by participating in the drafting of shadow reports or joint statements together with European coalitions or informal networks of civil society organisations. This is the case, for instance, with the shadow report published in 2023 by *Liberties*, a network of civil society organisations from 19 European countries mainly active in the field of human rights⁴³. This report, which also featured contributions from a number of Italian organisations, offers an independent analysis of the situation of the rule of law in Italy and 18 other EU countries with the intention of drawing the attention of political decision-makers and public opinion to a number of issues that are crucial for the respect of the rule of law and the functioning of European democracy⁴⁴.

Another example is the joint declaration on the Rule of Law Report 2023 signed by 34 European civil society organisations, including two Italian ones⁴⁵. The declaration focuses on a number of issues that are defined as ‘horizontal’ because they apply to many member states and require special attention from the European Commission in the run-up to the next rule of law report, including, for example, the persistent weakening of press freedom and the impact of the war in Ukraine on Europe.

However, the experiences of *Osservatorio Balcani Caucaso Transeuropa* and discussions with Italian and European experts reveal some weaknesses in the rule of law mechanism. First of all, the **non-binding** nature of the annual reports means that the Commission’s monitoring remains a feeble activity that is unable to push reluctant states to implement the Commission’s recommendations.

Civil society claims not to be considered as a **key actor** within the monitoring cycle and criticises the lack of **transparency** regarding the criteria for the inclusion of organisations in meetings with the Commission when visiting member states, thus making the process hardly inclusive. Within Italian civil society, for example, few

43 [Liberties Rule of Law Report 2023](#)

44 The chapter about Italy was edited by CILD and Antigone. It also includes contributions from A Buon Diritto and ASGI, as well as our contribution as OBCT.

45 [Joint Statement on the European Commission’s 2023 Rule of Law Report](#)

organisations were actively involved in the dialogue with the Commission and in 2022 only 9 organisations took part in the previous public consultations⁴⁶.

The **limited prominence** the mechanism enjoys among both experts and the Italian media also contributes to making it a rather ineffective instrument both for advocacy work and for raising awareness among the general public. As far as the media are concerned, a monitoring activity we carried out by selecting three of the most-read Italian newspapers in 2022⁴⁷ shows that only two articles related to the rule of law report and the recommendations addressed to Italy were published last year⁴⁸.

Finally, the **timing** of the consultations is inconvenient as the latter take place between November and January – a particularly busy period for organisations caught up in reporting and financial statements. But the timing of publication is also part of the issue: the report is generally published in the middle of summer when many offices are closed and institutional activities on hold, so it is not surprising that it struggles to generate an open and informed debate in member countries, both among policymakers and within the public.

Lacking cogent force as much as prominence, the Mechanism has not been particularly successful to date in terms of either participation or political effectiveness in pressuring national governments to respect the rule of law and fundamental values.

Despite all the limitations of the Mechanism, the issue of transnational protection of the rule of law in the European space should receive more attention. It is clear that each member country can benefit from a cross-check of the state of democracy in which European and national institutions and civil society are involved in the protection of the rule of law. Even if only for the possibility of opening an annual public debate on the necessary measures to strengthen democracy in the EU, a widespread commitment for its implementation would be significant.

46 [2022 Rule of law report - stakeholder contributions](#)

47 According to the ranking by Prima Comunicazione in October 2022

48 The only two articles in which explicit reference is made to the report are: [Contrasto agli illeciti: l'allarme corruzione resta alto. Allerta anche sul Pnrr](#), Il Sole 24 Ore, 20/09/2022;

BOX 3 - The Rule of Law Conditionality Regulation

As a further demonstration of the significance of the binding nature of European instruments, it is worth reflecting on the effectiveness of the **Rule of Law Conditionality Regulation** that entered into force in January 2021. The new regulation, aimed at protecting the EU's interests from the improper use of funds by states that do not comply with its founding values, provides for the possibility of blocking or suspending the transfer of European funds to member states that systematically violate the rule of law. This can apply to funds from the multiannual budget as well as to funds from the Recovery and Resilience Plan (RRP)⁴⁹.

This instrument is currently blocking a substantial part of the funds allocated to Hungary and – to a lesser extent – Poland⁵⁰. While the latter, struggling with the reception of several million refugees from Ukraine, has witnessed a relaxation of the control mechanism, the former has so far only received a fraction of the resources it could benefit from for its post-pandemic economic recovery⁵¹.

Luckily, so far Italy has not found itself in a situation tricky to the extent that a funding freeze is necessary. However, using this instrument is not easy for civil society, as it would soon be accused of harming its own country instead of protecting it. Likewise, it is no coincidence that in its campaigns civil society rarely refers to infringements whereby a member country is brought before the CJEU by the European Commission and possibly forced to pay heavy fines for failure to adopt, inadequate adoption or poor implementation of European standards⁵².

