The Securitarian Turn in Italian Criminal Law

Security Decrees and the Shift from Populism to Illiberalism

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On April 11, 2025, the Italian far-right Executive approved a sweeping reform of the criminal justice system through a decree-law, commonly referred to as the "Security Decree", which was later converted into law by Parliament. At the time, concerns were raised by NGOs, criminal and constitutional law scholars, associations of criminal defense lawyers and magistrates, and international bodies including the Council of Europe Commissioner for Human Rights and the OSCE Office for Democratic Institutions and Human Rights. They warned that this securitarian measure could mark the first step toward a broader illiberal and possibly authoritarian project to reshape Italian criminal law. Those concerns now seem justified.

On February 5, 2026, the Executive adopted a second decree-law, commonly referred to as the "2026 Security Decree". Published in the Official Gazette only on February 24 for alleged budgetary reasons, the act introduces additional measures to strengthen public order and security, once again with potentially far-reaching consequences for fundamental freedoms.

The two Security Decrees differ in content and together amount to a wide-ranging reform of the Italian criminal justice system. Yet, despite their apparent heterogeneity, they share a number of features that point to a common securitarian and illiberal approach.

Emergency as a method

From a procedural point of view, both measures were adopted through decree-laws, an exceptional legislative instrument that the Constitution reserves for "extraordinary cases of necessity and urgency". Decree-laws enter into force immediately but must be converted by Parliament within 60 days, a timeframe that significantly limits the scope of parliamentary debate. In criminal matters – subject to strict legality requirements and parliamentary competence – recourse to this tool demands particular caution.

In these cases, the choice of this instrument appears hard to justify by reference to any genuine emergency. Instead, it indicates a deliberate attempt by the Executive to normalize emergency as a method of political governance that bypasses ordinary parliamentary scrutiny and minimizes the risk that public debate might delay or dilute the reforms (see the criticisms expressed within the Italian Association of Constitutionalists).

Public Security First

Substantively, the two Decrees are heterogeneous, both in relation to each other and internally, further undermining their adoption as decree-laws. They intervene across multiple areas of the criminal justice system, from prison law to the regulation of bladed weapons, while introducing numerous new offenses and aggravating circumstances.

Yet they are driven by a shared premise: that "security" and "public order" are autonomous *Rechtsgüter* that justify expansive penal intervention, even at the expense of constitutional freedoms (Mongillo, 2025). Under this logic, criminal law comes to serve as the primary tool of a punitive approach to social control, one that places the protection of public authority first, suppresses even non-violent forms of dissent, and relies on punishment to govern social marginality. Militancy, poverty and social distress, rather than being addressed through dialogue and welfare policies, are increasingly securitized (Wæver, 1995) and, thus, penalized (Wacquant, 2001).

The 2025 Security Decree

The 2025 Security Decree (No. 48 of 2025) was widely criticized as an example of illiberal, symbolic, and authoritarian criminal policy, with many of its provisions suspected of being unconstitutional (see the special issue of *Questione Giustizia*).

For analytical clarity, its intervention in substantive criminal law can be grouped around four main guidelines.

First, the Decree targets dissent, whether violent or peaceful. It criminalizes the obstruction of traffic on roads or railways by one's own body, a form of nonviolent protest frequently used by striking workers and environmental activists in recent years. It also introduces the offense of "riot within a prison," extended to irregular migrants detained in repatriation centers. Participation in a riot is punishable when it involves violence, threats, or resistance, including mere "passive resistance". This extension is particularly troubling. Detainees are structurally vulnerable and exposed to potential abuse and inadequate conditions. Restricting their ability to protest peacefully risks silencing one of the few means available to make their suffering visible. Criminalization thus becomes a tool to discipline collective expression within detention spaces.

Second, the Decree strengthens protections for law enforcement authorities. It provides a financial contribution of up to €10,000 per stage of proceedings to cover the legal expenses of officers investigated for service-related acts. It allows public security agents to carry firearms – other than their service weapon – off duty without a license. Crucially, it extends the offenses of non-compliance and resistance or violence against Financial Police vessels when they are engaged in the prevention of irregular migration. Although formally general, this measure operates within Italy's broader crimmigration framework. By criminalizing even non-compliance in migration operations, the Decree narrows the space for humanitarian search and rescue activities at sea and reinforces a punitive model of border governance. It closes the legal gap that, a few years ago, led to the acquittal of the captain of Sea-Watch 3, who docked in Lampedusa despite orders issued by the Financial Police.

Third, the Decree criminalizes behaviors associated with poverty and social marginality. It expands begging-related offenses and introduces a new offense of "arbitrary occupation of property intended as another person's residence", coupled with a reinstatement procedure that, in certain circumstances, allows police intervention without prior judicial authorization. Poverty and social vulnerability are thus treated primarily as matters for criminal law rather than social policy.

Finally, the Decree intensifies repression of terrorism and certain ordinary crimes. It further anticipates criminal liability for terrorism-related offenses, extending it to preparatory conduct such as obtaining or possessing instructional material on weapons or violent techniques "for the purpose of terrorism". It also increases penalties for offenses committed on trains or in stations and for fraud targeting vulnerable victims, particularly the elderly.

The 2026 Security Decree

If the 2025 Decree marked a turning point, the 2026 Security Decree (No. 23 of 2026) consolidates and deepens this punitive and illiberal trajectory, despite amendments to some of its most extreme provisions following concerns raised by the President of the Republic.

