

LIII. ITALY¹³⁷

SUMMARY OF LEGISLATION OF ITALY RELATED TO TERRORISM

Under Decree Law No. 374 of 18 October 2001, enacted as Law No. 438 of 15 December 2001 (Decree Law 374/2001), Italy adopted urgent measures to combat international terrorism. Section 7 of that Decree, referring to section 18 of Law 152/1975, applies the provisions of the Anti-mafia Act (Law 575/1965) to international terrorism. This measure extends the application of pre-emptive and preventive measures involving restrictions on personal freedom (internal exile, surveillance), the investigation of economic and financial assets extended to those of family members; the sequestration and confiscation of goods acquired as a result of illegal activities or of assets into which illegally acquired assets have been reinvested, to anyone performing any action in preparation for the commission of terrorist crimes, whether domestic or international.

In addition to existing legislation, Decree Law 374/2001 criminalizes the financing of both international and domestic terrorist activities. Section 1 (“Provisions relating to conspiracy for the purposes of domestic or international terrorism”) updates article 270-bis of the Criminal Code and provides that “anyone promoting, instituting, organising, managing or financing organisations whose purpose is to propose acts of violence for the purposes of terrorism or for subverting the democratic order shall be liable for a term of imprisonment of between seven and fifteen years”, and that “anyone participating in the aforementioned organisations shall be liable for a term of imprisonment of between five and ten years”, specifying that “the pursuit of terrorism shall also apply when the acts of violence are directed against a foreign state, or an international organisation or institution”. The same article 1 also contemplates the crime of “providing assistance to associated persons” in article 270-ter of the Criminal Code, for which the penalty is a term of imprisonment of a maximum of four years.

Law 152/1975 for the protection of public order, empowers the members of the judicial police force and the ordinary police force, in cases of necessity and when urgently required, to conduct spot checks and/or search individuals and/or vehicles in order to ascertain whether they are in possession of offensive weapons and/or tools for the purposes of breaking and entering. These provisions also apply to anyone performing actions to subvert the State and/or to anyone instigating, master-minding and/or financing them.

Furthermore, Decree Law 374/2001 makes it a crime merely to take part in any preparatory activities in association with others for the commission of acts of terrorism. In particular, it expands the application of the regime for judicial

¹³⁷ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2002/8, enclosure) and 9 July 2003 (S/2003/724, enclosure).

wire-tapping and the searching of buildings or blocks of buildings to cover cases of crimes committed for the purposes of international terrorism (section 3); it introduces ad hoc provisions to permit undercover operations, and to delay the issue of arrest warrants, the arrest of individuals and the seizure of property in this connection (section 4); it extends to counter-terrorism investigations the possibility of carrying out preventive wire-tapping (section 5) and the interception of communications between persons present, in connection with the search for fugitives from the law (section 6).

With regard to the issue of recruitment of individuals who would engage in terrorist activities, the new legislation opens up new scope for intervention by creating new criminal offences.

With regard to preventing the supply of weapons to members of associations or groups with the purpose of terrorism, Italian legislation provides suitable legislative measures for effectively controlling the circulation of weapons (Law 895/1967, Law 110/1975 and Law 185/1990), through a tightly controlled system of issuing permits for imports and exports, the registration of companies and data, prior investigations of individuals and the imposition of stringent criminal penalties on offenders. It should be noted that the aforementioned Decree-Law 374/2001 incorporates (in section 1(2)) the list of "weapons of war" referred to in Law 110/1975, to include "aggressive biological and radioactive substances". It should also be noted that Section 22 of law 93/2001 has introduced into the Italian legal system the crime of "organising the traffic in waste", with penalties of imprisonment for between three and eight years in the case of highly radioactive waste. This provision is particularly useful for combating the transfer of any kind of radioactive materials that are not specifically classifiable as "aggressive".

There are additional provisions of the Criminal Code which warrant being mentioned. Article 110 makes any person aiding and abetting crime liable for that same crime, and therefore makes it possible to prosecute anyone financing individual acts of terrorism. Article 240(1) involves the seizure of funds of this kind; the illegal establishment of and participation in international conspiracies constitute crimes punishable under articles 273 and 274. Other cases, such as terrorist bombing, devastation, looting and multiple murder, and attacks against constitutional organs of the State and regional assemblies are provided by articles 280, 285 and 289. Article 289-bis introduces the punishment for abducting individuals for terrorist purposes; article 294 deals with the political rights of the citizens, article 306 provides penalties for establishing or taking part in armed gangs, and, lastly, article 312 sanctions the expulsion of foreign nationals who have been found guilty of these crimes.

The Decree Law previously mentioned has, among other things, updated article 270-bis of the Criminal Code and has further strengthened the system of the criminal law provisions already in force. In particular, the most relevant rules for combating domestic terrorism are contained in article 270 of the Criminal Code, which contemplates the crime of setting up subversive organisations; in article 270-bis which contemplates the crime of conspiracy for the purposes of terrorism

and subversion of the democratic order; in articles 285 and 286 regarding devastation, multiple murder, looting, and civil war; in article 306 governing armed organisations; in article 280 which lays down the penalties for attacks designed for the purposes of terrorism and subversion; in article 289-bis relating to the abduction of persons for terrorist purposes or to subvert democratic order.

Pursuant to Decree Law 374/2001, Italy's legislation to protect law and order and to combat the subversion of the democratic system are now also applicable to crimes that are committed for the purposes of international terrorism. In particular, mention should be made of the following measures: the possibility of conducting police searches to discover weapons and explosives, without requiring the intervention or authority of the Courts (Section 4 of Law 152/1975); the seizure and confiscation of buildings in which weapons have been discovered (Section 5 of Law 533/1977); the detention of persons refusing to provide personal particulars or who are without identity documents (Section 11 of Law 191/1978); the statutory requirement to notify the authorities of assignments of property or the use and enjoyment of a building (Section 12 of that same Act).

In addition to this, the Italian legal system makes provision pursuant to Section 1 of law 15/1980 for aggravating circumstances, so that it is possible to proceed not only in respect of specified crimes related to this field, but also by charging suspects of ordinary crimes with the aggravating circumstances of having acted with the intention to commit acts of terrorism or the subversion of the democratic order.

LIV. JAPAN¹³⁸

SUMMARY OF LEGISLATION OF JAPAN RELATED TO TERRORISM

As regards Japanese counter-terrorism legislation and executive measures, reference is made to the following:

- Foreign exchange and foreign trade law (law no. 228 of 1949)
- Export trade control order (executive order no. 414 of 1949)
- Foreign exchange order (executive order no. 260 of 1980)
- Law concerning prevention of injury to persons caused by sarin (law no. 78 of 1995)

¹³⁸ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1306, enclosure) and 29 January 2003 (S/2003/269, enclosure).