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Cases - International Crimes and the Right to Compensation

• Court of Cassation, III Civil Section, Judgment No. 3642 of 9 February 2024 published in ‘Rivista di Diritto internazionale’, no. 2, 2024, pp. 622-629

With Judgment No. 3642/2024, the Court of Cassation ruled once again on the civil claims for compensation brought against Germany by Italian victims of war crimes and crimes against humanity. In the present case, the question submitted to the Court of Cassation concerned the issue of the limitation period of the right to compensation, considering that almost 80 years have elapsed since the damaging events. This decision originated from an appeal against the judgment No. 772/2021 of the Court of Appeal of Florence which rejected a civil claim for damages brought by the heir of an Italian Military Internee who was captured in Greece and later deported to a German camp where he was subjected to forced labour in slave conditions between 1943 and 1945.

The Court of Appeal of Florence recognised the principle of no statute of limitations for international crimes codified in the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968.² However, the Court held that this principle was not applicable to conduct that ceased in 1945 by virtue of the preclusion provided for in Article 25(2) of the Italian Constitution, which establishes the non-retroactivity of unfavourable criminal law.³ The Court of Appeal further asserted that, although

¹ This report was prepared by Rachele Cera, Andrea Crescenzi, and Valentina Della Fina on behalf of the Institute for International Legal Studies of the National Research Council (CNR), Rome, Italy.

² Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, opened for signature 16 December 1968, 754 UNTS 73, entered into 11 November 1970. To date, Italy has not ratified this Convention.

³ Article 25 (2) of the Italian Constitution reads: ‘No one shall be punished save on the basis of a law which was in force at the time the offence was committed’. This provision enshrines the principle of non-retroactivity of criminal law and the principles of legality and *favour rei*. The Court further clarified that the principle of non-

the principle of no statute of limitations for international crimes is part of our legal system by virtue of Article 10(1) of the Italian Constitution,⁴ it could not be applied retroactively to facts committed in 1945 as in that period this principle was not yet a rule of general international law. As a result, for the Court of Appeal civil claims for compensation had to be considered time-barred since the crime applicable in the present case, i.e. enslavement, had a 15-year limitation in 1945.⁵ According to the Court of Appeal, the right to compensation was also time-barred pursuant to Article 2947(3) of the Italian Civil Code that governs the statute of limitations concerning civil claims for damages arising from a criminal offense.⁶

With Judgment No. 3642/2024, the Court of Cassation completely overturned the reasoning of the Court of Appeal of Florence by drawing a clear distinction between criminal non-retroactivity, which is guaranteed by the constitutional principle enshrined in Article 25(2) of the Constitution, and civil non-retroactivity, which is not supported by any constitutional provision. The Court clarified that in criminal law, non-retroactivity is guaranteed by the principle of legality and *favor rei* enshrined in Article 25(2) of the Constitution. On the contrary, in civil law, the statute of limitations does not enjoy the same constitutional guarantees, thus allowing the retroactive application of unfavourable rules. As a result, according to the Court of Cassation in civil matters it is not a retroactive application of the principle concerning the no statute of limitations for war crimes and crimes against humanity. The Court further clarified that for civil purposes, Article 2947(3) of the Italian Civil Code permits an incidental ascertainment of criminal liability in abstract, without the constitutional limitation referred to in Article 25(2) coming into play, since no criminal conviction can be pronounced pursuant to such provision. For the Court of Cassation, Article 2947(3) of the Italian Civil Code was therefore not applicable in the present case.

The Court of Cassation further emphasised that for matters concerning compensation for international crimes, issues related to jurisdiction and no statute of limitations of such crimes were strictly interlinked. Over the years, both aspects have shown an evolution of the relevant Italian case law. In the present case, the Court invoked the *Ferrini* case in which the same Court of Cassation ruled that Germany was not entitled to sovereign immunity from jurisdiction of Italian courts.⁷ While States enjoy 'absolute immunity' for acts committed in the exercise of

retroactivity established in Article 25(2) of the Constitution concerns only provisions establishing criminal offences and does not apply to claims for civil liability.

⁴ Under Article 10 (1) 'The Italian legal system conforms to the generally acknowledged provisions of international law'.

⁵ This offence is now punished by Article 600 ('Reducing or keeping in slavery or servitude') of the Italian Criminal Code which reads as follows: 'Whoever exerts on any other person powers and rights corresponding to ownership; places or holds any person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing said person into begging, or exploiting him/her in any other way, shall be punished with imprisonment from eight to twenty years. Placement or maintenance in a position of slavery occur when use is made of violence, threat, deceit, or abuse of power; or when anyone takes advantage of a situation of physical or mental inferiority and poverty; or when money is promised, payments are made or other kinds of benefits are promised to those who are responsible for the person in question'.

⁶ Under Article 2947(3) if the act causing a damage is also a crime and the criminal statute of limitations is longer than the civil one, then the longer criminal statute of limitations period applies to the civil claim for damages. However, if the crime is extinguished for reasons other than the statute of limitations or an irrevocable sentence has been issued in the criminal trial, the right to compensation for damages expires within the terms indicated in the first two paragraphs, starting from the date of extinction of the crime. The current Italian Civil Code was adopted by Royal Decree No. 262 of 16 March 1942 and entered into force on 21 April 1942. The Code was therefore in force at the time of the facts of the present case.

⁷ See Court of Cassation (United Sections), judgment No. 5044 of 6 November 2003 <<https://www.jolau.com/wp-content/uploads/2018/10/Sentenza-Ferrini-5044-04-2.pdf>>, accessed 30 April 2025. For a comment, see Pasquale

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their sovereign authority (*acta jure imperii*), the *Ferrini* ruling established that this immunity must be lifted when those acts constitute international crimes and serious violations of human rights. The Court of Cassation cited the *Ferrini* case to underscore the jurisprudential shift it inaugurated.

Starting from the decision *Ferrini* onwards, the rule on the jurisdictional immunity of foreign States was waived in cases of *acta iure imperii* that amounted to international crimes regardless of the date on which they were committed. This judgment paved the way for hundreds of civil claims for damages against Germany before Italian courts. The Court of Cassation also recalled the dispute between Italy and Germany before the International Court of Justice (ICJ) which ended with the ICJ ruling of 2012,⁸ and the subsequent decision No. 238 of 2014 of the Constitutional Court. In this latter case, the Constitutional Court reaffirmed the derogation from the rule on jurisdictional immunity of foreign States for claims concerning compensation for damages suffered by the victims of war crimes and crimes against humanity in breach of fundamental human rights committed as acts *jure imperii* by the Third Reich in Italy.⁹

The Court of Cassation also examined Article 43 of Decree-Law No. 36/2022 establishing the Fund for the Compensation of Damages Suffered by Victims of War Crimes and Crimes against Humanity.¹⁰ However, it ruled that this provision could not be applied to the present case because it had not yet been enacted when the appeal was lodged.

