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Policy Paper

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**Human rights at risk:
an analysis of the Italian Security Bill (Decreto
Sicurezza) and its impact on fundamental freedoms**
(Prepared to be submitted to the office of the Commissioner for Human Rights of the Council of Europe)

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1. Introduction

The adoption of Decree-Law No. 48 of 11 April 2025, later converted into Law No. 80 of 9 June 2025, marks a significant moment in the evolving relationship between state security, criminal law, and fundamental rights in Italy. Presented as a response to perceived threats to public order and institutional stability, the decree introduces a series of penal and administrative measures that redefine the legal framework governing dissent, protest, and the role of law enforcement. Its provisions have sparked intense debate within the legal community, civil society, and international human rights institutions, raising critical questions about the boundaries of legitimate state intervention in a democratic society.

This report examines the decree in light of both the Italian constitutional order and Italy's international obligations, particularly under the European Convention on Human Rights. It draws on institutional critiques, including those issued by the judiciary and by supranational human rights bodies, to evaluate the coherence of the decree with established principles of legality, proportionality, and the protection of civil liberties. The analysis situates the legislative developments within a broader context of increasing recourse to emergency legislation, criminalisation of protest, and the use of penal tools to regulate complex social dynamics.

In doing so, the report aims to contribute to an informed and principled dialogue on the rule of law, democratic pluralism, and the appropriate role of the criminal justice system in safeguarding, not suppressing, public space and democratic participation.

2. National framework

The Report (relazione) n. 33/2025 of the Ufficio del Massimario della Corte di Cassazione¹ (Italian Supreme Court) raises serious constitutional doubts² about both the form and the content of Decree-Law No. 48/2025, later converted without substantial amendments into Law No. 80/2025. On the procedural level, the report highlights the absence of “presupposti giustificativi del ricorso alla decretazione d’urgenza” (“justifying grounds for the use of emergency decree legislation”), stressing that the government's decision to transpose a bill already under parliamentary debate into a decree, without any new or extraordinary circumstances, amounts to “una prepotenza governativa non priva di rischi sotto il profilo dell’equilibrio tra i poteri” (“an act of governmental overreach not without risk to the balance of powers”). Citing the Associazione Italiana dei Costituzionalisti, the report notes that the security decree stands out for “la quantità e qualità delle fattispecie incriminatrici ivi disciplinate oltre che per le modalità che hanno condotto ad esse” (“the quantity and quality of criminal offences introduced, as well as the method by which they were adopted”), pointing to both procedural irregularity and the expansive scope of penal intervention.

On the merits, the Relazione characterizes the decree as “frutto di un atteggiamento autoritario e panpenalista” (“the product of an authoritarian and pan-penal stance”), revealing a shift toward a punitive conception of public order that deviates from constitutional guarantees. It criticizes the use of the criminal law to support “una concezione stato-centrica, punitiva e repressiva” (“a state-centric, punitive and repressive conception”) of security, which departs from the constitutional mandate to balance public order with personal rights. Particular concern is expressed regarding what the report calls the “rafforzamento sproporzionato delle situazioni giuridiche soggettive di coloro che sono impegnati in attività di ordine pubblico” (“disproportionate reinforcement of legal burdens on those engaged in public-order activities”),

¹ UFFICIO DEL MASSIMARIO DELLA CORTE DI CASSAZIONE (2025)

² SARA OCCHIPINTI (2025)

effectively targeting protest participants. The introduction of multiple aggravating circumstances based on location, such as near stations, roads, or government buildings, is said to “deliberatamente colpire l’area della manifestazione del dissenso e le sue modalità di espressione, specie nei luoghi e tra le persone dove emergono più acutamente disagio, disuguaglianza e povertà” (“deliberately strike at the sphere of dissent and its modes of expression, especially in places and among people where hardship, inequality and poverty are most acute”).

The report also signals potential violations of core principles of constitutional criminal law, including subsidiarity, ultima ratio, offensività (“harm principle”), determinatezza (“definiteness”), personal responsibility, and the rehabilitative purpose of punishment under Article 27(3) of the Constitution. In practical terms, it warns that the decree may generate “un incremento generalizzato del carico sanzionatorio” (“a generalized increase in the penal burden”), worsening delays and overburdening an already strained justice system.