49 [Regolamento UE 2020/2092 relativo a un regime generale di condizionalità per la protezione del bilancio dell'Unione](#)

50 [L'Ue blocca i fondi all'Ungheria per le violazioni dello stato di diritto](#), Domani, 30/11/2022

51 [EU strikes deal with Hungary, reducing funding freeze to get Ukraine aid approved](#), Politico, 12/12/2022

52 Qui un esempio di messa a disposizione di dati sul tema da parte del centro studi italiano OpenPolis: <https://www.openpolis.it/infringe-il-monitoraggio-delle-infrazioni-europee-con-i-dati/>

3.5 The key role of networking

The interviews collected for this study reveal that working at the European level is quite challenging and burdensome for many Italian civic organisations and requires, among other things, specific knowledge: *“It is important to have resources that are able to engage in advocacy. It is necessary to come up with ideas and draft documents; then you need to be able to start a conversation with the right representative at the right time”* (int. 3).

For this reason, working within **transnational networks and coalitions** with like-minded actors dealing with the same issues in different countries not only allows organisations to exchange knowledge, but also, as emerges clearly in the interviews, to *“broaden your perspective and see problems related to your country in a different light”* (int. 6), thus favouring the process to identify new solutions. .

With regard to legal action, several of our respondents also emphasised the benefits of networking and connecting with organisations and/or activists present in the various territories and engaged in the field. In the case of the chain push-backs along the Balkan route, for example, the important victory obtained with the Rome court order of 2021⁵³ was possible precisely thanks to the *“active, very useful and effective connection with the entities, NGOs and activists in the territories along the Balkan route”* (int. 6).

For the NGOs that pursue litigation, in fact, it is essential to gather evidence of the human rights violations they report. For this reason “[they] refer to all the entities and actors that are present on the field on a daily basis and operate directly at the local level” (int. 6). In addition to raising public awareness, in fact, the reports and research of the NGOs present on the territory have been useful in demonstrating cases of chain push-backs, providing documentation of the violence suffered by migrants as well as: *“to provide the most accurate description of the critical issues and difficulties experienced by asylum seekers and migrants in accessing their own rights”* (int. 6).

In the case of advocacy, at the European level it is possible to rely on **umbrella organisations**, i.e. mostly Brussels-based entities that bring together and represent national organisations active in a certain field, e.g. protection of the rights of migrants or the LGBTQ+ community, social justice or environmental protection.

As such, they provide the national associations with an important channel of information and representation: on the one hand, they keep the associations they represent up to date with what is happening at European level within their area of intervention; on the other hand, they mediate in their relationship with the EU institutions, enabling them to actively contribute to European policy-making.

53 [Ordinanza del Tribunale di Roma](#), N.R.G. 56420/2020

As this research also shows, however, it is not always easy to establish an effective relationship between national organisations and umbrella organisations. In the case of the ECI We are a Welcoming Europe that we examined, for example, our respondents were not satisfied with the relationship they established with the campaign coordinators in Brussels. Undoubtedly, in its efforts to reach the million-signature target, the umbrella NGO failed to spur the emergence of horizontal relations between civil society actors in the countries involved, thereby missing an opportunity to foster the European Union bottom-up. Although in this context transnational civic action is hindered by the European instrument, which – like most European institutions – is conceived as an aggregator of nation-state realities, there is an extensive literature examining the difficulties of centre-periphery relations in the EU also with regard to civil society initiatives. As one of the respondents pointed out: *“the tricky part is not only about bringing actors together, but rather about communicating and getting certain messages across. (...) Where many voices come together, it is never easy to find a single message to spread”*(int.7).

Moreover, for Italian civil society organisations, most of which are small and can rely on limited resources, networking at national level is a heavy commitment⁵⁴. As one of the respondents pointed out: *“It is quite unthinkable to ask small national organisations to also take responsibility for advocacy at European level; at the moment, organisations like ours are busy dealing with day-to-day emergencies, trying to bridge the institutional gap when it comes to solidarity and reception”* (int. 1).

The interviews revealed that, in addition to the demand for resources – in terms of funds, time and personnel – to be dedicated to building transnational alliances, the diversity of issues and priorities faced by organisations in the various national contexts in some cases represents an obstacle that hinders the creation and – above all – the effectiveness of European networks. *“When there is agreement on issues, priorities and objectives, it is easier to operate as a network”* (int. 5), but the European Union is made up of regions that often have different needs.

The experience of an organisation operating as an Italian section within a federation that has branches in several European countries is a good example of this. As one of our respondents reported, even though they are part of the same federation, the national sections do not always deal with the same issues, nor do they share the same priorities; this significantly conditions the organisations’ ability to operate in a united manner at the European level.

