

Ref: CommHR/MOF/sf 206-2024

The Hon. Ignazio La Russa
President of the Senate of Italy

Strasbourg, 16 December 2024

Honorable President,

My mandate is to foster the effective observance of human rights in the member states of the Council of Europe. An important part of my work is to engage in dialogue with the governments and parliaments of member states, and to assist them in addressing possible shortcomings in their laws and practices.

I write about Bill n. 1236 (*Disposizioni in materia di sicurezza pubblica, di tutela del personale in servizio, nonché di vittime dell'usura e di ordinamento penitenziario*), currently before the Senate. Drawing from the law, and in particular from the European Convention on Human Rights (hereinafter, 'the Convention') as interpreted by the European Court of Human Rights (hereinafter, 'the Court'), I have a number of concerns. Before referring to these, allow me to lay out the applicable standards.

The rights to freedom of expression and of peaceful assembly, enshrined in Articles 10 and 11 of the Convention, are a cornerstone of democratic society, ensuring that citizens can engage in public discourse and express disagreement with, or demand improvements in laws, policies and practices. Any restrictions on these rights must be prescribed by law, necessary, proportionate, non-discriminatory, and subject to independent judicial review. They must be interpreted narrowly and must not be used to undermine the essence of the right to protest, or to criminalise peaceful demonstrators. Demonstrations ought to be considered peaceful even when they involve conduct that may temporarily disrupt the life of a community, including through the generation of noise, the obstruction of road traffic, or other types of nuisance. Such temporary alterations of ordinary life do not exempt state authorities from their positive obligation to facilitate the effective exercise of the right to peaceful assembly. When legislating in relation to public assemblies, the legislator has a responsibility to strike the right balance between respect for freedom of peaceful assembly and the protection of the rights of others. In doing so, the legislator should be guided by the human rights obligations undertaken by the state, including the Convention, as interpreted by the Court. Relevant standards are also detailed in the Guidelines on Freedom of Peaceful Assembly adopted by OSCE/ODIHR and the Venice Commission.

The case-law of the Court indicates that, although member states have a certain margin of appreciation for sanctioning intentional disruption of ordinary life and traffic in the context of assemblies, they do not enjoy unlimited discretion to take any measure they consider appropriate. Rather, considering that demonstrations featuring roadblocks and other physical conduct purposely obstructing traffic and the ordinary course of life also fall within the terms of Article 11 of the Convention, member states must apply standards which are in line with the principles embodied in it. This means that they must exercise their discretion reasonably, carefully and in good faith, and only adopt proportionate measures pursuing a legitimate aim and which are necessary to address a pressing social need. The Court has also repeatedly held that a peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction and notably to deprivation of liberty. The Court examines with particular scrutiny situations where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence. In *Ekrem Can and Others v. Turkey*, it found that sentencing demonstrators to one year and eight months' imprisonment, on account of the disturbance created, was not justifiable, when the applicants' conduct was not violent and caused no damage.

Drawing on these standards, I am concerned that Bill 1236 excessively broadens the scope of permissible state interventions in public assemblies, including against individuals attending peaceful protests. In particular, Article 14 of the bill introduces the criminal offence (in place of the existing administrative offence) of traffic disruption with one's own body, punishable with imprisonment from six months to two years if carried out by at least two people. Article 11 further introduces a general aggravating circumstance for any crimes committed inside or near train and underground stations and

carriages. Article 13 also extends the circumstances under which police commissioners can ban individuals from accessing certain areas in proximity to roads, railways, airports and other infrastructures, for up to one year, and Article 24 imposes prison sentences between six and eighteen months for the defacement of buildings or goods used for public functions, when the goal is to harm the honour, prestige or decorum of an institution. Article 26 introduces the crime of rebellion in prisons, punishing individuals with imprisonment from one to five years (and from two to eight years for those who promote, organise or direct the rebellion) not only for acts of violence or threats, but also for resistance, including passive resistance. Moreover, Article 27 introduces the same crime in the context of detention and reception centres for migrants and asylum seekers, punishable with imprisonment from one to four years (and from eighteen months to five years for those who promote, organise or direct the rebellion), again also for people who have merely resisted passively.

It is my view that these provisions, which introduce offences that are defined in vague terms, and include other severe restrictions, create room for arbitrary and disproportionate application, affecting activities that represent a legitimate exercise of freedom of peaceful assembly or expression. In particular, by providing for the imposition of significant prison sentences merely for participating in demonstrations that may not have been violent or caused damage, Bill 1236 imposes restrictions that may not be consistent with the requirements of the Convention. It also creates a chilling effect on the legitimate exercise of public freedoms, which authorities must take into account when designing legislative measures.

Certain measures addressed above restrict the rights of people in prisons or detention centres, who may have limited recourse to institutional avenues to defend their rights. Prisoners continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, which may only be restricted in cases and to the extent foreseen by it. Although the Court considers that, within the context of prisons, Article 11 of the Convention does not confer a right to mix socially with other prisoners at any particular time or place, it does not rule out inmates' rights of association. Furthermore, prisoners continue to enjoy the right to freedom of expression, which covers certain forms of peaceful protest that may entail passive resistance. In the context of prisoners' protests, for example in case of hunger strikes, it is essential for the proper examination and management of the situation by the state to ascertain the true intention of and real reasons for the inmates' protest, as well as ensuring a meaningful response to their complaints and demands. As is apparent from the case-law of the Court and reports of the CPT, as well as from domestic case-law, treatment and conditions in Italy's prisons and detention centres have been found not to comply with international standards, adding reasons for prisoners to challenge their conditions by peaceful means.

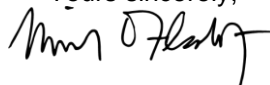
Furthermore, I note that several measures within the bill appear specifically designed to target environmental protesters, including young human rights defenders. As also highlighted by the UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor, in a report published in January 2024, young people have limited possibilities to formally participate in political decision-making. Consequently, they may need to rely on demonstrations or protests, including disruptive ones, to make their voices heard. My Office has already observed increasing reports from Italy of legal action and restrictive measures targeting individuals advocating for urgent action to protect the environment – including through the implementation of recent legislation.

While in this letter I have chosen to specifically address risks related to freedom of peaceful assembly and expression, I note that the bill has a wide scope and raises various additional concerns in relation to other rights, which have been described in a legal opinion published by OSCE/ODIHR as well as by civil society organisations.

I respectfully ask the members of the Senate to refrain from adopting the bill, unless it is substantially amended to ensure that it complies with relevant Council of Europe human rights standards.

I would be grateful if you could ensure that all members of the Senate receive a copy of this letter and I look forward to continuing our dialogue and cooperation.

Yours sincerely,



Michael O'Flaherty