Among its main objectives, the Decree seeks to address juvenile deviance, especially by tightening weapons regulations. It criminalizes the carrying of bladed weapons without a license, introduces administrative sanctions for parents of minors who violate this ban, and prohibits the sale to minors of pointed or cutting instruments capable of inflicting injury, including "improper" weapons such as scissors and kitchen knives. It also expands the list of offenses for which the *Questore* (a police commissioner) may issue warnings to children aged 12 to 14.

Even more significant are the new privileges granted to law enforcement authorities. The Decree creates a special register, separate from the ordinary investigations register, for reports of offenses "clearly"

committed under a legal justification – including the lawful use of weapons by public officials or the performance of official duties – and shortens investigative time limits in such cases. It also introduces a new offense applicable to drivers who fail to comply with a police order to stop and flee in a manner that endangers public or private safety.

The most troubling innovations, however, concern public space and demonstrations. A particularly worrisome measure is the introduction of a form of "preventive detention". During public gatherings, police may detain individuals for up to 12 hours when, based on specific circumstances – such as wearing helmets or having a relevant criminal record – they are suspected of posing a concrete danger to the peaceful course of the demonstration. No prior judicial authorization is required; the prosecutor is merely informed and may order the person's release if those circumstances are not met. Deprivation of liberty is thus grounded not in a committed offense or an imminent and concrete threat, but in an assessment of presumed dangerousness.

Beyond this move toward anticipatory repression, the Decree contains additional restrictions affecting access to public spaces and the right to protest. It introduces a judicial ban on participation in public assemblies for individuals convicted – even by a non-final judgment – of certain offenses, including injury to a public officer. It also expands on-the-spot search powers during demonstrations in cases of immediate security concerns. It authorizes the *Prefetto* (local government representative) to designate specific "red areas" from which individuals merely accused of certain crimes – including property offenses – and engaged in harassing or threatening conduct may be removed. Finally, it extends the prohibition on access to certain public places ("*Daspo urbano*") to individuals convicted, even by a non-final decision, within the previous five years of specific crimes committed during public demonstrations.

Interestingly, the Decree decriminalizes several offenses related to public gatherings, including failure to give advance notice, non-compliance with a ban, violations of time and place restrictions, and refusal to obey an order to disperse. Although this may appear to ease repression, the reform aims to accelerate enforcement and increase financial penalties. Previously classified as misdemeanors punishable by short prison terms – under 1 year and thus often suspended – and modest fines generally below €500, these offenses are now subject to administrative fines imposed by the *Prefetto* ranging from €1,000 to €20,000. The Decree also introduces additional administrative offenses for violating movement restrictions or disrupting public gatherings and public order services.

Overall, these measures transform the legal framework that governs public spaces and gatherings. Assembly and demonstrations are subject to strict surveillance and deterrence, steadily narrowing the space for political action and likely having a chilling effect on core democratic freedoms.

From Populism to Illiberalism

The two Security Decrees must be situated within the broader criminal justice agenda of the current Italian Executive, which in recent years has adopted a series of decree-laws signaling a clear punitive shift in social governance. These include the "Rave Decree" (No. 162 of 2022), which created a new offense for the arbitrary occupation of public or private land or buildings to hold unauthorized musical events deemed dangerous to public safety; the "Cutro Decree" (No. 20 of 2023), which introduced stricter measures against irregular immigration, including harsher penalties and new criminal offenses; and the "Caivano Decree" (No. 123 of 2023), which significantly toughened the juvenile justice system. These are only the emergency measures. Additional crimes, aggravating circumstances, and repressive tools have been enacted through ordinary legislative procedures. As part of the same legislative package as the 2026 Security Decree, the Executive also introduced a bill further tightening punitive measures aimed at combating irregular immigration.

Moreover, the far-right parliamentary majority has approved a constitutional reform – soon to be submitted to referendum – separating the careers of public prosecutors and judges. Although expert opin-

ion remains divided – for example, criminal procedure scholars have expressed both supportive and critical views –, the reform has raised concerns about the future balance between the judiciary and political power (Daniele, 2025).

If two coincidences suggest a clue and three amount to proof, this accumulation of punitive measures leaves little room for doubt about a deliberate political and legal agenda.

What emerges is a vision of the criminal justice system that has evolved from a more traditional hyper-punitive and populist model, exemplified by the "Rave Decree", toward a more explicit illiberal and authoritarian project. Criminal law is not used merely as a tool of political propaganda or as a catch-all solution to social problems; instead, it is employed to chill and progressively erode crucial democratic freedoms, including freedom of expression and assembly and the right to strike, while extending privileges to law enforcement authorities through expanded penal protection and broader forms of impunity. In this context, specific groups such as (irregular) migrants, environmental activists, political opponents, detainees, and more generally vulnerable communities associated with "deviance", are treated as presumed enemies of public order and social decorum. All of this unfolds through the normalization of executive emergency powers and the marginalization of Parliament.

Overall, the result is not the formal dismantling of the Constitution's social-democratic project, but rather its gradual erosion and *de facto* marginalization. Here, penal power is no longer constrained by, nor does it serve to protect, fundamental rights; instead, it is instrumentalized to advance an ideology of public order and security that criminalizes social marginality, silences dissent, and restricts democratic freedoms, thereby limiting the space for collective political expression and action.

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