

The new security law is an attack on the rule of law

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THE REASONS FOR OUR WORRIES

Government Bill No. 1660, currently under discussion in the Italian Chamber of Deputies, in many of its provisions clearly **conflicts** with a number of constitutional principles that govern our legal system, specifically in the field of criminal law, immigration law and prison law. This was denounced in recent days, among the others, by the **Organisation for Security and Cooperation in Europe** (OSCE), in a document analysing this measure, stating that: "Most of the provisions have the potential to **undermine** the fundamental principles of criminal justice and the rule of law".

The new provisions that the government would like to introduce appear, in fact, to be based on a **repressive and dehumanising** logic. Security is only declined in terms of prohibitions and punishments, ignoring the fact that it is, first and foremost, social, labour, human security and should be aimed at the equality of persons. Instead, the government's bill exploits people's **fears** and contravenes the duties of solidarity under Article 2 of the Constitution. The legislation pushes towards a **criminalisation of dissent and social struggles**, turning behaviours that have to do with protest, discomfort and social marginality into crimes. The introduction of the crime of prison riot runs the risk of irreparably changing the face of the prison system, providing for the punishability of passive resistance to an order from a police officer, without even specifying whether it is legitimate. The regulations of the government bill are inspired by a model of criminal law of **authoritarian** and not liberal nature that responds to a very clear cultural and political matrix of dubious democratic consistency. With this document, Antigone and ASGI express their great concern about the effects of this government bill on our legal system, the rights of citizens and migrants, and the extremely dangerous drift towards authoritarianism. Below are some critical remarks on the regulations judged most dangerous and illiberal.

The notion of terrorism is extended indefinitely in a vague and non-exhaustive manner

Article 1 provides for the introduction into the Criminal Code of two new offences: the first punishes with imprisonment from 2 to 6 years anyone who 'knowingly procures or possesses material containing instructions on the preparation or use of deadly war devices, firearms or other weapons or harmful or dangerous chemical or bacteriological substances, as well as on any other technique or method for carrying out acts of violence or sabotage of essential public services, for the purpose of terrorism'; the second consists of the introduction into Article 435 of the Criminal Code - which punishes with imprisonment from 1 to 5 years the manufacture or possession of explosive materials, for the purpose of threatening public safety - of a new



paragraph punishing with 6 months to 4 years' imprisonment the distribution by any means or the advertising of material containing instructions on how to manufacture such material. Both of these provisions further anticipate the threshold of criminal relevance concerning individuals who do not appear to be part of any terrorist organization. They do so by punishing the mere act of procuring material related to the use of weapons or the perpetration of acts of violence, or the dissemination of material with instructions on how to manufacture such material, even if these individuals have not yet engaged in behaviors unequivocally aimed at committing acts with terrorist ends.

Revocation of Italian citizenship is facilitated for foreigners

It is intended to make it increasingly **difficult** for foreigners who have already obtained Italian citizenship to remain in Italy if they have committed a crime, even a minor one. The revocation of citizenship up to ten years after the act committed turns the punishment into **revenge**. The **revocation** of citizenship would thus end up constituting a second penalty, which could come decades later and which would affect, in violation of the principle of equality, for the reasons indicated above, only a certain category of Italian citizens (those originally foreigners).

Suppressing movements for the right to housing by punishing squatting with imprisonment

The government intends not only to introduce the **new offence** of 'Arbitrary occupation of property used as someone else's home', but to **increase** the penalty from 2 to 7 years imprisonment, even for those who cooperate in the occupation, thus excluding the possibility of applying the substitute penalties for the latter. Evident is the intent to **criminalise** the social phenomenon of property occupations even more, showing indifference to the housing needs of a large segment of the population. The government's objective is also to hit that part of the social movements that, in the absence of state intervention in this area, take on the need for housing; it is no coincidence that those who 'cooperate' in the occupation are also subject to the same penalty of 2 to 7 years. A further aspect of deep concern is **the increase** in the powers of the police who can intervene immediately, without written authorisation from the judicial authority, if the occupation is the only actual dwelling of the complainant.