Based on the *Ferrini* ruling and the decision of the Constitutional Court No. 238/2014, the Court of Cassation held that the civil claim for damages of the present case, which was brought in 2006, was not time-barred. Accordingly, it annulled the appealed decision and referred the case back to the Court of Appeal of Florence to rule on the case, but in a different composition.

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De Sena and Francesca De Vittor, 'State Immunity and Human Rights: The Italian Supreme Court Decision on the Ferrini Case', *The European Journal of International Law*, 2005, Vol. 16, no.1, pp. 89-112.

⁸ See Rachele Cera et al., 'Correspondents' Report – Italy' (2012) 15 *YIHL*, <<https://www.asser.nl/media/1424/italy-yihl-15-2012.pdf>> accessed 18 May 2025, pp 1-6.

⁹ See Rachele Cera et al., 'Correspondents' Report – Italy' (2014) 17 *YIHL*, <<https://www.asser.nl/media/2613/italy-yihl-17-2014.pdf>> accessed 18 May 2025, pp 1-12.

¹⁰ See Rachele Cera et al., 'Correspondents' Report – Italy' (2022) 25 *YIHL*, <<https://www.asser.nl/media/797145/italy-report-2022-final.pdf>> accessed 18 May 2025, pp 13-14.

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Cases – Fund for the Compensation of Damages Suffered by Victims of War Crimes and Crimes against Humanity

☛ Court of Lecce, Judgment No. 1751 of 7 May 2024

<[☛ Decision Court of Florence, Judgment No. 1744 of 31 May 2024](https://apps.dirittopratico.it/sentenza/tribunale/lecce/2024/1751.html#:~:text=Il%20Tribunale%20ha%20respinto%20l,10%20della%20Costituzione.></p></div><div data-bbox=)

<[>](https://apps.dirittopratico.it/sentenza/tribunale/firenze/2024/1744.html)

These two decisions are substantively very similar in the contents as both Courts recognised Italian citizens to be compensated for international crimes committed by the Nazi regime and the access by the victims' heirs to the "Fund for the compensation of damages suffered by victims of war crimes and crimes against humanity carried out on Italian territory or to the detriment of Italian citizens by the forces of the Third Reich in the period between 1 September 1939 and 8 May 1945" established by Article 43, para. 3, of the Decree-Law No. 36 of 30 April 2022 converted into law, with amendments, by Law No. 79 of 29 June 2022.¹²

With judgment No. 1751 of 7 May 2024, the Court of Lecce awarded the plaintiff the compensation for the damage suffered by her father in a Nazi concentration camp. The victim was enlisted as a conscript soldier in the Italian army and assigned to the 10th Engineer Corps-Chemists. He was captured by German troops and, since he refused to fight alongside the Germans for ideological and political reasons, was deported to a Nazi concentration camp where he was subjected to forced labour. He remained there until his death, which was caused by the physical violence and beatings inflicted by the German soldiers. His body was not found until 2013, when it was handed over to relatives. The applicant claimed the reimbursement of total sum of €100,000.00, plus interest and monetary revaluation, from the Fund for the compensation of damages suffered by victims of war crimes and crimes against humanity.

The Ministry of Economy and Finance, which entered an appearance, objected to the statute of limitations of the civil action for damages brought by the plaintiff and the lack of standing due to the plaintiff's failure to prove her capacity as heir. The Court of Lecce rejected both arguments. First, it recalled the decision of the Court of Cassation in the *Ferrini* case¹³ and the affirmation of the principle that foreign state immunity is waived when *iure imperii* acts are committed in violation of fundamental human rights, admitting the jurisdiction of Italian courts over civil disputes on reparations for war crimes and crimes against humanity. The Court stressed that to resolve the dispute with Germany concerning the numerous lawsuits for compensation, Italy established with Article 43 of Decree-Law No. 36/2022 the Fund for the compensation of damages suffered by victims of war crimes and crimes against humanity.¹⁴ It further specified that if a civil action is brought pursuant to Article 43 of Decree-Law No. 36/2022, as in the present case, the judge is called upon, first of all, to ascertain whether or not the person to whom the damage refers was a victim of war crimes or crimes against humanity

¹² See Rachele Cera et al., Correspondents' Report – Italy (2022) 25 *YIHL*, <<https://www.asser.nl/media/797145/italy-report-2022-final.pdf>> accessed 18 May 2025, pp 13-14.

¹³ On the *Ferrini* case, see Court of Cassation (United Sections), judgment No. 5044 of 6 November 2003 <<https://www.jolau.com/wp-content/uploads/2018/10/Sentenza-Ferrini-5044-04-2.pdf>>, accessed 30 April 2025.

¹⁴ See Rachele Cera et al., Correspondents' Report – Italy (2022) 25 *YIHL*, <<https://www.asser.nl/media/797145/italy-report-2022-final.pdf>> accessed 18 May 2025, pp 13-14.

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and, in the event of a positive finding, the judge has to proceed to liquidate the damage, recognising the victim's right to access the Fund.¹⁵

On the merits, the Court of Lecce recalled the principle of universal jurisdiction invoked in the *Ferrini* case (ruling no. 5044/2004) in which the Court of Cassation affirmed that it could also be applied to civil actions arising from international crimes.¹⁶ Moreover, it held that the customary international rule providing for the non-applicability of statutory limitations to war crimes must be considered to be retroactive, precisely because of the purpose for which it was introduced, i.e. to ensure that international crimes committed by the Nazis during World War II did not go unpunished. As a result, the arguments put forward by Ministry of Economy and Finance according to which in the present case war crimes were assimilated to the crime of enslavement pursuant to Article 600 of the Italian Criminal Code, which provides for 15-year limitation period, were irrelevant. The Court of Lecce further held that the phrase 'without prejudice to the running of the ordinary limitation periods' contained in Article 43(6) of Decree-Law No. 36/22 must be interpreted as a reference made by the legislator to the entire legislation regulating the limitation period in the Italian legal system, including the principle of no statutory limitation for war crimes and crimes against humanity.

Secondly, the Court recognised the applicant as the victim's daughter based on the family certificate that she submitted which revealed the relationship of filiation between the victim and the applicant. The latter acted as daughter and heir, thus for the Court the burden of proof was discharged. In the absence of evidence to the contrary provided by the Ministry, the Court of Lecce rejected the exception.

To quantify the non-pecuniary damage suffered by the applicant's father, the Court considered the inhuman treatment he suffered during the imprisonment. The applicant produced the registration sheet no. 26771 which reported the beginning and end of her father's imprisonment, the name of the camp where he was interned, and the certification of his death in the same prison camp 'due to various fractures'. The Court observed that it is a well-known historical fact that, immediately after the armistice of 8 September 1943, Italian soldiers were considered traitors. They were deprived of their status as prisoners of war (and thus of the protection guaranteed in the 1929 Convention relative to the Treatment of Prisoners of War¹⁷ and were given the status of 'internees'. They were exploited for work in inhumane conditions and without rights. In view of the physical and moral suffering endured by the victim, and the period he spent in the Nazi concentration camp, the Court quantified the compensation at €31.000 of which €11.000 for the damage suffered during the 110 days the victim was interned, and €20.000 for parental damage since the victim died before his daughter was born. The Court, therefore, ruled that the Ministry of Economy and Finance was required to pay this sum, including legal fees, through the Fund for the compensation of damages suffered by victims of war crimes and crimes against humanity.

