On Italy’s Use of Preventive Measures to Crack Down on Climate Protests

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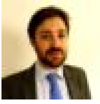

Giacomo Menegus

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Climate Protests and City Bans

As climate protests are mounting across Italy, there is a corresponding escalation in repressive responses from public authorities. This trend is not unique to Italy but is rather widespread throughout Europe, as evidenced by frequent reports in national newspapers and posts on this blog. What sets Italy apart from other European nations is the spectacular increase in the use of preventive measures by the public security administration. Measures such as the so-called *avviso orale* (a warning to obey the law), the *rimpatrio con foglio di via obbligatorio* (also called *foglio di via*, a city ban, ranging from six months up to four years), or the more recent *daspo urbano* (a ban from specific city areas, introduced in 2017, ranging from 48 hours up to two years) are now a rather frequent occurrence in the aftermath of climate protests. The use of preventive measures against climate activists is not only inherently problematic, given the contested constitutionality of these measures and the questionable fulfillment of the conditions for their application to climate activists, but it also appears to be primarily directed at suppressing climate protests rather than genuinely pursuing the legislative goal of safeguarding public security.

Banning climate activists from cities: an increasing trend

On October 23, 2023, a group of one hundred people disguised as Pinocchio blocked the entrance to the Ministry of Infrastructure and Transport to protest climate denialism. In response, the authorities not only confiscated the equipment of the activists but also charged three protestors for demonstrating without prior notice and issued one *foglio di via*. Dozens of further charges were subsequently added over the Christmas holidays.

Fast forward to November 29, seven activists occupied the roof of an arena in Turin during the “Aerospace and Defense Meeting” to unfurl peace flags and a large banner proclaiming: “War and climate crisis are being financed here.” Nine people were charged with several offences, four of them were banned from the city, and two received oral warnings.

On December 9, protestors dyed the Grand Canal in Venice green using fluorescein. Three individuals abseiled from the picturesque Rialto Bridge. The protest resulted in 28 people, including an unfortunate tourist who was merely passing by, being detained by the police for six hours. They were charged with several offenses, including coercion and spilling of dangerous substances. The authorities also issued seven *fogli di via*, three *daspo urbano,* and three *avvisi orali*. However, one of the city bans was later revoked because it was directed against a student of Ca' Foscari University in Venice.

Overall, according to a statement by the group Extinction Rebellion, at least 100 criminal charges, *fogli di via,* and other preventive measures have been issued by public security authorities against activists during the latest months.

The use of preventive measures to crack down on climate activists' protests in Italy poses several constitutional issues.

The legal framework for *fogli di via*

Among the various preventive measures, we will narrow our focus on the widely utilized *fogli di via* – the city bans. They can be classified as "personal" preventive measures, distinct from those targeting assets, and are governed by Article 2 of Legislative Decree No. 159 of 2011 (Code of anti-mafia laws and preventive measures).

A *foglio di via* may be issued by the *Questore* – a high-ranking official within the Administration of Internal Affairs tasked with directing police services and maintaining public order in provinces. The measure may be applied against individuals deemed "socially dangerous" under Article 1 of Legislative Decree No. 159/2011, which defines the addressees of the Act as:

> "(a) any person who may be presumed, on the basis of factual findings, to be habitually involved in unlawful dealings;
>
> (b) any person who, owing to his or her conduct and lifestyle, may be presumed, on the basis of factual findings, to earn a living, either in full or in part, from the proceeds of unlawful activities;
>
> (c) any person who by his or her conduct may be presumed, on the basis of factual findings, (…) to be involved in the commission of crimes that offend or endanger the physical or moral integrity of minors, health, public security or public tranquility."

Individuals who are identified as socially dangerous under Article 1 and are also perceived as a present and tangible threat to public security, may be ordered to leave the municipality within 48 hours. This is unless the municipality is their formal or factual habitual residence. Subsequently, they may be prohibited from reentering for a period that can range from six months to four years.

The *foglio di via* is an *administrative* preventive measure, which implies that it is adopted unilaterally by the public security authority, without providing the affected person with a fair hearing. It relies on "factual findings," where mere suspicions – rather than facts established through standard criminal proceedings – suffice to suggest a potential threat to public security. The involvement of a judge is not mandatory, but the affected individual can challenge the measure before an administrative court.

Of Dissidents and Dangerous Subjects

Personal preventive measures, like the *foglio di via,* have a deep-rooted history in the Italian legal system, with their origins tracing back to the pre-unification states in the 19th century. Throughout various stages of modern Italian history, these measures have been widely applied. Initially designed to ostracize beggars, idlers, vagabonds, suspects of crimes, or those defamed for previous convictions, their overarching purpose was primarily social defense, particularly of liberal bourgeois values. Over time, however, such preventive measures were used to target "politically dangerous" subjects, brigandage, and the Mafia. During Fascism, they were also widely utilized to repress dissidents.

Notably, the new Republican Constitution, which entered into force in 1948, omits any mention of preventive measures, and there was also almost no debate on the topic during the preceding Constituent Assembly.

