



Statewatch analysis

Italy

Tough new anti-terrorist laws adopted

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“allows law enforcement authorities to interrogate suspects without the suspect having a lawyer present, thus eliminating an important safeguard against torture as well as a protection of the right to a fair trial” (Amnesty International)

“it will also be possible for an executive authority (a prefect) - not a judge - to expel from Italy a person who is residing in Italy legally, determining that expulsion on prima facie evidence that the person poses a security threat to Italy” (Amnesty International)

“it gives the secret services the possibility to intercept [communications]; it makes the storage of telephone and IT traffic data obligatory for an unreasonable time” (Mauro Paissan, Italian Data Protection Ombudsman’s Authority)

“Muslims must go around in jacket and trousers so as to avoid there being any covered body parts, otherwise there could be a terrorist under every robe” (Giancarlo Gentilini, Lega Nord mayor of Treviso)

On 1 August 2005, a new anti-terrorist law came into force in Italy only five days after the government had presented the decree that the Council of Ministers (the Italian cabinet) had approved on 22 July 2005. It includes a string of anti-terrorist measures in response to the terrorist attacks in the London public transport services on 7 July. The decree followed a heated public debate which often strayed into racism, as a result of the threat issued by Al Qaida against Italy in relation to its presence in Iraq and of the increasingly intolerant discourse of MPs and ministers from the *Lega Nord*. Giuseppe Pisanu, the Italian Interior Minister, explained that measures in the decree’s nineteen articles were not “exceptional” but rather, an:

“intervention to make existing norms sharper and more incisive in the fight against terrorism”

Although the claim was aimed at reducing concern over the measures that were to be adopted, a closer reading of the law suggests that it features the adoption of “exceptional” measures on a permanent basis. The inclusion of measures to make data retention compulsory until 31 December 2007, the limiting of judicial oversight and increased political involvement in expulsions and investigative activities, and powers given to the army to search and detain terrorist suspects are examples of this. The law (whose title admits that it is aimed at tackling “international terrorism and crime”) also sanctions a departure from ordinary procedure for practices such as detention, searches, surveillance or the adoption of restrictive measures for cases involving terrorist offences, expands the definition of terrorist conduct in line with the definition adopted at an EU level, and increases punishment for individuals contravening restrictive measures imposed upon them.

Amnesty International spoke out against some of the provisions that were proposed, arguing that the decree:

“allows law enforcement authorities to interrogate suspects without the suspect having a lawyer present, thus eliminating an important safeguard against torture as well as a protection of the right to a fair trial”

and that

“it will also be possible for an executive authority (a prefect) - not a judge - to expel from Italy a person who is residing in Italy legally, determining that expulsion on prima facie evidence that the person poses a security threat to Italy”

Although this measure was altered to allow the interior minister to order expulsions and to make the prefect’s power to do so dependent on authorisation by the interior minister, the oversight over this measure has become political rather than judicial. Mauro Paissan from the Italian data protection ombudsman’s authority also expressed his concern:

“it gives the secret services the possibility to intercept [communications]; it makes the storage of telephone and IT traffic data obligatory for an unreasonable time”

The measures adopted by the Council of Ministers applied to internal terrorism, or terrorist activity against other countries or international organisations (the last two of these were first introduced in Italy following the 11-5 attacks in the US, see *Statewatch vol. 11 no. 5*), and have a number of purposes. In the first place, they limit judicial oversight and remove some guarantees for suspects, as well as legal restrictions applying to the expulsion of foreigners whose presence in the country is deemed to benefit terrorism “in any way” (potentially on the basis of secret evidence). They offer the possibility of obtaining long term residence permits for “illegal” migrants who

cooperate with authorities by providing information to combat terrorist activities, decree mandatory telecommunications data retention until 31 December 2007 and expand powers to intercept communications to the secret services.