¹⁵ Giorgia Berrino, 'The impact of Article 43 of Decree-Law no 36/2022 on enforcement proceedings regarding German State-owned assets', <https://www.qil-qdi.org/wp-content/uploads/2022/10/05_Jurisdictional-Immunities-Again_BERRINO_FIN-3.pdf> accessed 18 May 2025.

¹⁶ See Pasquale De Sena and Francesca De Vittor, 'State Immunity and Human Rights: The Italian Supreme Court Decision on the Ferrini Case', <<https://www.ejil.org/pdfs/16/1/291.pdf>> accessed 20 November 2025.

¹⁷ The 1929 Convention relative to the Treatment of Prisoners of War was replaced by the Third Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

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With Judgment No. 1744 of 31 May 2024, the Court of Florence ruled on the massacre of 'Ville di Corsano' a location in the province of Siena where the Nazis brutally killed the elderly Vittorio Bari, who was accused of being a partisan because of the discovery of an old rifle handle in his house, together with his three sons who had rushed to his aid. The claim for compensation was filed by the only surviving son of the victim, who was two years old at the time of the massacre. The Court stressed that the massacre suffered by the applicant's family was a crime against humanity and a war crime as reflected under Articles 7 and 8 of the Statute of the International Criminal Court (ICC) which expressly prohibit, in addition to voluntary manslaughter, attacks against civilians who do not take direct part in the hostilities, attacks and bombing, by any means, of towns, villages, dwellings or buildings that are not defended and that do not constitute military objectives.¹⁸

The Court further mentioned Article 3 common to the four Geneva Conventions of 1949 which ensures the protection of civilians during times of internal armed conflict by prohibiting violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.¹⁹

The Court of Florence specified that according to established doctrine and case law on the matter, crimes against humanity are characterised by being particularly heinous crimes which do not consist of sporadic or isolated events but constitute a widespread or systematic practice of atrocities, resulting in a serious violation of human dignity and grave humiliation of civilians or, if committed in wartime, of persons not taking direct part in hostilities.

Recalling the Italian case law on these crimes, such as the ruling on the Priebke case, the Court of Florence held that war crimes and crimes against humanity are always punishable and are not subject to statutory limitations.²⁰

The Court of Florence then focused on the evolution of Italian case law concerning civil actions against Germany for damages suffered by Italian citizens during the German occupation and the reasons that led to the establishment of the Fund for the compensation of damages suffered by victims of war crimes and crimes against humanity in 2022.

In line with previous case law on the matter, the Court ruled that the applicant had the right to compensation for pecuniary and non-pecuniary damage for the crimes suffered by his family members. The Court stressed that he suffered very serious damages for having lost, at a very young age, parental figures of utmost importance with whom he lived. The Court highlighted that according to recent case law, the quantification of the damage from the loss of parental relationship must include both the pain suffered at the moment in which the loss is perceived, and the suffering that is projected in the future existence, due to the definitive deprivation of the enjoyment of the relative and the impairment of reciprocal interpersonal relations. Based on these parameters, the Court held that the damages suffered by the applicant pursuant to Article 43(1) of the Decree-Law No. 36/2022 amounted to €300.000 that were to be charged

¹⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90.

¹⁹ See Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention No. I), 12 August 1949, 75 UNTS 3, entered into force 21 October 1950; Geneva Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention No. II), 12 August 1949, 75 UNTS 85, entered into force 21 October 1950; Geneva Convention Relative to the protection of Civilian persons in Time of War (Geneva Convention No. III), 12 August 1949, 75 UNTS 287, entered into force 21 October 1950; Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention No. IV), 12 August 1949, 75 UNTS 238, entered into force 21 October 1950.

²⁰ See Sergio Marchisio, 'The Priebke Case before the Italian Military Tribunals: A Reaffirmation of the Principle of Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity', (1998) 1 *YIHL*, pp. 344-353.

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to the Fund for the compensation of damages suffered by victims of war crimes and crimes against humanity.

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- Supreme Court of Cassation, Sixth Penal Section, Judgment No. 32712, 11 July 2024, published on 20 August 2024
<https://www.cortedicassazione.it/resources/cms/documents/32712_08_2024_pen_noindex.pdf>
- Supreme Court of Cassation, Sixth Penal Section, Judgment No. 32710, 11 July 2024, published on 20 August 2024
<<https://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpn&id=./20240820/snpn@s60@a2024@n32710@tS.clean.pdf>>
- Supreme Court of Cassation, Second Penal Section, Judgment No. 9962, 15 February 2024, published on 8 March 2024
<<https://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpn&id=./20240308/snpn@s20@a2024@n09962@tS.clean.pdf>>

In 2024, the Court of Cassation issued three Judgments (Judgments No. 32712 and No. 32710 of 11 July 2024; and Judgment No. 9962 of 15 February 2024) through which it once again ruled on the scope of Article 270-bis of the Italian Criminal Code concerning the ‘offense of participation in an international terrorist association’ to better define its contours. These decisions added to the already extensive case law on international terrorism. Over time, this jurisprudence has undergone significant evolution, often characterised by differing positions due mainly to the difficulty of categorising new forms of terrorism, such as ISIS, within the criminal offences established by Italian legislation.²¹ However, in the judgments under review,

²¹ The atypical and extremely fluid nature characterising the organisational model of some new international criminal groups (including ISIS) made it very complex to identify the minimum prerequisites to prove an individual’s participation in an association with terrorist purposes punishable under Article 270-bis of Italian Criminal Code. In the past, two different orientations had emerged. In particular, the Italian jurisprudence sought to clarify whether the ideological adherence of the individual to the criminal program through propaganda activities with messaging, dissemination of images and documents glorifying holy war, proselytism, etc., was sufficient or not for the purpose of configuring the crime under Article 270-bis. The point was crucial to avoid criminalising mere psychological adherence and including it under Article 270-bis. This reconstruction of the jurisprudence on association with terrorist purposes was the premise from which the Court of Cassation moved in Judgment No. 5471 of 17 November 2020 (published on 11 February 2021), Judgment No. 8891 of 18 December 2020 (published on 4 March 2021), and Judgment No. 11581 of 27 January 2021. In this regard, see Rachele Cera et al., ‘Correspondents’ Reports 2021: Italy’ 24 YIHL <https://www.asser.nl/media/796060/italy-report_2021.pdf> accessed 9 April 2025, pp. 12-16. This jurisprudence, in turn, echoed what the Court had previously stated in earlier rulings. In this respect, see Judgment No. 22163 of the Court of Cassation (Second Penal Section) of 21 February 2019, already reported in Rachele Cera et al., ‘Correspondents’ Reports 2019: Italy’ 22 YIHL <https://www.asser.nl/media/680347/italy-report_2019.pdf> accessed 9 April 2025, pp. 7-12. See also Judgments of the Supreme Court of Cassation, Sixth Penal Section, No. 14503 of 19 December 2017, and No. 40348 of 11 September 2018, reported in Rachele Cera et al., ‘Correspondents’ Reports 2018: Italy’ 21