Although European networks and coalitions are in most cases considered *“useful or even indispensable”* (int. 2), transnational collaboration is still somewhat of an uphill climb for

54 See Chiodi et al. 2021, section 3.2.

many Italian civil society organisations. In some cases, participation in European calls and projects offers an opportunity for mutual acquaintance that can foster the creation of transnational networks and partnerships (int. 3). Being involved in European-wide projects is important for organisations also – and most importantly – to gain visibility and credibility. Not infrequently, in fact, the groups that are created from individual projects manage to expand, laying the foundations for new opportunities for collaboration that go beyond the boundaries of the projects themselves.

Competition for access to European funding opportunities is, however, very high and often only the largest organisations or those that can invest large resources in planning are able to win calls for proposals. The risk, therefore, is that small and medium-sized organisations are excluded not only from access to European funds, but also from the possibility of joining transnational networks and groups. This aspect becomes even more critical if we consider that in Italy, as we pointed out, small and medium-sized organisations represent a significant part of civil society and that these are more likely to have a better connection with the territories as well as a better understanding of the needs of the population.

Finally, the examples put forward confirm the centrality of the issue of resources. In the case of ECI, the Italian achievement in collecting signatures depended on the national coalition-building work on migration issues carried out in a project prior to the launch of the European initiative. Conversely, for the CASE coalition, the possibility of dedicating time and resources to the coordination of the Italian network engaged in the fight against SLAPPs stems from involvement in a multi-year European project on the same issues.

4. FINAL REMARKS

Populism has been the distinctive trait of politics over the past two decades in liberal democracies, including established European Union (EU) democracies such as Italy. Pleading for a direct relationship between leaders and citizens and getting rid of intermediate bodies, populism has generated a strong delegitimisation of the role of civil society.

Against this background, our work has examined some cases of transnational mobilisation of Italian organisations that have exploited the opportunities offered by the European political space for their civic action and experienced its limitations. Although for many Italian organisations the transnational horizon is far from being reached, for others the European space has become the **least scope** for pursuing their objectives at national level, on issues as diverse as migration and LGBTQ+ rights.

Transnational action does not necessarily imply a pro-European vision of civil society, all the more so where disappointments have been abundant: whether it was the difficulty of reaching the necessary signatures for a popular initiative proposal or dealing with the limit of the European Union's competences.

Nevertheless, civil society organisations need **advanced expertise** and **substantial resources** to be able to achieve significant results. Working at the European level is in fact challenging because such the multilevel institutional mechanism is quite complex, due to the fact that it started out as a group of states. Our research reveals that every path taken by the Italian organisations is faced with this limitation.

Without a doubt, strategic litigation has brought civil society extraordinary results against those who seek to gain consensus through discriminatory policies, which is why it is now seen as the new frontier of civil rights battles. However, for this to be successful, it is necessary that the European space stands out for the development of advanced standards such as those introduced at the turn of the 1990s, which still form the legal basis on which we rely today. Where instead European institutions struggle to live up to the values they preach, as in the case of recent migration policies, there is a lack of **legal ground** for action.

This is why civil society is often engaged in various ways to promote the introduction of new legislation. The high expectations for ECI citizens' legislative initiatives could not be fulfilled due to the main constraints of the European space: the national-state structure and the limits of the competences of the EU. Transnational advocacy work also has to come to terms with the nature of the European space; in addition, when building alliances with organisations in other countries, it is faced with both the scarcity of available resources and the difficulties of bringing together on the

same platform the diverse institutional, cultural and political contexts with which it interacts.

Finally, the cogent nature of law offers guarantees for those who fight for fundamental rights as long as the rule of law functions properly. The new Mechanism introduced for its protection, for the time being only provides limited consultation functions. This is compounded by the practical-organisational constraints we have highlighted, such as the timing of publication of reports, which reduce their prominence. Yet again, Italian civil society should not give up on transnational action that gives political and cultural strength to the joint protection of democracy in all member states and, for its part, should be prepared to respond in the best possible way to the challenges that lie ahead in the years to come, building on the experience acquired so far.

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List of organisations interviewed

Baobab Experience

Associazione per gli Studi Giuridici sull'Immigrazione - ASGI

Avvocatura per i diritti LGBT - Rete Lenford

“Ero Straniero” Campaign

ActionAid Italia

Terre des Hommes Italia

Osservatorio Solidarietà

This publication is produced with the support of Civitates, a philanthropic initiative for democracy and solidarity in Europe, as part of the project “Winning the Narrative: Reclaiming Spaces, Building New Narratives,” and with the support of the Erasmus+ Programme of the European Union under the Jean Monnet Network “Transnational Political Contention in Europe” (TraPoCo) (GA 620881).

The support of the donors for the production of this publication does not constitute an endorsement of the contents, which reflect only the opinions of the authors. Donors cannot be held responsible for any use that may be made of the information contained therein.

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