Some authoritative scholars have argued that the silence maintained by the Constituents – many of whom experienced preventive measures during the regime – should be understood as a radical rejection of such instruments[1]. In any case, constitutional scholarship raised significant doubts about the validity of the existing legislation, citing the lack of due process, vague wording in relevant provisions, and the potential for arbitrary application and abuse[2]. Since its establishment in 1956, the Constitutional Court has dealt with various proceedings concerning preventive measures, adopting a case-by-case approach. While it has corrected the most manifestly unconstitutional aspects of the practice, uncertainties persist. The framework for preventive measures underwent its first amendment in 1956 in response to the initial Court decisions. However, it has since been continuously expanded, driven by the pressing need to combat the Mafia and terrorism, and, more recently, to ensure urban decorum.

Following the 2017 *De Tommaso* ruling, where the European Court of Human Rights found the preventive measure of "special police supervision" to violate the Convention due to a lack of precision and predictability in the relevant provisions, the Constitutional Court seemed to adopt a more stringent stance. It subsequently found the definition of "dangerous persons" under Article 1, lett. (a) to be too vague and indeterminate (see Judgment No. 24 of 2019).

The discipline governing the *foglio di via,* has not yet been referred to the Court since this perceived shift in constitutional jurisprudence. Given that it shares the problems of vagueness and non-foreseeability with the provisions invalidated, it is likely destined to – sooner or later – be declared unconstitutional.

The highly problematic application in the context of climate protests

Temporarily setting aside constitutional concerns, the application of *fogli di via* in the context of climate protests already appears inherently problematic within the existing legal framework. Categorizing climate activists as ‘socially dangerous’ under Article 1 of Legislative Decree No. 159/2011 would necessitate a classification under lett. (c), as lett. (b) is evidently not applicable to their case, and they cannot be classified under lett. (a) either, since this must be deemed unconstitutional after judgment no. 24/2019. Accordingly, it would require the fact-based presumption that the protestors are “involved in the commission of crimes that offend or endanger…public security or public tranquility”.

Considering that the acts of civil disobedience carried out by climate movements are consistently peaceful and pose no threat to public security, it becomes challenging to conceive what kind of “factual findings” could justify the issuance of preventive measures. To our knowledge, most of the measures issued in the last months were based on police reports relating to alleged criminal offences such as organizing demonstrations without prior notice and failing to comply with orders from public authorities – practices often associated with passive resistance, such as sitting blockades. In some instances, the charges seem to be *prima facie* overqualified, as in the fluorescein case in Venice.

The validity of the preventive measures adopted in response to climate protests becomes increasingly questionable when considering, that, according to well-established case law, to issue a *foglio di via* under Article 2 of Legislative Decree No. 159 of 2011, the current and actual dangerousness to public security by the individuals presumed “socially dangerous” under lett. (c) should be assessed. In this context, given that all activist demonstrations, despite not being pre-notified to the police, have been peaceful, it remains unclear on what basis the issuance of city bans was justified.

Furthermore, considering the broad impact of such measures on the fundamental rights of the individuals affected, including the freedom of movement, authorities should adhere to the general principle of proportionality. They should therefore refrain from imposing *fogli di via* when the potential unlawful activities are likely to have minimal or no impact on public security. The proportionality of the measures issued against climate activists appears, therefore, dubious at best.

Banning climate activists as an indirect infringement of the freedom of peaceful assembly

Even under the assumption that the use of city bans against climate activists serves a preventive purpose, the resulting infringement upon the constitutional right to peaceful assembly is evident. However, if the objective of the *foglio di via* is to prevent non-violent civil disobedience or the organization of protests without prior notice, the link between the preventive measure adopted and the legislative purpose of preventing threats to public security becomes blurred. This misalignment with the objectives specified in the law undermines the legitimacy of the administrative action; if the concrete goal of the public authorities diverges from the legislative purpose, the act becomes unlawful due to *eccesso di potere per sviamento* (abuse of power by misuse) and may be annulled by administrative courts. Therefore, it is crucial for the public security authority to exercise particular caution when implementing such measures in response to assemblies that, despite not being pre-notified to the police, occurred peacefully.

Additionally – if taken to an extreme – the systematic issuance of *fogli di via* against individuals associated with climate groups may constitute a limitation based on political reasons. This is intolerable both in the context of freedom of assembly and, even more so, the freedom of movement, since Article 16 of the Italian Constitution expressly states that "[n]o restrictions may be imposed for political reasons".

The right road leads straight to the administrative courts

All things considered, the activists were right in seeking reassessments of the respective *fogli di via* directly from the public security authority, especially in cases that clearly lacked legitimacy– such as instances where they were imposed on individuals who resided in the municipality from which they were banned (in the Venice case). However, the correct course of action, as currently pursued by the activists, leads directly to the administrative courts. There, one can expect not only a definitive halt of this highly dubious practice but also a reference to the Constitutional Court for a review of the legal framework outlined in Legislative Decree No. 159 of 2011. In light of the most recent jurisprudence from the Strasbourg Court and the Constitutional Court itself, a comprehensive reform of this Act, which no longer aligns with the constitutional framework despite a long-standing tradition, seems nonetheless inevitable.

References

↑**1** See, e.g., *Elia*, Libertà personale e misure di prevenzione, 1962; *Barile*, Diritti dell'uomo e libertà fondamentali, 1984, pp. 136 ff.

↑**2** For a comprehensive reconstruction of the doctrinal debate, see *Dolso*, Le misure di prevenzione personali nell'ordinamento costituzionale, in Fiorentin (ed.), Misure di prevenzione personali e patrimoniali, 2018, pp. 41 ff.

References

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