

Informal hearing in the Bureau, relating to the examination of draft law no. 840 (decree-law no. 113/2018 - public security)

Speech by Gennaro Santoro (CILD Legal Advisor)

Mr. President, Honourable MPs,

The decree addresses several matters and concerns not only foreigners, but also demonstrators, individuals who occupy houses and marginalised groups.

It is a decree that intervenes on non-homogeneous subjects, such as urban security, foreigners' fundamental rights, regulations on subcontracting, sale of confiscated property and other subjects.

The decree causes an increase in the use of preventive measures and removal orders, and, as we shall see, in the relevance of police reports, and introduces a new type of crime for those who take to the streets to protest.

It addresses social issues (housing, health, economic issues) by providing for repressive tools that will fuel social tension and will entail costs for the whole community.

This adds to an exponential increase in litigation in courts (and related costs that have not been taken into account by the decree) that will further weaken the Italian justice system, which is already collapsing.

The decree-law, i.e. the legislative instrument used in this case, is an exceptional one, but there is no need for urgent intervention for hardly any of the areas affected by the decree. For example, matters such as extending the procedure for granting citizenship from 2 to 4 years and introducing the revocation of citizenship in the event that a criminal offense has been committed

cannot be regulated with the instrument of the emergency decree. There are no conditions to resort to such an instrument.

The Italian Coalition for Civil Liberties and Rights does not mean to politically assess the decree, but only intends to consider it from a technical point of view. However, it is clear that the climate of everlasting electoral campaign has led to issuing a 'spot decree' that will be dismantled, and declared unconstitutional in many of its parts.

The rules laid down by the decree will also be discussed in court, for example, in the event that individuals are forced to bring their case before a court to be granted a **residence permit for humanitarian reasons**, invoking the direct application of article 10 of the Italian Constitution. Nowadays, instead, police stations (*questure*) and Territorial Commissions are allowed grant this permit to those individuals who are really integrated in our country (and in 20 EU countries). Such permit can prevent many individuals from falling prey of organized crime. This decree will produce new irregular immigrants, it will cause thousands of foreign individuals - who have been working and paying taxes in Italy for years, who fled countries in turmoil, and whose children attend our streets, our schools - to become irregular.

This is because it is clear that irregularity and deviance are closely linked. Moreover, **dismantling the Sprar system** will be of use to the organized crime. Indeed, through the management of big centres for asylum seekers - that has always been awarded directly - the organized crime has always found labourers for crime and filled our streets with prostitutes without rights that work on the road during the day and come back to their respective CAS (Extraordinary Reception Centres) at night.

The overall system envisaged by the decree is not based on reality. **The number of the arrival of foreigners is decreasing, crime rates are decreasing, and yet the government has deemed it necessary to intervene with an emergency decree.**

Is it possible to resort to an emergency decree to increase the **penalties for those who occupy houses**, while not providing for an extraordinary plan for the housing emergency? What is the real urgency? What is the real emergency? The absence of housing policies, the speculation of the big property owners who keep their houses empty or the sanctions (which already exist!) for those who lead movements that fight over housing issues?

The decree also introduces a new type of crime for those who protest, providing for a penalty of one to six years imprisonment for anyone who blocks or obstructs a road. Since 1999 and until a few days ago, such behaviour was punished with an administrative sanction. The penalty system is turning evil. With these new rules, all the No Tav (i.e. a movement that fights the construction of high-speed train infrastructures) would have ended up in jail, even those who protested peacefully - including some of the current members of the Parliament. It is a measure that represses dissent.

Therefore, we do not understand where the emergency is. Policies should be the result of a rational analysis of reality that is based on data. This decree, instead, opportunistically pursues mere perceptions of insecurity. In some ways it follows the path paved by the measures introduced by the previous government (included in the so-called *Minniti decree*). And what did the *Minniti decree* led to?

Mr President, Honourable MPs, we believe that this Commission has a great opportunity today.

The opportunity to formally and peremptorily report that there is no need to avoid a parliamentary debate on many of the matters covered by the decree. Resorting to the tool of the emergency decree also implies forcing you and us to ratify, in 60 days, rules that are already into force, which formally and

substantially will not last and will almost certainly be declared constitutionally illegitimate in many parts.

Again, it is not true that the decree will not produce any additional economic costs. Indeed, doubling the time foreigners spend in CPRs (Detention Centres for Repatriation) will result in doubling costs as well. This measure is ineffective, given that less than half of those who are held in CPRs are then effectively expelled; and it is oppressive, because it aims at 'punishing and causing suffering' to individuals whose only guilt is to have migrated.