New terrorist offences are introduced, such as the recruitment or training of terrorists or the transmission of information that may be used to commit violent acts for terrorist purposes, and behaviour that has terrorist goals (increasing sanctions for “apologia”, or justification). The period during which suspects can be interrogated without a lawyer being present is increased from 12 to 24 hours (the limit for such interrogations was reduced to 12 hours after the death of Pinelli, an anarchist suspected of involvement in the Piazza Fontana bombing which was later found to have been the work of right wingers, who died after falling out of a window during an interrogation in 1969). Also the creation of inter-force investigation units on order from the interior minister is envisaged for investigations into terrorist offences. The requirement of prior authorisation is introduced for telecommunication service providers (a license subject to the establishment of procedures to comply with data retention and user monitoring provisions), people “importing, trading, transporting and using” detonators and explosives or instructing people in their use (with possible sentences of between one and six years), and flight activity over Italian territory. The exclusive power of the judicial police to exercise some of its functions is circumscribed in scope and extended to other bodies (such as the prison police in urgent cases involving detainees). Sanctions for possession, use and manufacturing of false documents are increased, and possession of a false document will also become a circumstance that allows immediate detention, as it is to be considered evidence of the likelihood of a suspect fleeing.

The amended law which emerged on 31 July after scrutiny in the Senate (two days) and parliament (one day) featured the introduction of measures including:

- the granting of powers to personnel from the army involved in anti-terrorist surveillance to search or detain suspects for anti-terrorist purposes;
- the extension of the power to conduct undercover operations (using IT facilities) to the postal police;
- the extension of the need for a special license to any kind of establishment where telephones or terminals are made available for use by the public, customers or members (except for public payphones, but applicable to call centres);
- a clear statement of the fact that when appeals are filed by people against whom an expulsion order has been filed for anti-terrorist purposes, the expulsion will not be suspended under any circumstance pending appeal;
- the allocation of special funding to develop anti-terrorist security in airports and for the coming Winter Olympics in Turin;

- increased sanctions against people “taking part in public demonstrations.. in public spaces... using helmets or with the face partially or completely covered” (from one to six months and fines of between 25 to 100 euros- to one to two years and fines of between 1,000 and 2,000 euros).

This last measure caused a degree of controversy, because it was viewed as a measure that the LN had proposed to prevent Muslim women from wearing veils or burqas in public places, thus criminalising an entire community. A closer reading indicates that it is aimed at people wearing helmets or whose face is partially or completely covered, obstructing their identification, during demonstrations in public spaces or when police officers request to identify them. As a consequence, in theory, this measure is as likely to affect demonstrators (increasing punishment for specified forms of behaviour on demonstrations) as women wearing a veil. However, there have already been reports that two women have already been arrested for wearing a veil in Venice, leading the Venice general prosecutor to state that it is not a punishable offence to wear a veil or burqa in public, unless the wearer refuses to uncover her face when police seek to identify her. Nonetheless, in the north-eastern city of Treviso, the notorious LN mayor, Giancarlo Gentilini, declared that “this kind of clothing is inadmissible in a moment like this”, adding that he was also opposed to the wearing of robes:

“Muslims must go around in jacket and trousers so as to avoid there being any covered body parts, otherwise there could be a terrorist under every robe”

Outline of the contents of the law:

Art. 1 extends the power to privately interview detainees, previously limited to personnel from the Antimafia Investigative Direction, to officials at a province level of the police and *carabinieri* for investigations concerning terrorism, as well as to judicial police and customs police officers in relation to the financing of terrorism, in order to acquire information “for the prevention and repression of crimes committed for terrorist purposes or to subvert the democratic order”.

Art. 2 decrees that foreigners whose stay in the country must be ensured as a result of their cooperation with the authorities in the course of “police operations, investigations or proceedings” into terrorist offences, will be granted a special residence permit lasting no less than a year. The request for the permit will have to be motivated, with reference to the “relevance of the contribution” made by the foreigner, and the permit will be renewable for reasons of “justice or public security” and may be withdrawn in the case of conduct which is “incompatible” with the reasons for which it was issued. If the contribution by the foreigner is deemed “extraordinary” in terms of preventing terrorist attacks threatening the life or physical integrity of persons, or of lessening their effects, a *carta di soggiorno* (long-term residence permit) may be issued.

Art.3 allows the prefetto (local police chief) to order the immediate expulsion of foreigners concerning whom there are reasons to believe that their stay in

Italy may benefit terrorist organisations or activities “in any way”. Following amendments, this provision was made subject to authorisation to do so, to be granted by the Interior Minister, who is also given authority to order expulsions. This measure applies to persons who have been accused or found guilty, or have had special conditions applied to them, because they are considered to be involved in the carrying out of criminal acts that offend or threaten public security and peace. The expulsion may be suspended if the conditions for granting the foreigner a residence permit as envisaged in article 2 (the provision of useful information for the prevention of terrorist activities) apply. Expulsion orders may be appealed before regional administrative courts, although appeals may be suspended for up to two years, if state secrecy regulations apply, and amendments to the original text state clearly that appeals will not result in a suspension of the execution of the expulsion.

