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Definition and Prosecution of Terrorist Acts

The new Code of Criminal Procedure which allows criminal judges of the specialized circuit to try crimes of terrorism and related acts. More specifically, any person who, during the course of an armed conflict, undertakes or order indiscriminate or excessive acts, or targets the civilian population for attacks, reprisals, violence or threats for the main purpose of terrorizing them shall, by that act alone, be liable to a term of imprisonment of between fifteen and twenty-five years, substantial fines, and shall be banned from exercising any public rights or functions for a period of between fifteen and twenty years.”

The State of Colombia has enacted a number of legislative measures and domestic rules which help to further international instruments to which Colombia is a party. Act No. 14 of 1972 added a chapter entitled “crimes against air security” to volume II, section VIII, of the Colombian Penal Code. The chapter imposes a sentence of between 10 to 15 years’ imprisonment for a person “who, while on board an aircraft in flight, illegally, through the use of violence or any other form of intimidation, takes over or takes effective control of that aircraft.” Furthermore, section III of the new Code of Criminal Procedure establishes, in relation to the “hijacking of aircraft, ships or any means of public transportation, that any person who, through violence, threats or deceptive maneuvers, takes over a ship, aircraft or any other means of public transportation or changes its itinerary or takes control thereof shall, by that act alone, be liable to a term of imprisonment of between 10 to fifteen years imprisonment and substantial fines. Article 144 of Act No. 599 of 2000 specifies that “

Weapons Control

The acquisition or carrying of firearms without a license is strictly prohibited in Colombia, pursuant to article 233 of the National Constitution. In the case of each firearm within the national territory owned by individuals, the owner must have received a valid license to possess or carry it, issued by the competent military authority. The Political Charter establishes that only the State has the power to issue licenses . The new Penal Code provides for sentences of between one and four years’ imprisonment for anyone who, without a license, imports, traffics in, manufactures, transports, stores, distributes, sells, supplies, repairs or carries self-defense firearms, ammunition or explosives. “Moreover, article 366 provides for sentences of between three and ten years’ imprisonment for anyone who, without a license from the competent authority, imports, traffics in, manufactures, repairs, stores, keeps, acquires, supplies or carries weapons or munitions for the exclusive use of the armed forces.”

Money Laundering – Prevention and Prosecution

The Colombian Penal Code, in its chapter on money-laundering, requires any suspicious transaction to be reported. In particular, article 325 criminalizes non-compliance with control mechanisms, which it describes in the following terms:

“Any employee or director of a financial institution or savings and loan cooperative who, with a view to concealing or disguising the illicit origin of the money, fails to comply with the control mechanisms established by the legal system with respect to cash transactions, shall be liable to a term of imprisonment...”

Both Decree No. 663 of the Financial Institutions Statute and Act No. 190 of the Anti-corruption Statute require the reporting of irregularities. Also, the operation of “informal” banks in Colombian territory is expressly forbidden in Colombia’s financial legislation. In accordance with article 53 of the Organic Statute of the Financial System (EOSF), individuals that seek to

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carry out banking-type operations in Colombia, must first establish an entity for that purpose, for which they are required to meet a number of legal requirements and obtain due authorization from the Superintendent of Banks.

The Superintendent of Banks must ensure that no one undertakes any irregular or informal banking activity in the country. In order to achieve this, the Superintendent of Banks must, when there is credible evidence, undertake inspection visits to offices or locations where individuals are operating who may be involved in informal or illegal banking activity and to adopt effective measures to combat such activity. If informal banking activity is established, the Superintendent of Banks is authorized to adopt whatever preventive measures may be necessary, ranging from an order to suspend activity under pain of fines to liquidation of the company and of any illegal banking operations.