In response to the concerns expressed by the Italian Court of Cassation, Minister of the Interior Matteo Piantedosi dismissed the analysis as “un esercizio connotato da una forte impostazione ideologica più che da considerazioni di puro diritto” (“an exercise marked more by ideological framing than by legal reasoning”). Without addressing the document in detail, stating that he had not read it³, Piantedosi rejected the notion that measures aimed at preventing protest-related violence or ensuring public order could be incompatible with constitutional principles. He argued that provisions such as those criminalizing traffic obstruction or passive resistance merely seek to protect “citizens and police forces from the violence committed during demonstrations” and to guarantee “the rights of those needing urgent access to work or hospital care.” On the decree’s contested use of emergency powers, he remarked that if constitutional legitimacy “were reduced to the opinion of the Massimario Office, allora sì che avrei il timore di vivere in un Paese che ha perduto i fondamentali riferimenti degli equilibri costituzionali tra i poteri” (“then I would indeed fear living in a country that has lost the fundamental reference points of constitutional balance among the powers”).

The minister further defended provisions allowing undercover agents to direct extremist associations without incurring criminal liability, invoking the international credibility of Italian police and intelligence services, and dismissing concerns about democratic accountability. On the controversial issue of detaining pregnant women or mothers of infants under one year, he contended that “mi sfugge quale principio costituzionale violerebbe” (“I fail to see which constitutional principle it would violate”), since the law entrusts the judiciary with assessing each case on the basis of child protection. Finally, in support of tightening the scope of the crime of torture and expanding police access to tasers, Piantedosi affirmed that police officers too are “titolari di diritti umani” (“holders of human rights”) and should be equipped with tools to defend themselves and the public “sempre nell’ambito di una cornice di legalità” (“always within a framework of legality”). His response reflects a broader government stance that frames the Security Decree not as a restriction of freedoms but as a restoration of public order, thereby downplaying constitutional proportionality analysis and recasting critiques as politically motivated resistance to necessary state authority.

3. Council of Europe’s general framework

The following analysis originates from the letter addressed on 18 April 2024 by the Council of Europe Commissioner for Human Rights to the President of the Italian Senate. In that correspondence, the Commissioner raised a number of serious concerns regarding the draft

³ FRANCESCO MALFETANO, 2025
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version of the Security Decree, warning that several of its provisions risked undermining fundamental rights protected under the European Convention on Human Rights, particularly the freedoms of expression, assembly, and movement. These concerns provide the foundation for assessing the final legislative text in light of Council of Europe standards.

One of the most controversial provisions of Decree-Law No. 48/2025⁴, later converted into Law No. 80/2025⁵, is the introduction of a new criminal offence under Article 434-bis of the Italian Criminal Code. This article criminalizes the act of obstructing or slowing down traffic during public demonstrations by means of one's own body or other physical means, punishable by imprisonment from one to three years. This provision significantly escalates what was previously considered an administrative offence and has drawn criticism from the Council of Europe Commissioner for Human Rights, who warned that it risks unduly restricting the right to peaceful assembly protected under Article 11 of the European Convention on Human Rights. In particular, the provision's broad and vague formulation creates the potential for disproportionate criminal sanctions against non-violent demonstrators, including those engaging in forms of civil disobedience commonly associated with environmental or social justice movements. The severity of the penalties, coupled with the low threshold of applicability (e.g., obstruction by as few as two persons), raises concerns about a chilling effect on legitimate protest activities.

Another provision raising significant human rights concerns is Article 14 of Decree-Law No. 48/2025, which amends Article 61 of the Italian Criminal Code by adding a general aggravating circumstance applicable to any offence committed in the vicinity of key transport infrastructure, including airports, seaports, railway stations, and metro systems. While the provision purports to enhance public security, its overly broad formulation allows for the imposition of harsher penalties solely based on geographic location, regardless of the nature or severity of the underlying offence. The Council of Europe Commissioner for Human Rights has cautioned that such measures could lead to arbitrary or discriminatory enforcement, particularly against protestors whose activities may incidentally occur near these sites. The automatic escalation of penalties without a clear and proportionate link to a demonstrable threat undermines legal certainty and fails to meet the necessity and proportionality requirements under Articles 10 and 11 of the European Convention on Human Rights.

Furthermore, article 15 of Decree-Law No. 48/2025 introduces significant expansions to the administrative powers of law enforcement by modifying Article 10, paragraph 3, of Legislative Decree No. 14/2017. Under the revised framework, police commissioners (questori) may impose bans on individuals from accessing or remaining near critical infrastructure areas, such as roads, railways, airports, and ports, for a period of up to twelve months, even in the absence of a criminal conviction. This measure raises serious concerns regarding the principles of legality and proportionality, as it grants extensive discretion to administrative authorities without the necessary procedural safeguards, such as prior judicial review. The Commissioner for Human Rights of the Council of Europe criticized the provision for its potential to arbitrarily curtail freedom of movement and assembly, particularly given the vague criteria for its application. The absence of individualized judicial oversight makes this restriction susceptible to abuse and incompatible with the standards set by the European Convention on Human Rights, particularly Article 11, which demands that any limitation on peaceful assembly be both narrowly tailored and subject to independent scrutiny.