Art. 4 allows the Prime Minister to instruct the directors of the secret services to request a judicial authorisation to carry out “preventative telephone interceptions”, if they are considered “indispensable” to prevent terrorist or subversive activities. Amendments specify that the general prosecutor in the appeal court of the district where the person to be placed under surveillance is located is responsible for the authorisation.

Art.5 allows the setting up of inter-force investigating units composed by experts, officials and officers from the police forces and judicial police by the Interior Minister if they are needed for judicial police investigations related to terrorist offences.

Art. 6 concerns telephone and IT traffic data. Until 31 December 2007, the decree orders the suspension of the implementation of any measures that order or allow the deletion of telephone or IT-based communication traffic data allowing to trace access and services, and that they must be stored until that date by providers of any communication network that is open to the public, except for those for which a longer storage period is provided. Traffic data will include data concerning telephone calls that were not answered. The use of data stored beyond the limit imposed in June 2003 (thirty months for telephone calls which may be extended by a further 24 months, whereas a new requirement to store data relating to IT-based communications introduces a minimum retention period of six months, which may be extended by six months) will only be allowed for the purposes of this decree. It will be compulsory for telecommunication service providers to acquire personal data contained in an official identity document presented by a customer before issuing a SIM card. An amendment introduced for “urgent” cases, in which “delay could seriously prejudice investigations”, allows prosecuting magistrates to apply for access to telephone traffic data by a fast-track procedure lasting a maximum of three days.

Art. 7 introduces the requirement to obtain a special licence to provide telecommunication services, whose granting will be subject to the establishment of procedures to monitor the users’ operations and to store data, as well as for the collection of personal data as envisaged above. Amendments extend the need to obtain this license to any establishment or

any kind of private club providing terminals for people to carry out telephone or IT communications, excluding public payphones, and establish deadlines for obtaining these licenses.

Art.7 bis (amendment) expands the power to conduct undercover IT activities for the purpose of combating terrorist activities or activities that further terrorism, including getting in contact or activating groups or individuals, without any crime they may commit in the process to obtain evidence being punishable, to the postal police (the police, carabinieri and customs forces already had the possibility to do so).

Art. 8 introduces special limits or conditions for the importing, trade, transport and use of specified detonators and explosives. Instruction in the use of explosives is to be subject to a prior authorisation granted by the *questore* (in charge of the administration of public security in any given province), and can be withdrawn if specified circumstances apply. Contravening this provision may lead to sentences of between one and six years, unless aggravating circumstances apply.

Art. 9 allows the interior minister to decree that a prior authorisation by the *questore* should also apply to permits to fly and to undergo instruction to fly, for a specific period of between six months and two years, in order to ascertain that there are no concerns regarding the people concerned in relation to public order and security, or State security. This authorisation may also be required of people who are licensed to carry out this activity, “for serious reasons of public order and security”, who seek to fly over the Italian territory. If the *questore*’s authorisation is not issued, any previous licenses or permits that have been granted will be withdrawn, and those issued by other countries will not be valid in Italian territory. “For serious public order or security reasons”, an amendment makes flying activity from, towards or through Italy subject to a prior permission to be issued by the *questore*.

Art. 9 bis (amendment) provides 2,500,000 euros in funding for investment by the Ente Nazionale per l’Aviazione Civile (National Agency for Civil Aviation) in measures to improve security in airports in an anti-terrorist key.

Art.10 deals with personal identification. The limit for police detention to identify or question a person will be extended from 12 to 24 hours, and its scope will be broadened from someone who “has been charged by the judicial authority” to include “a person who is under investigation by the same authority or by the judicial police”. People in possession of false documents (amended from “users”) are to be punished with between one and four years’ imprisonment, and half (up from a third) of this sanction will apply to people who make or develop the false document, without using it themselves. If necessary, DNA samples may be taken from a detained person, after prior authorisation has been given by a prosecuting magistrate, if the person in question does not authorise it. Amendments were introduced stating that hair or saliva samples would be the source of the DNA profiles, and that sanctions for “taking part in public demonstrations.. in public spaces... using helmets or

with the face partially or completely covered” are to be increased to between one and two years in prison and fines of between 1,000 and 2,000 Euros.