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the Court of Cassation addressed a different aspect compared to previous decisions. The central issue in Judgments No. 32712 and No. 32710 of 11 July 2024 concerned whether ‘armed rebellion’ could be classified under the notion of terrorism as per Article 270-bis rather than under ‘legitimate defence’ according to international law and the right to self-determination of peoples. Another point of relevance pertained to the legitimate forms of armed resistance in international law. With these Judgments, the Court of Cassation also made a significant contribution to the definition of ‘foreign State’ in light of Article 270-bis, paragraph 3, of the Italian Criminal Code. These two Judgments can be considered ‘twinned’ as they are identical in subject matter and entirely overlapping in the legal principles stated in various argumentative passages. However, despite starting from the same factual and legal premises, they significantly diverge in their respective conclusions.

In both cases under review, the appellants were deemed by the Court of First Instance to be leading members of the terrorist group known as the ‘Tukarem Brigade’, which in turn is considered a branch of the ‘Al Aqsa Martyrs Brigades’. The Review Court of L’Aquila confirmed the pre-trial detention order, finding the appellants guilty of planning terrorist attacks on Israeli settlements in the West Bank. Against this order confirming the detention, the appellants filed an appeal before the Court of Cassation.

The grounds for the appeal were twofold. The first ground concerned the fact that, according to the appellants, the Review Court had not verified the terrorist purposes of the group they were part of, but it had based the guilty verdict solely on the fact that it appeared in the lists of terrorist associations drawn up by the European Union (EU). The group known as ‘Al Aqsa Martyrs Brigades’ had indeed been included in a *blacklist* adopted by the EU pursuant to Council Implementing Regulation (EU) No. 1505 of 20 July 2023.²² As is well known, all individuals and/or legal entities listed as being connected, in various capacities, to organisations classified as terrorist are subject to preventive measures that significantly restrict the property and movement freedoms of the suspected terrorist, such as asset freezing and travel bans within EU Member States. Additionally, suspected terrorists cannot be provided, directly or indirectly, with capital, financial assets, and economic resources.²³

YIHL <<https://www.asser.nl/media/679452/yihl-2018-correspondents-reports-italy-final-copy-clean.pdf>> accessed 9 April 2025, pp. 6-12.

²² Council Implementing Regulation (EU) No. 2023/1505 of 20 July 2023 *implementing Article 2(3) of Regulation (EC) No. 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2023/420*, published in the EU Official Journal L 184 of 21 July 2023, pp. 1-4, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1505&qid=1744639494607>> accessed 10 April 2025. This Regulation is no longer in force having been repealed by Council Implementing Regulation (EU) 2024/329 of 16 January 2024 *implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2023/1505*, published in the EU Official Journal L, 2024/329 of 16 January 2024 <http://data.europa.eu/eli/reg_impl/2024/329/oj> accessed 10 April 2025.

²³ The EU first adopted restrictive measures against individuals and entities involved in terrorist acts following the terrorist attacks of 11 September 2001. With these measures, the EU implemented the provisions of UN Security Council Resolution 1373 (2001). It should be noted that the EU enjoys a unique and special status at the United Nations, which differs from that of a Member State but goes beyond that of a simple international organisation. It has the status of a Permanent Observer granted under General Assembly Resolution 3208 (XXIX). The status of Permanent Observer entails certain rights of active participation; since 2011, thanks to General Assembly Resolution A/RES/65/276, they have been further strengthened compared to those of other Observers. The EU is also a regional integration organisation with a common foreign and security policy that makes a significant contribution in support of actions undertaken by the UN Security Council in peacekeeping. For an extensive analysis of the relations between the EU and the UN and the relevance of Security Council decisions for the EU can be found see Sergio Marchisio, ‘Il primato della Carta e la Comunità europea’ (The Primacy of the UN Charter and the European Community), in Francesco Salerno (ed.), *Sanzioni «individuali» del Consiglio di*

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According to the appellants, the mere inclusion of such a group in the EU terrorist association lists was not sufficient in itself to prove the 'offense of association with the aim of international terrorism' as per Article 270-bis of the Italian Criminal Code. This was especially true if it concerned a subgroup such as the one the appellants were part of, namely the 'Tukarem Brigade'.

The appellants also contested the classification of their conduct as terrorist activity directed against a foreign State as required by Article 270-bis of the Criminal Code, arguing that it was exclusively directed against military (not civilian) targets at the Avnei Hefetz settlement in the West Bank territories. According to multiple United Nations resolutions, these territories are illegally occupied by Israel. As such, according to the defendants, the notion of 'foreign State' is missing for the purposes of the offense and the contested activity would constitute a lawful act of armed rebellion under international law aimed at exercising the self-defence and the right to self-determination of peoples.

In relation to these grounds of appeal, the Court of Cassation was called to assess the legitimacy of the Review Court's decision focused on a variety of heterogeneous elements starting with an analysis of the territorial context underlying the criminal facts of the two aforementioned Judgments. This context consists of the Palestinian territories of the West Bank, which – from the perspective of international law – are subject to illegal occupation by Israel. The Court referred to UN Security Council Resolution No. 242 of 1967, which calls for the establishment of a just and lasting peace in the Middle East based on the withdrawal of Israeli armed forces from occupied territories, the cessation of all claims by Israel and the recognition of the territorial integrity of every State in the region.²⁴

On this premise, the Court of Cassation analysed the grounds of the appeal. Regarding the first ground, namely the probative relevance of the inclusion of the group known as the 'Al Aqsa Martyrs Brigades' in the EU *blacklist*, the Court of Cassation partially upheld the defence's arguments. In fact, the Court recognised that

the inclusion of a particular association in the so-called blacklist does not introduce a presumption, in the procedural sense of the term, valid in judicial contexts with a consequent reversal of the burden of proof. However, it is also incorrect to assert that the assessment of the terrorist nature carried out by international bodies endowed with extensive knowledge of the phenomenon is devoid of any relevance.²⁵

According to the Court of Cassation, the evaluation by an international body has indicative value but it is not sufficient to prove the terrorist intent. For this purpose, the inclusion of an association in the list of those engaged in terrorist activities constitutes a relevant factor, but it must be considered together with other elements and not in isolation. That said, the Court

sicurezza e garanzie processuali fondamentali' («Individual» Targeted Sanctions of the UN Security Council and Fundamental Procedural Guarantees), Cedam, 2010, pp. 87-104.