Roadblocks by environmental activists are punished. Only if they use their bodies

Originally, roadblocking alone was punished as an administrative offence, except in cases where the act constituted interruption of a public service. The rule had already been decriminalised by the legislator. The governmental proposal **transforms** the administrative sanction into a criminal offence that provides for imprisonment of up to one month, or a fine of up to 300 euros, and also **extends** this sanction to anyone who impedes free movement also on a railroad. A special aggravating circumstance is also **introduced**, which provides for a penalty of six months to two years' imprisonment if the road or rail blockade carried out 'with one's own body' is committed by several persons united. This proposal goes against the so-called '**eco-activists**', who appear at first reading to be the specific targets of the legislative proposal, which therefore has an obvious repressive and criminalising purpose of political dissent.

Return to prison detention for female inmates who are mothers of small children or pregnant inmates

Today, Article 146 of the Criminal Code provides for the mandatory deferment of imprisonment in the case of a pregnant woman or mother of a child under one year of age. **The child's best interest** is clearly to live outside prison and no individual assessment is required to establish this. From the first to the third year of the child's life, the decision whether or not to defer the sentence is instead left to the judge's assessment. The new article **eliminates** the compulsory deferral of punishment, thus creating an intolerable **impairment of** the legal, social and educational system for the child. The new provision is conceived, as well as publicly portrayed, as an **anti-Roma rule**, based on the prejudice that Roma women are all dedicated to theft and that they choose motherhood to escape imprisonment.

People soliciting alms are punished beyond reason

Article 13 amends the offences provided for in Article 600-octies of the Criminal Code. Regarding the employment of minors in begging, the punishable age is extended to minors under sixteen years, instead of fourteen, with a significant **increase** in the prescribed penalty, which is imprisonment from one to five years. The possibility of imposing significant prison sentences from conduct with very blurred boundaries such as 'inducement' appears very dangerous when begging (of adults or adolescents) is practised by groups (such as some Roma communities) traditionally subject to criminal **stigmatisation**, with the risk of disproportionately increasing the punitive instruments that can be activated on the basis of discretionary choices by the police forces.

Increased penalties for resistance and violence against police officers

The bill provides for an increased penalty in the case of violence or resistance committed against a police officer. The new rule creates within the category of public officials a subset consisting only of police officers. Thus, an act of violence against a police officer is **punished more severely** than one committed against a judge, for example. The maximum penalty can be up to seven years. This rule brings us back to an old and illiberal idea of criminal law, set up to protect not the citizens but the state. A police model constructed in this way **conflicts with the** very idea of a democratic, community-based police force that should be the first public guarantee to protect the fundamental rights of citizens and foreigners, as specified in OSCE and Council of Europe documents. It also introduces an aggravating circumstance with a special effect for these offences, in that the increase in the penalty is set at a fixed measure of one third, instead of up to one third, and the balancing of this aggravating circumstance with mitigating circumstances is not allowed. The instrument of balancing the circumstances is **taken away from the judge**.

Crime of prison riot: passive resistance to an order, without specifying whether it is lawful, is punished

The new crime of prison revolt forever **changes** the face of the penitentiary system, returning it to dark times when inmates were forced to obey with their heads down. It is a crime that targets acts and behaviors already sanctioned by law, such as violence. By including passive resistance



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to an order among the forms of revolt, without even specifying whether the order is legitimate, common sense is overturned, even non-active disobedience is **punished**, and a step is taken towards a police state. It is an **anti-democratic** norm that only illiberal countries can afford to have in their codes. The rioters are treated from a penitentiary perspective on par with mafiosi and terrorists and would lose all benefits allowed to the other detainees.

Violence committed by an inmate against a prison officer, already widely prosecuted before, is now equated with passive resistance and **attempted escape**. In short, if three inmates sharing the same overcrowded cell refuse to obey a police officer's order, in a non-violent manner, they will be charged with riot. A prisoner, for example, who has entered prison to serve a few months for a simple theft, could remain there for eight years, without being able to access prison benefits, since rioting, as well as incitement to disobedience, is equated with mafia and terrorism offences for the purposes of access to prison benefits, according to Art. 25, para. 1 of the bill. In everyday prison life, this rule will be a weapon of **blackmail** to induce discipline and silence on inmates who will not have the possibility to dissent, protest or oppose any prison order. The rule also applies in administrative detention centres for migrants and even in hotspots or in reception centres for asylum seekers.