The decree introduces the possibility to hold asylum seekers for 30 days in hotspots, places that should only serve for a very rapid assessment of the identity of the asylum seeker. After 30 days, according to the decree, it is now possible to transfer asylum seekers to CPRs for a maximum period of 180 days. Therefore, individuals seeking a type of protection that is recognized as a constitutional right can be held for 7 months, in violation of European and international law. Again, what costs will this measure produce?

As the Italian Coalition for Civil Liberties and Rights, we have just concluded a pilot project in Lampedusa and currently a criminal trial is pending before the court of Agrigento (Sicily) for the case of a woman who was illegitimately detained in a hotspot for 40 days. She was held despite the lack of any judicial decision, *sine titulo*, and without being able to meet a lawyer or exercise her rights. Other proceedings are pending before the European Court of Human Rights for the illegitimate detention of asylum seekers both in Lampedusa and in other hotspots. The government has decided to ratify a practice that is against the law and that can be observed nowadays when asylum seekers are held in informal structures. Rather than solving problems, the government has chosen to assert that a practice, which is *contra legem*, ultimately amounts to law.

We really hope that this Commission will not just ratify illegitimate norms, but listen to our cry of justice, Constitution and measure.

We hope that you, as a Commission, will do your duty, bearing in mind the Italian Constitution and international standards. We hope that you will analyse the several unconstitutional provisions that appear evident from just reading the 'European elections decree' - because this is the name the measure deserves, together with 'shame decree' or 'grave of the constitutional state'. It is up to you to decide how to call this decree. And it is also up to you to decide whether to follow the example of those members of the Constituent Assembly - as Moro - who used to discuss about the right to asylum and humane penalties, or of those - as Dossetti - who discussed about including the right of resistance in the Italian Constitution. Instead, you can choose to ratify rules that are ineffective, oppressive and largely unconstitutional - rules laid down by a government that is not watchful in respecting fundamental rights.

You can choose whether to ratify provisions fostered by those who aim at suspending or speeding up the procedures for granting international protection for those who have been reported - even in case of slanderous accusations - and authorize the repatriation of the applicants even if they appeal the decision of the Territorial Commission.

You can choose whether to support **those who endow the municipal police with tasers even before the stun guns trial period has ended for the National Police and the Carabinieri.** Why is this measure considered urgent? And what are the risks that it entails for our children? Policemen should think about the road hogs that within two days killed two people on a crosswalk in city centre of Rome. It is not advisable to entrust potentially deadly weapons to individuals who have always used other tools. Tasers have caused 1000 deaths in America.

The rules included in the decree forbid asylum seekers to register at the General Registry Office!!! With these measures many immigrants will become irregular, thus leading to greater security risks. There is a link between forced irregularity and deviance. Any investigator and a mere reading of statistical data proves this. Instead, inclusion pays off. It guarantees security.

And pay attention, because many rules of the rules included in the decree concern Italian citizens as well. **Preventive measures are being dramatically increased**, despite the ECHR recently convicted Italy for casually resorting to such measures. We are talking about those preventive measures that, on the basis of a mere suspicion of the police - and not of the commission of a crime - may lead to bans on access to certain places, bans on residing in one or more provinces, special surveillance, etc. These measures were indiscriminately applied during the fascist regime. They should be limited as much as possible. It is essential to resort to such measures more than wisely. **With the decree, however, these measures are applied even to those who are suspected to have occupied a house.**

Moreover, more possibilities to issue removal orders are envisaged for those who endanger public security, even in medical centers: but where are we headed with these measures? Such removal orders are not subject to any judicial review, except for particular cases (i.e. when the removal order also foresees an obligation to sign at the judicial police office) and too often are based on police reports that, again, do not lay on criminal responsibility but on mere suspicions, and are issued indefinitely in the absence of any cross-examination.

Honourable MPs, please pay attention, because behind the many anti-foreigners measures are hidden just as many measures against any citizen who protests or occupies a house, or whose name is merely included in the police database. This increases the possibilities for the police to apply any measure without guarantees.

The Italian Coalition for Civil Liberties and Rights ultimately expresses a negative opinion on the whole text under discussion. Knowing that we cannot ask for the moon, at least we ask this Commission to limit the potential damage and propose amendments to remove the norms to which we have referred and which, in the opinion of the experts, are likely to be unconstitutional.