²⁴ Resolution No. 242 (1967) adopted by the Security Council of the United Nations at its 1382nd meeting of 22 November 1967, *On a Peaceful and Accepted Settlement of the Middle East Situation*, UN Doc. S/RES/242(1967), <[https://docs.un.org/en/S/RES/242\(1967\)](https://docs.un.org/en/S/RES/242(1967))> accessed 9 April 2025.

²⁵ Judgment No. 32712 of 11 July 2024, paragraph 2.1, p. 5. See also Judgment No. 32710 of 11 July 2024, paragraph 2.1, p. 6. For a deep analysis of the Judgment No. 32712/2024 of the Court of Cassation of Italy, see among others Agnese Vitale, 'La Corte di Cassazione ricomprende nell'art. 270-bis del Codice penale, in tema di atti di terrorismo contro Stati esteri, anche condotte violente contro la popolazione civile in territori illegalmente occupati' (The Supreme Court of Cassation includes in the Article 270-bis of the Italian Criminal Code concerning Acts of Terrorism against Foreign States, Violent Conducts Against the Civilian Population in Illegally Occupied Territories), in 'Osservatorio sulle fonti', 2024, pp. 419-436, <<https://www.osservatoriosullefonti.it/note-commenti/1926-la-corte-di-cassazione-ricomprende-nell-art-270-bis-del-codice-penale-in-tema-di-atti-di-terrorismo-contro-stati-esteri-anche-condotte-violente-contro-la-popolazione-civile-in-territori-illegalmente-occupati/file>> accessed 29 April 2025.

highlighted that the Review Court had indeed concretely verified the existence of terrorist intent and that it did not violate any law on this point.

The examination of the second ground of appeal concerned whether 'armed rebellion' can be classified as terrorism rather than 'legitimate use of armed force' to ensure the implementation of the right to self-determination is more complex.

The Court of Cassation's conclusion was grounded primarily on the existence of substantial evidence regarding the intent to commit terrorist acts against civilian targets. Based on numerous phone interceptions, the Tribunal of First Instance and subsequently the Review Court had determined that the organisation of the attack at the Israeli settlement of Avnei Hefetz was directed not only against military structures but also against civilian targets. The applicants' defence contested this perspective and sought to provide an alternative interpretation of the intercepted conversations. However, the trial judges did not accept the defence's different perspective.

According to the Court of Cassation, in the cases at hand, 'it is in no way possible' to indicate 'a clear separation between forms of legitimate resistance according to international law and conduct of a terrorist nature'. The reconstruction made by judges of first instance revealed multiple elements from which they concluded that the actions were directly or indirectly aimed at involving civilian targets making such forms of armed reaction 'incompatible with the hypotheses of legitimate opposition in a war-like context'.

For the judges of the Court of Cassation, this conclusion was supported by the definition of terrorism contained in Article 270-sexies of the Criminal Code, which refers to international legal instruments binding on Italy.²⁶ In this regard, the Court specifically referred to the International Convention for the Suppression of the Financing of Terrorism of 1999²⁷ ratified by Italy with Law No. 7/2003.²⁸

By the parallel and complementary reading of Article 270-sexies of the Criminal Code and Article 2, letter b, of the Convention,²⁹ the Court inferred that such acts also constitute terrorist acts:

acts of violence committed in the context of armed conflicts directed against a military target, when the peculiar and concrete factual situations make the severe consequences to the life and physical safety of the civilian population certain and inevitable contributing to spreading fear and panic in the community.

²⁶ Article 270-sexies of the Italian Criminal Code considers 'Conducts with terrorist purposes)' conducts that "owing to its nature or context can seriously damage a nation or an international organisation and that is performed with the purpose of intimidating the population and forcing public authorities or an international organisation to perform or not perform any act or destabilize or destroy the fundamental public, constitutional, economic and social structures of a nation or of an international organisation, as well as other conduct defined as terrorism or committed with terrorist purposes is defined as having terrorist purposes by conventions or other international law provisions in force in Italy."

²⁷ International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999, UNTS 2178 (2004) p. 197, entered into force 10 April 2002 <<https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004f335&clang=en>> accessed 10 April 2025.

²⁸ Law No. 7 of 14 January 2003, Ratification and implementation of the International Convention for the Suppression of the Financing of Terrorism done at New York on 9 December 1999 and norms on the Adaptation of the Domestic Legal System, published in *Gazzetta Ufficiale* No. 21 of 27 January 2003.

²⁹ Article 2, lett. b, of the International Convention for the Suppression of the Financing of Terrorism states that: "Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act."

It is worth to remember that the Court of Cassation's role is to ensure certainty and uniformity in the interpretation of the law within the Italian legal system. It acts as the judge of the judges' rulings, therefore, it takes account of the rules of a case only in so far as they have been established in the earlier proceedings, and only to the extent necessary in order to determine whether law is correctly or incorrectly applied. As a result, in the present case the Court of Cassation did not provide an analysis of international humanitarian law violations.

Certainly, the 'principle of distinction' was pivotal in the reasoning of the Court. It implicitly relied on this principle as legal parameter for legitimacy. This principle represents a "cardinal" and "intransgressible" cornerstone of international humanitarian law as stated in 1996 by the International Court of Justice (ICJ) in its Nuclear Weapons Advisory Opinion.³⁰ It establishes the dividing line between two categories of people: combatants and civilians. States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets. Furthermore, in 2024 the ICJ stated that the protection of civilians and the prohibition of violence against non-combatants constitute obligations *erga omnes* that apply regardless of the legitimacy of the cause (self-determination).³¹ In addition, the ICJ reaffirmed what it stated in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 9 July 2004, that the Israeli settlements in the West Bank and East Jerusalem, and the regime associated with them, have been established and are being maintained in violation of international law. This Opinion adds a crucial element. Indeed, it contextualized armed rebellion within the framework of the right to self-determination. This latter was also considered by the Court of Cassation. On these premises, the Court stated that the fact that the appellant was planning an attack by preparing means and resources for a confrontation against the Israeli population and military automatically excluded that it could be a legitimate reaction to the occupation of the West Bank territories.

The Court's conclusion is also supported by international doctrine. The latter agrees that if, in the context of the use of force aimed at realising the right to self-determination of a people, events occur that constitute crimes against humanity, acts of terrorism, or other relevant offenses from the perspective of international criminal law, these events should be evaluated not only according to the domestic criminal law of the State, but also according to international law provisions. Furthermore, it cannot be excluded that international criminal responsibility of the individuals committing the criminal acts may arise, even if committed for the cause of self-determination.³²

Finally, the Court focused on the notion of 'foreign State' that is relevant for the applicability of Article 270-bis, paragraph 3, of the Italian Criminal Code to the cases under consideration. As the Court recalled, this provision was modified by Decree-Law No. 374/2001 to adapt the

³⁰ 'Legality of the Threat or Use of Nuclear Weapons', Advisory Opinion of the International Court of Justice of 8 July 1996.