New measures in the Colombia Penal Code raised the rank of a crime of willfully providing funds for terrorist acts or to engage in terrorist activities. Although Colombian legislation has no specific procedure for “freezing” funds or financial assets of persons or entities suspected of supporting terrorist activities, any assets linked to criminal activities, including terrorism, are subject to confiscation in the context of a criminal procedure, as provided in article 67 of the Code of Criminal Procedure. Expropriation or restriction of assets must be effected by court order, either through a precautionary measure seeking criminal confiscation or termination of the right of ownership. The Prosecutor-General has the power to issue an order for the freezing of funds or assets. If there is sufficient evidence linking the item of property with the criminal activity, funds may be frozen immediately. If there is insufficient proof, Colombian legislation provides for an initial period of six months to be allowed for gathering the necessary facts to support an order for the freezing of funds.

Finally, “the information and Financial Analysis Unit of the Ministry of Finance concludes agreements with financial tracking bodies in other countries to exchange information, which helps to carry out initial checks, with particular reference to recent international legal measures to combat Colombian terrorist groups and other groups outside the law. Likewise, the relevant Interpol agreements help to ensure that other nations duly report suspicious transactions.”

Information Sharing

Colombia has executed a number of bilateral agreements in order to enhance its ability to obtain information and effectively fight terrorism and international crime in general. Moreover, “Colombia has developed a series of mechanisms within the framework of the confidence-building measures and cooperation it has instituted with its neighbors and other countries of the region. Those mechanisms include: COMBIFRON (binational border commissions) with Ecuador and Venezuela; rounds of talks with Peru; bilateral intelligence meetings with Peru, Bolivia, Brazil and Chile, and regional border meetings with Brazil, Ecuador, Peru and Venezuela.” Information is also being shared with other bodies, such as Interpol and the intelligence agencies of nations with embassies in Colombia, with an emphasis upon obtaining information and tracking the movements of persons outside the law and to conducting joint operations at the international level. Meetings are continually held and topics of a general nature are dealt with and confidential recommendations and understandings are formulated for the purpose of bolstering efforts to combat crime. DAS-Interpol in Colombia exercises controls and coordinates actions with its counterpart offices, in accordance with the regulations of the organization.

BIBLIOGRAPHY OF COLOMBIAN LEGISLATION

Definition and Prosecution of Terrorist Acts

1. Colombian Code of Criminal Procedure, Section III – Hijacking of Airplanes.
2. Colombian Penal Code, Act No. 599, Article 144 of 2000 – Acts Aimed at Civilians.
3. Colombian Code of Criminal Procedure, Act No. 600 of 2000 – The Trying of Terrorist Acts.
4. Colombian Penal Code, Act No. 14, volume II, section VIII of 1972 – Crimes against Air Security.

Prevention of Terrorism – Security Measures

1. Political Constitution of Columbia, Article 223 – Preventing the Acquisition or Carrying of Firearms.
2. Political Constitution of Columbia, Article 8 and 88 -- Prohibiting the manufacture, import, possession, and use of chemical, biological, and nuclear weapons.
3. Colombian Penal Code, Act No. 599, Article 365 of 2000 – Importing, Trafficking, manufacturing, Selling and Distributing Firearms and Explosives without a license.
4. Colombian Penal Code, Act No. 599, Article 366 of 2000 – Importing, Trafficking, Manufacturing, Selling and Distributing Firearms and Explosives without a License.
5. Decree-Law No. 2535 of 1993 – possession, carrying, sale, manufacture and use of firearms, ammunition and explosives.

Money Laundering – Prevention and Prosecution

1. Anti-corruption Statute, Act No. 190 – Reporting of irregularities.
2. Colombian Penal Code, Article 325 – Non-compliance with Control Mechanisms.
3. Colombian Penal Code, Section 345 – Management of Resources Linked to Terrorist Acts.
4. Decree No. 1957 – Reporting of documents linked to money-laundering activities.
5. Financial Institutions Statute, Decree No. 663 – Reporting of irregularities.
6. Act No. 333, Article 2, paragraph 4 – Termination of Ownership Rights.
7. Colombian Code of Criminal Procedure, Article 67 – freezing of any assets linked to criminal activities, including terrorism.