Art.11 decrees that electronic residence permits and *carta di soggiorno* (long-term residence permit) are to be issued using advanced technological means against counterfeiting, in accordance with the uniform forms that apply to permits for third-country citizens in EC Regulation 1030/2002.

Art. 12 introduces the duty to check any judicial precedents that are reported involving a person who is under investigation or has been charged, either previous or subsequent to the acts for which the charges have been brought or investigations initiated, and even if the person has used an alias.

Art. 13 arrest and detention - the lower threshold for the obligatory immediate arrest of people caught in the act of committing a crime for terrorist or subversive purposes (regardless of whether it has been committed or attempted) that is liable to be punished with sentences of between five and ten years, is lowered to four years. The making, possession or use of a false identification document is added to the list of offences to which this measure applies. Measures for the detention of people against whom serious evidence exists, who are not caught in the act but are deemed to be liable to flee, are extended from offences relating to “war weapons and explosives” to crimes committed for terrorist or subversive purposes, and the requirement for this measure to be taken “specific elements that lend credibility to the risk that the suspect may be about to flee” is changed to “specific elements, like the possession of false documents, that lend credibility to the risk that the suspect may be about to flee”.

Art. 14 The failure to comply with obligations and prohibitions that apply to the special surveillance of “persons who are a threat to public security and morality” will result in imprisonment for between one and five years, and is subject to obligatory arrest even when the person concerned is not caught in the act. The measure also applies, for instance, to someone leaving an “obligatory place of residence” that has been decreed (two to five years). Moreover, this article also allows the freezing of assets when there are sufficient elements to inform the UN Sanctions Committee, the conditions defined in EC Regulation n. 881/2002 of 27 May 2002 apply, and the assets may be “dispersed, hidden or used to finance terrorist activities”. In such cases, the competent public prosecutor must be informed of the case by the financial security committee.

Art.15 introduces new types of criminal activity to be treated as terrorist, including 1) the recruitment of terrorists, (which may be sanctioned with between seven and fifteen years in prison); 2) their training or the provision of information on explosives, weapons or techniques for carrying out acts of violence (sanctionable with between five and ten years in prison with the same sanction being applicable to the recipient of training or information); and 3) conducts that have terrorist goals, which are loosely defined as behaviour that, for its nature or context “may harm a country or international organisation” and “is committed to intimidate a population or to force public

authorities or an international organisation to carry out or abstain from carrying out any act or to destabilise or destroy the fundamental political, constitutional, economic and social structures of a country or international organisation". Amendments specified that "acts of violence" referred to "sabotage of essential public services, with terrorist aims", expanded the list of instances of terrorist activity to include a definition that is almost identical to that approved by the EU in the Framework decision on terrorism, and the sentences for instigating or justifying ("apologia") criminal activities are increased by half for "terrorist" crimes or "crimes against humanity".

Art. 16 prohibits the adoption of judicial initiatives involving terrorist activities without authorisation from the justice minister. Legal guarantees in the *codice di procedura penale* (procedural criminal code) concerning practices such as police detention, searches of individuals or places of residence, the adoption of restrictive measures against individuals, identification, the interception of communications or conversations and interrogations, which decree that any evidence obtained without following the relevant procedure in these areas cannot be used, are decreed not to apply to terrorist offences.

Art. 17 In proceedings involving prisoners or prisoners awaiting appeal, prison police officers are allowed to issue notifications (previously a competence of the judicial police or officers) subject to authorisation by a judge, and their exclusive competency to notify decisions adopted by prosecuting magistrates is limited to "investigations or measures that the judicial police itself has been delegated to carry out or has a duty to execute".

Art. 18 allows private security guards and companies to carry out subsidiary security functions in ports, railway and metro stations, including vehicles and deposits, for which the exercise of public duties or membership of police forces is not required. The ministry of infrastructure and transport is in charge of adopting a decree in cooperation with the Interior Minister, to regulate the scope, procedure and personal requirements for carrying out these functions, as well as the "functional characteristics of the technical equipment" that may be used, and any prohibitions that are deemed necessary to carry out this surveillance activity, for whose costs the users of these services will pay. Amendments added the requirement to ensure "the dignity of persons" alongside "security", and detail some lines of funding to be made available, as well as special measures concerning the staging of the Winter Olympics in Turin.

Art.19 allows the interior minister to authorise the issuing of urgent funding for crisis situations by the chief of police, the general director of public security, who may delegate this function to the *prefetti*.

Sources

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16 August 2005