³¹ 'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem', Opinion of the International Court of Justice of 19 July 2024.

³² The principle of self-determination has evolved over time to indicate the broader right of each people to determine their own status free from any external interference. In our era, the right to self-determination of peoples is not only subject of provisions contained in multiple legal binding bilateral and multilateral international treaties, but it also belongs to general international law applicable to all States and members of the international community, all of whom are obliged to respect it. The literature on the principle of self-determination of peoples in international law is wide and continuously evolving. In this regard, see among others Giuseppe Palmisano, 'Autodeterminazione dei popoli' ('Self-Determination of Peoples'), in *Annali V*, Giuffrè, 2012, pp. 82-133; Flavia Lattanzi, 'Autodeterminazione dei popoli' ('Self-Determination of Peoples'), in *Digesto delle discipline pubblicistiche*, II, 1987, pp. 4 ff.

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domestic sanctioning system to international obligations assumed by Italy, providing actions to counter international terrorism.³³

In particular, the provision extends the notion of terrorist purposes to acts directed against a foreign State, an institution or an international organisation. This broad formulation aims to encompass the new forms in which international terrorism manifests, which due to purposes, means, and ramifications of organisations can carry out criminal programs in States other than those of affiliates or outside the national territory. According to the Court of Cassation, when referring to acts directed 'against a foreign State', the provision refers to a subject of international law with the status of a sovereign and independent State.

Therefore, a necessary requirement for the application of the provision is *in primis* constituted by Italy's recognition of the State against which the terrorist attack was carried out. In this regard, it is worth to recall that Italy recognised the State of Israel in 1950. However, in line with numerous UN resolutions and the International Court of Justice, this recognition does not include the occupied Palestinian territories. In this context, the appellant's defence argued that the violent conduct was not directed at striking a foreign State on its territory, namely the legitimate Israeli territory recognised internationally. According to the appellant, such conduct was intended to resist the occupation of the West Bank territories from which Israel should have withdrawn since 1967.

Based on a complex reasoning on the elements characterising international subjectivity and, among these, in particular the territorial element, the Court of Cassation ruled that

The international personality of the State – even a foreign State – is harmed simply by the fact that its citizens are targets of terrorist conduct regardless of where this is carried out, with the consequence that the offense under Article 270-bis of the Criminal Code will be applicable both when the population is the object of a terrorist attack within the legitimate national borders of the State and when the same conduct – meeting the requirements of Article 270-sexies of the Criminal Code – is carried out outside the national borders and even in illegally occupied territories, since the aggression carried out against citizens by virtue of their nationality entails a harm to the integrity of the state of belonging.³⁴

To support its reasoning, the Court referred to the 1999 International Convention for the Suppression of the Financing of Terrorism, in which the terrorist nature of the act is directly linked to the purpose 'to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act' (Article 2, letter b). The Court also referred to the EU Council Framework Decision of 13 June 2002 on combating terrorism,³⁵ whose

³³ Law Decree No. 374 of 18 October 2001, Urgent provisions to counter international terrorism. Entry into force: 19 October 2001. Decree-Law converted with modifications by Law No. 438 of 15 December 2001 published in Gazzetta Ufficiale No. 293 of 18 December 2001), <<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2001-10-18:374>> accessed 20 April 2025. As a result of the amendment introduced by the 2001 Law Decree, Article 270-bis was modified. Firstly, the title of the offense was changed to 'Associations with purposes of terrorism, including international terrorism, or subversion of the democratic order'. Additionally, paragraph 3 states that 'for the purposes of criminal law, the purpose of terrorism also applies when acts of violence are directed against a foreign state, an institution, or an international organisation'.

³⁴ See Judgment No. 32712/2024, Considerations in Law, paragraph 3.3., p. 11.

³⁵ EU Council Framework Decision of 13 June 2002 (2002/475/JHA), *on combating terrorism*, published in the EU Official Journal L 164 of 22 June 2002, pp. 3–7, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002F0475>> accessed on 15 April 2025. It is no longer in force. The Decision 2002/475/JHA was repealed and replaced by Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017, *on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, published in the EU Official Journal L 88 31 March 2017, pp. 6–21 <<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32017L0541>> accessed 15 April 2025.

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definition of 'terrorist offenses' largely reflects the aforementioned Article 2 of the Convention.³⁶

Based on the main international legal instruments from which the notion of terrorism can be derived, the Court of Cassation ruled that the offense under Article 270-bis of the criminal Code also includes violent conduct aimed at intimidating the civilian population. In addition, the Court stated that the international personality of a foreign State must be considered harmed regardless of where the terrorist conduct is carried out. Consequently, according to the Court, since the appellant was planning a terrorist attack against Israeli civilians, the attack was to be considered directed against the State of Israel even if the actions were 'intended to be committed outside its territory as legitimately identified by international law'.³⁷

As already mentioned, the principles and legal issues identically outlined by the Court of Cassation in Judgments No. 32712 and No. 32710 of 2024 led to different conclusions due to the different involvement of the two applicants in the two specific cases. In Judgment No. 32712/2024, the Court rejected the appeal deeming it unfounded and confirming the pre-trial detention ordered by the Review Court. The Court also ordered the appellant to pay legal costs of the trial.

Conversely, in Judgment No. 32710/2024, the Court of Cassation held that the appeal was well-founded and therefore annulled the challenged order referring the case back to the Review Court of L'Aquila for a new trial. The reasons that led the Court of Cassation to this different outcome lie in the fact that the involvement of the defendant Irar Ali Saji Ribhi with the terrorist association is different and – according to the Court – lacks those certain elements of substantial evidence that existed in the previous case.

In Judgment No. 32710/2024, the Court found that the elements considered by the Review Court were all limited to certain factual circumstances. Such factual circumstances would serve only as evidence of the existence of a relationship between the two appellants. According to the Court, sharing the same apartment, the common origin from the Palestinian territories of the West Bank, the sharing of photos of armed individuals belonging to the 'Al Aqsa Martyrs Brigades' on social networks, etc., are all elements that do not represent a substantial proof of the appellant's direct relationship with the terrorist association. In this regard, the Court recalled that

the associative offense necessarily presupposes that the associate is recognised as such by the reference group and at the same time that the subject provides an individual contribution not attributable to the mere sharing of the same intentions.

To support its reasoning, the Court referred to Judgment No. 5461 of 17 November 2020. This Judgment can be considered a turning point in the long jurisprudential path taken by the Court of Cassation on the legal qualification of the 'offense of participation in international terrorist associations or for subverting the democratic order' under Article 270-bis.³⁸ In this decision, the judges of the Court of Cassation outlined the principle of the so-called 'bilateral

³⁶ In this respect, Article 1, paragraph 1, of the EU Council Framework Decision No. 475 of 13 June 2002 states that: "Each Member State shall take the necessary measures to ensure that the intentional acts referred to below in points (a) to (i), as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation where committed with the aim of:

— seriously intimidating a population, or

— unduly compelling a Government or international organisation to perform or abstain from performing any act, or

— seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation."