Article 20 of Decree-Law No. 48/2025 introduces a new offence under Article 391-ter of the

⁴ Decreto-Legge 11 Aprile 2025, n. 48

⁵ Legge 9 Giugno 2025, n. 80

Italian Criminal Code, criminalizing so-called “rebellion” within prisons. The provision defines the offence broadly to include not only acts involving violence or threats against prison staff but also forms of passive resistance. Penalties range from one to five years of imprisonment, with higher sentences (two to eight years) for those identified as organizers or instigators. This provision has been sharply criticized by the Council of Europe Commissioner for Human Rights, who highlighted its incompatibility with established human rights norms. In particular, the criminalization of non-violent protest within detention settings raises serious concerns under Articles 10 and 11 of the European Convention on Human Rights, which continue to apply to prisoners. The European Court of Human Rights has recognized that certain forms of peaceful protest, including passive resistance or hunger strikes, may constitute legitimate expressions of dissent and should not automatically trigger punitive sanctions. The vague and expansive language of the provision opens the door to disproportionate enforcement against inmates who may already have limited avenues to seek redress for rights violations, thus compounding existing structural deficits in Italy’s prison system.

Article 21 of Decree-Law No. 48/2025 extends the newly introduced offence of “rebellion” to include individuals held in migrant detention centres (CPRs) and reception facilities (CARAs). The provision mirrors Article 391-ter of the Criminal Code, punishing not only acts of violence or threats but also passive resistance with prison sentences ranging from one to four years, and up to five years for organizers. This extension has been met with strong criticism from the Council of Europe Commissioner for Human Rights, who warned that such measures risk criminalizing the legitimate expression of grievances by some of society’s most vulnerable groups (migrants and asylum seekers) who often lack effective access to legal remedies. By equating passive or non-cooperative behavior with criminal rebellion, the provision undermines core principles of necessity and proportionality under the European Convention on Human Rights, particularly Article 11. The Commissioner further noted that in the context of structurally inadequate detention conditions, already flagged by the European Committee for the Prevention of Torture (CPT), this legal framework may suppress even peaceful forms of protest, exacerbating the marginalization and legal precarity of detainees rather than addressing the root causes of unrest.

4. The act in light of the case-law of the European Court of Human Rights

The criminalization of non-violent protest through the introduction of Article 434-bis of the Italian Criminal Code must be examined in light of the European Court of Human Rights’ case law on peaceful assembly. In *Kudrevičius and Others v. Lithuania*⁶, the Grand Chamber acknowledged that acts such as road blockades may interfere with the rights of others but nonetheless fall within the protective scope of Article 11 of the European Convention on Human Rights. The Court emphasized that “an assembly does not cease to enjoy the protection of Article 11 as long as its organisers and participants do not engage in acts of violence” (§ 92), and that any sanctions imposed must be necessary and proportionate to the legitimate aim pursued. Importantly, the Court noted that criminal sanctions, particularly custodial ones, require “a stricter scrutiny” and may have a chilling effect on the exercise of the right to assembly (§ 146). In the Italian context, the introduction of a prison sentence of up to three years for obstructing traffic with one’s body, regardless of the peaceful nature of the protest, risks failing this proportionality test and contradicts the principle that “the peaceful character of the assembly remains a decisive criterion” (§ 155). Thus, the provision raises significant concerns about compliance with Strasbourg jurisprudence.

The Italian Decree-Law No. 48/2025, through Article 19, introduces a new criminal offence

⁶ *Kudrevičius and Others v. Lithuania* (2015)
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(Article 635-quinquies of the Criminal Code) that penalizes the defacement of public buildings or goods when intended to offend the “honor, prestige or decorum” of an institution, with imprisonment from six to eighteen months. This provision raises concerns under Article 10 of the European Convention on Human Rights, especially when applied to non-violent symbolic protests. The European Court of Human Rights addressed a comparable issue in *Öllinger v. Austria*⁷, where a peaceful commemorative protest was banned on the grounds that it might provoke discomfort during a sensitive public event. The Court held that such discomfort did not justify a blanket restriction, affirming that “an assembly does not lose the protection of Article 11 simply because it may provoke tension or be seen as provocative” (§ 36), and emphasized the importance of balancing competing rights rather than privileging institutional sensitivities (§ 49–50). The Italian offence, by criminalizing expressions intended to challenge or critique state institutions through acts such as symbolic defacement (e.g., washable paint or banners), risks stifling legitimate political dissent. Its vague and subjective criteria open the door to disproportionate enforcement, contrary to the Court’s insistence that any limitation on political expression must be narrowly drawn and convincingly justified by a pressing social need.