³⁷ See Judgment No. 32712/2024, Considerations in Law, paragraph 3.4, p. 12

³⁸ Judgment No. 5471 of 17 November 2020 (published on 11 February 2021), See above footnote No. 1.

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relationship' as an indispensable element for ascertaining the actual participation of an individual in a terrorist organisation with fluid contours like ISIS. The principle of the 'bilateral relationship' is based on the idea that the inclusion of the individual in the organised criminal structure must be 'effective and not merely potential'. This excludes that the mere adherence to radical jihadist ideology and/or terrorist purposes can constitute evidence of such participation.

This interpretation of Article 270-bis of the Italian Criminal Code is central also in the Decision No. 32710/2024. According to the Court of Cassation, the analysis of the circumstantial elements against the appellant showed characteristics so nuanced that they did not allow for inferring the appellant's actual participation in the criminal association. The determinateness and materiality necessary to configure the existence of the offense of participation in international terrorist association or for subverting the democratic order were not found by the Court in any of the circumstantial elements considered by the Review Court. For example, it was not found in the conversations regarding the sending of money, as there was no certainty about the possible facilitating conduct of financing terrorist groups carried out by the defendant. It was also not found in the incident concerning the procurement of a weapon, as it turned out to be an air rifle, which excluded its possible subsequent use in terrorist actions. Furthermore, it was not found in the publication on social networks of photographs of armed individuals with phrases inciting war against Israel, as this would only constitute proof of mere ideological adherence to the Palestinian struggle against the occupation of Israel.

Lastly, the Court of Cassation highlighted that the Review Court did not sufficiently consider the fact that the appellant had no part in planning the Aveni attack. It is worth noting that this point had represented one of the most serious circumstantial elements in Judgment No. 32712/2024. Based on this framework, the Court of Cassation decided that the appeal was well-founded.

In 2024, the offense of participation in international terrorist association under Article 270-bis of the Criminal Code was also the subject of attention by the Court of Cassation in another decision, namely Judgment No. 9962 of 15 February 2024. This Judgment did not introduce new elements compared to the Court's jurisprudence on the matter, but it represented another useful piece for its consolidation. In Judgment No. 9962/2024, the Court reiterated what it had stated in the past, namely that

in the matter of association with terrorist purposes, under Article 270-bis of the Criminal Code, conduct constituting participation in 'ISIS' includes the systematic repetition – by those who maintain operational contacts with members or individuals in any way connected even indirectly to the group – of acts of indoctrination, proselytism, and apologetic propaganda directed at third parties.³⁹

In such cases, there were substantial grounds to believe that the suspect was guilty and, in the absence of any contrary evidence, remand in custody was justified in consideration of the real risk of further offences, inferred from the conduct of the suspect and from his overall risk to society. Moreover, as the Judges themselves highlighted, the review carried out by the Court of Cassation is a review of legitimacy. Therefore, it did not concern the reconstruction of the facts and did not intervene in the evaluation of the circumstances examined by the Tribunal of First Instance, which was also responsible for assessing the probative value of these elements.

³⁹ Supreme Court of Cassation, Five Penal Section, Judgment No. 17079 of 18 January 2022 in the case *Abdel Rahman Mohi Eldin*.

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The Court of Cassation thus declared the appeal unfounded and ordered the appellant to pay the legal costs of the trial.

ROSITA FORASTIERO⁴⁰

Cases – Divergent Trends on “Public” Torture Committed by State Officers

• Court of Assizes of Rome, Order No. 4, 13 March 2024

<<https://www.giurisprudenzapenale.com/wp-content/uploads/2024/03/ORDINANZA-Assise-REGENI-18-marzo-2024-Pregiudiziali-PDF.pdf>>

Following Judgment No. 192 of the Italian Constitutional Court of 2023,⁴¹ the proceedings against four officials of the Egyptian National Security Agency, accused of kidnapping and murdering Giulio Regeni in 2016, resumed. In particular, the Constitutional Court declared the constitutional illegitimacy of Article 420-bis, para. 2, of the Italian Code of Criminal Procedure, in the part in which it does not provide that the judge shall proceed in the absence of the accused from the hearing, when, due to the lack of cooperation by the State of origin of the accused, it is impossible to have proof that the latter was made aware of the pending proceedings.

By its Order No. 4, the Court of Assizes of Rome rejected the preliminary issues raised by the defence against the Italian jurisdiction and decided to proceed with the trial. The defence objected based on the non-retroactivity of the criminal law with regard to the offences foreseen by Articles 613 bis ('torture committed by state officials') and 613 ter ('instigation of a public official to commit torture') of the Italian Criminal Code introduced by Law No. 110 of 2017 subsequently to the facts. An additional objection concerned the position of three defendants that were only charged with the crime of kidnapping aggravated by the quality of public officials, but not with crimes against the physical integrity of the person of Regeni which were, therefore, outside the scope of Article 1 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁴²

On the first objection, the Court held that the provision of the Italian Criminal Code on torture contains only the explicit statement of a concept that already existed in Italian law at the time of the facts, being the prohibition of torture *a jus cogens* provision foreseen by Article 5 of the 1948 Universal Declaration of Human Rights,⁴³ Article 3 of the 1950 European Convention on Human Rights (ECHR)⁴⁴ and Article 7 of the 1998 Rome Statute of the

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⁴¹ See Rachele Cera et al., Correspondents' Report – Italy (2023) 26 *YIHL* <<https://www.asser.nl/media/797691/italy-report-2023-final.pdf>> accessed 23 June 2025, pp. 10-14.

⁴² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85, entered into force 26 June 1987 [CAT].

⁴³ Universal Declaration of Human Rights, adopted by General Assembly Resolution 217 A(III) of 10 December 1948.

⁴⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, 213 UNTS 221, entered into force 3 September 1953 [ECHR].

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International Criminal Court.⁴⁵ Given its inherent impact on the dignity of the human person, the investigation into the crime of torture in judicial settings is a constitutional and supranational obligation that must be complied with even when external circumstances deprive the defendant of the right to a fair trial.

As for the position of three accused, the Court of Assizes deemed that the minimal element constituting the crime of torture had been fulfilled, by taking into consideration the methods, characteristics and purposes of the conduct.

In fact, the arbitrary deprivation of personal liberty, during which the victim was subjected to severe physical suffering and moral prostration, in addition to corporal mortification, although carried by others, mirrors the purposes of public torture with punitive and intimidating intent.

Although kidnapping is placed in the section of the Italian Criminal Code entitled to crimes against personal freedom, differently from Article 613 bis which is classified as a crime against the person, the case law of the Supreme Court of Cassation extended the notion of torture to align with Article 1 of the CAT and Article 3 of the ECHR and with the interpretation of supranational courts.⁴⁶

Accordingly, the Court reaffirmed the existence of Italian jurisdiction with respect to all the contested conducts by virtue of the constitutional obligation to prosecute and sanction them, even if the principle of non-retroactivity of the incriminations based on Article 25, paragraph 2, of the Constitution imposes its subsumption in the specific case with a different *nomen juris*.