The case of *Ekrem Can and Others v. Turkey*⁸ offers critical guidance on the proportionality of criminal sanctions imposed for participation in non-violent protest activities. In that case, the applicants had staged peaceful demonstrations, involving road occupation and other symbolic acts, in support of a political cause. Despite the absence of violence or damage, they were sentenced to one year and eight months of imprisonment. The European Court of Human Rights held that such sanctions violated Article 11 of the Convention, emphasizing that “a peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction and notably to deprivation of liberty” (§ 31). The Court reiterated that imprisonment for non-violent protest constitutes a severe interference and requires the most stringent justification. These principles directly call into question several provisions of Italy’s Decree-Law No. 48/2025. Article 434-bis criminalizes traffic obstruction during demonstrations with penalties of up to three years, regardless of the peaceful nature of the act. Similarly, Articles 20 and 21 introduce the offence of “rebellion” within prisons and migrant centres, punishable even for passive resistance. By extending criminal liability to non-violent conduct that is often expressive in nature, the Italian legislation risks breaching the Convention standard that any restriction on assembly must be proportionate and should avoid criminalizing dissent in the absence of compelling state interests.

The European Court of Human Rights’ reasoning in *Altun and Others v. Türkiye*⁹ is particularly instructive when evaluating the compatibility of Decree-Law No. 48/2025 with Article 5 of the European Convention on Human Rights. In *Altun*, the Court found a violation of Article 5 § 1 due to the applicants’ pre-trial detention based on vague, general allegations and insufficient evidence, including mere association with alleged organizations or use of communication tools such as ByLock. The Court reiterated that “vague and general references to the wording of the provision in question and to the evidence in the file cannot be regarded as sufficient to justify the ‘reasonableness’ of the suspicion” justifying detention (*Altun*, § 12). It stressed that deprivation of liberty must be based on specific, verifiable facts and not on presumed affiliations or contextual inferences. Applied to the Italian context, Articles 20 and 21 of Decree-Law No. 48/2025 introduce the offence of “rebellion” within prisons and migrant facilities, encompassing not only violent acts but also forms of passive resistance, with penalties of up to eight years. This broad criminalization of protest, including symbolic or non-violent

⁷ ÖLLINGER V. AUSTRIA (2006)

⁸ EKREM CAN AND OTHERS V. TURKEY (2020)

⁹ ALTUN AND OTHERS V. TÜRKIYE (2024)

expressions of dissent, raises similar concerns regarding the lack of a clear evidentiary threshold and the risk of unjustified deprivation of liberty. The Altun judgment therefore casts doubt on the compatibility of these provisions with the Convention, especially where detention is used not as a last resort but as a deterrent to institutional criticism.

The Grand Chamber judgment in *Khlaifia and Others v. Italy*¹⁰ (2016) offers critical insights into the legal obligations surrounding the detention of migrants and asylum seekers, which bear directly on Article 21 of Decree-Law No. 48/2025. In *Khlaifia*, the Court found that the applicants, Tunisian nationals held in a migrant detention facility on Lampedusa, had been deprived of their liberty without a clear legal basis, in violation of Article 5 §§ 1 and 2 of the Convention. The Court stressed that the absence of individualised detention orders, access to judicial review, and legal remedies rendered the detention arbitrary (§§ 106–107). In addition, the Court found a violation of Article 13 taken together with Article 3, due to the inhumane and degrading conditions of the facility (§§ 185–186). These findings resonate with the concerns raised by Article 21 of the Italian Decree, which criminalizes so-called "rebellion" in migrant reception and detention centres (including passive resistance) with penalties of up to five years of imprisonment. Such measures risk punishing individuals for acts of protest that may in fact stem from inadequate conditions or a lack of legal recourse. The Court's reasoning in *Khlaifia* underscores the principle that where basic procedural and material safeguards are lacking, criminalizing protest, rather than addressing structural deficiencies, may violate the Convention and exacerbate existing human rights concerns within the immigration detention system.

5. Conclusion

In light of the concerns outlined in this report, ASSEDEL expresses the need for a vigilant and principled dialogue on the relationship between security and fundamental rights within democratic societies. The measures introduced by Decree-Law No. 48/2025, as converted into Law no. 80/2025, raise important questions about the appropriate use of criminal law, the limits of state authority, and the protection of core freedoms. As the legal and institutional landscape evolves, ongoing engagement by national and international human rights bodies remains crucial to safeguarding the values enshrined in the European Convention on Human Rights and ensuring that responses to public order challenges do not come at the expense of democratic legitimacy.

¹⁰ *KHLAIFIA AND OTHERS V. ITALY* (2016)
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