RACHELE CERA⁴⁷

Legislation – International Participation in International Mission

• Decision of 8 May 2024, 'Italy's participation in international missions 2024'
<<https://temi.camera.it/leg19/provvedimento/autorizzazione-e-proroga-delle-missioni-internazionali-nel-2024.html>>

On 8 May 2024, the Lower House approved the Council of Ministers' Decision of 26 February 2024 concerning an analytical report on ongoing international missions and the status of development cooperation interventions supporting peace and stabilisation processes for 2023,

⁴⁵ Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3, entered into force 1 July 2002 [Rome Statute].

⁴⁶ See Rachele Cera et al., Correspondents' Report – Italy (2019) 22 *YIHL* <https://www.asser.nl/media/794835/italy-report_2019.pdf> accessed 23 June 2025, pp. 1-24; Rachele Cera et al., Correspondents' Report – Italy (2021) 24 *YIHL* <https://www.asser.nl/media/796060/italy-report_2021.pdf> accessed 23 June 2025, pp. 1-5.

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with a view to extending them in 2024 (Document XXVI, No 2),⁴⁸ as well as launching three new international missions for 2024 (Document XXV, No 2).⁴⁹

As stated in the Report, the number of Italian missions abroad has increased considerably over the past few years, to such an extent that in 2024 Italy was involved in more than 40 missions, thus being the highest and second-highest contributor, respectively, in terms of EU and NATO missions. Italy was also the top Western contributor to UN missions.

Overall, in 2024, the number of Italian personnel engaged in missions reached a maximum of 11,166 with an average of 7632. The total financial requirement was quantified at €1.825 billion, an increase compared to 2023 (€1.72 billion).

From a geographical perspective, in Europe, Italy participated in nine missions and was strongly engaged in two NATO missions: Enhanced Vigilance Activities — Forward Land Forces (Sheet 32, 2340 personnel) and Joint Enterprise in the Western Balkans (Sheet 1, 1550 personnel). As regards the Mediterranean, Italy carried out Operation 'Mediterraneo Sicuro' (Safe Mediterranean, Sheet 26, 822 personnel) and participated in EUNAVFOR MED Irini (Sheet 5, 459 personnel).

In the Middle East and Asia, Italian soldiers were engaged in eight missions. Of particular importance were the missions under the auspices of the UN (UN Interim Force in Lebanon - UNIFIL, Sheet 7; UN Military Observer Group in India and Pakistan – UNMOGIP, Sheet 12) and NATO (Mission in Iraq, Sheet 11). Moreover, Italy initiated bilateral missions in Lebanon (Sheet 8) and Palestine (Sheet 9). UNIFIL was the mission with the largest number of Italian personnel (1292).

Africa is the continent with the largest number of missions involving Italian personnel (14). During 2024 Italy was mainly engaged in bilateral missions (Libya, Sheet 15; Tunisia, Sheet 16; Niger, Sheet 17; Somalia and Djibouti, Sheet 21; Burkina Faso, Sheet 25) and European missions (EUTM Somalia, Sheet 20; EUTM Mozambique, Sheet 23). The largest number of Italian personnel (500) were engaged in the Bilateral Support Mission in Niger (Sheet 17).

As described above, the Decision of May 2024 also authorised Italian participation in three new missions (Document XXV, No. 2). The first one was 'Operazione Levante', a humanitarian operation that started following the outbreak of the conflict between Israel and Hamas on 7 October 2023 (Sheet 13-bis). The intervention area covered Israel, the West Bank, the Gaza Strip, Lebanon, Egypt, Jordan, Cyprus, United Arab Emirates, Qatar and the Mediterranean region. The aims of the Mission were to provide commodities, set up a field hospital and send a hospital ship off the Israeli coast. Italian participation amounted to 192 military personnel.

The second mission was EUNAVFOR ASPIDES. This Mission was part of a surveillance and security arrangement in the regions of the Red Sea and the North Western Indian Ocean (Sheet 26-bis). In particular, ASPIDES — launched by the EU Council of 19 February 2024 with a one-year mandate — was intended to protect merchant and commercial vessels in transit off the Yemeni coasts and in the Red Sea. To this end, ASPIDES cooperates with other already existing initiatives in the area, such as EUNAVFOR-ATALANTA, European Maritime

⁴⁸ Relazione analitica sulle missioni internazionali in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione, riferita all'anno 2023, anche al fine della relativa proroga per l'anno 2024 (Doc. XXVI n. 2) [Analytical report detailing international missions carried out in 2023, with a view to extending them in 2024 (Document XXVI, No 2)].

⁴⁹ Deliberazione del Consiglio dei ministri del 26 febbraio 2024 Doc. XXV n. 2 in merito alla partecipazione dell'Italia a ulteriori missioni internazionali [Decision enabling Italy's participation in a new international missions (Document XXV, No 2)].

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Surveillance Mission in the Strait of Hormuz (EMASOH) and Combined Maritime Forces (CFM). These missions engaged 642 Italian personnel.

The third mission was the European Union Advisory Mission in Ukraine (EUAM, Sheet 34). Its aim was to help the Ministry of the Interior and the Police in Ukraine to set up security services in order to guarantee the rule of law, the respect for human rights and the fight against corruption. As regards Italy, authorisation was given for the participation of a member from the judiciary.

Finally, on 31 October 2024, Law No 168 was adopted, amending the Framework Law on Italy's participation in international missions (Law No 146 of 21 July 2016).⁵⁰ The amendments mainly seek to streamline authorisation and funding procedures for international missions. In the past, the implementation of resolutions approved by the Government was delayed due to the authorisation processes. This explains the amendments introduced in the Law which aim to: a) streamline resource allocation procedures for international missions (the Decrees of the President of the Council of Ministers have been replaced by Decrees of the Minister of Economy and Finance); b) eliminate the obligation to have a prior opinion on financial decrees by the Parliament; c) allow in advance for a possible "interoperability" between missions deployed in the same areas; d) identify rapid intervention forces, to be used in crises or emergencies, through an accelerated procedure for the decision of the two Chambers of the Parliament to be taken within five days from the Council of Ministers' decision; and e) postpone the yearly date for the presentation of the analytical report on ongoing missions by the Government to the Chambers, also with a view to their continuation (31 January instead of 31 December).

ANDREA CRESCENZI⁵¹

⁵⁰ Legge 31 ottobre 2024, n. 168, Modifiche alla Legge 21 luglio 2016, n. 145, recante disposizioni concernenti la partecipazione dell'Italia alle missioni internazionali [Law 31 October 2024, n. 168, Amendments to Law 21 July 2016, n. 145, containing provisions concerning Italy's participation in international missions], published in *Gazzetta Ufficiale* No. 269 of 16 November 2024.

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