

GERMANY

Criminalizing Terrorist Acts

German legislation criminalizes terrorist actions as serious criminal offenses. “Acting for terrorist motives, and in some cases the commission of an offence in a way characteristic of terrorist acts, can, for any offence, be taken into account as an aggravating circumstance justifying the imposition of a more severe penalty.” The greater the involvement of the individual in the terrorist action, the greater the penalty the individual may receive. For example, for participation in a terrorist organization alone, “ringleaders or backers” may receive a sentence of 3-15 years imprisonment, ordinary “members” might only receive 6 months to 5 years imprisonment. However, the Government has determined that “penal provisions relating to being (merely) a member of a criminal or terrorist organization do not adequately cover all possible situations, namely they do not apply to all cases of activity by foreign citizens abroad which should incur criminal liability.”

German criminal law provides several methods to obtain jurisdiction over persons who commit terrorist actions. “In particular, all persons, including foreign citizens, are subject to German jurisdiction regardless of the place of commission of an offence, if they are apprehended in Germany.” This applies to German nationals, regardless of whether they reside in Germany. However, “certain offences can only be prosecuted in Germany if the offence also incurs criminal liability in the country where it was committed.”

Suppressing Recruitment of Members of Terrorist Groups

Section 129a of the German Criminal Code lists recruitment for terrorist organizations as a separate offense. “Depending on the circumstances of the case, the law provides for a term of imprisonment from six months to fifteen years.”

The Prevention of Terrorism Act enhanced the legal requirements for banning “associations of foreigners,” that “support organizations outside Germany that instigate, support or threaten attacks against person or property.” Germany used this power for the first time in August of 2002 to ban Al-Qsa. The Law Governing Private Associations also allows for prohibition of associations of German citizens and foreigners under certain conditions. Section 14 bans such associations if their purpose or activities: “impair or pose a threat to the formation of the political will of the people in . . . Germany or to the peaceful coexistence of Germans and foreigners or various groups of foreigners within the territory, to public security or order or any other major interests of the Federal Republic of Germany;” are contradictory to Germany’s international obligations; support the use of violence to accomplish religious or political goals; or support associations who use violence to accomplish their goals.

Prevention of Terrorist Acts

Because Germany experienced domestic terrorist threats from the Red Army Faction during the 1980s, Germany had legislation prior to 2001 criminalizing terrorist actions. All security authorities in Germany share responsibility for preventing acts of terrorism. Intelligence services “are responsible for keeping a close eye on any endeavors undertaken by persons or organizations that are directed against the constitutional system.” Following the 11 September 2001 terrorist attacks in the United States, Germany amended its terrorism legislation in several areas. “A crucial focus of these legislative projects consist[ed] of granting necessary legal powers to security authorities such as the Federal Office for the Protection of the Constitution, the Military Counterintelligence Service, the Federal Intelligence Service, the Federal Criminal Police Office and the Federal Border Police.” The Federal Office for the Protection of the Constitution is responsible for gathering and evaluating information on “endeavors that are directed against the principle of international understanding and the peaceful co-existence of peoples.” The Office has increased access to information from “credit institutes, financial service institutions, financial companies, aviation companies, and companies providing telecommunications and teleservices.”

Laws Pertaining To Biology

Germany's laws prohibit the use of certain "substances or organisms" in armed confrontations between states. The War Weapons List defines a specific group of listed pathogens and equipment that are subject to regulatory oversight, including genetically altered micro-organisms and a list of representative pathogens and toxins which are considered as potential biological warfare agents. The War Weapons Control Act prohibits many additional acts, including the construction of facilities to produce biological agents without authorization, tampering with facilities or packages so as to cause a release of biological agents, or diverting biological agents from a facility or transport so as to cause their release. Penal sanctions for violations of the War Weapons Control Act and export control laws apply to offenses committed within the Federal Republic of Germany as well as to German citizens outside German territory.

German law contains a "civil use clause" which excludes from the biological weapon definition pathogens and toxins with a dual-use capability that are used "for civilian purposes or scientific, medical or industrial research in the field of pure and applied science," as well as "substances and organisms which serve prophylactic, protective or detection purposes." However, German law restricts possession, development and use of listed pathogens and equipment. to legitimate "civilian purposes or scientific, medical or industrial research in the field of pure and applied science," as well as "prophylactic, protective or detection purposes." Transfers and transport of listed agents or equipment are limited to authorized persons, provided they apply for permission and it is granted.

Germany's penal law prohibits the commission of and the inducement of others to commit the following acts:

- Exercise of actual control of biological substances,
- Development and production of biological weapons,
- Unauthorized possession of dangerous pathogens,
- Transfer and transport of any dangerous pathogen without authorization,
- Export of biological agents without authorization.

There are several legislative instruments that regulate the export of certain biological materials. The Export Control regulation, the Foreign Trade and Payments Act and the Foreign Trade and Payments Ordinance, and an Export List, defining micro-organisms, viruses, toxins, systems and basic system components that require export licenses. The German Ministry of Economics and Technology provides authorization to produce, sell, buy, export, import biological materials and equipment. Export and import of listed agents and equipment is regulated in accordance with EU law.

Preventing Terrorists From Obtaining Weapons

Under the German Criminal Code, supplying terrorist organizations with weapons is a criminal offense, subject to a term of imprisonment. Individuals must also shown to be "reliable" to be granted a permit to hold weapons. "European Council Directive 91/477/EEC of 1991 imposes on Germany (along with other EU member states), obligations to allow the acquisition of certain weapons only by person who has a good cause for having such weapons." "It must be ruled out: that weapons or ammunition will be used abusively or negligently; that the arms will not be used properly or will not be stored safely; and that third parties who are not authorized to handle arms will access to them."

Persons are deemed unreliable if they have been: sentenced to at least one year imprisonment for committing a criminal offence; convicted of a minor crime which was willfully committed; or been sentenced or fined for violations of the Weapons Act, the Act on the Control of War Weapons, the Explosives Act, or the Federal Hunting Act. "Person who are pursuing or have pursued goals in the past five years, as individuals or as members of an association, that are directed against the constitutional order or the concept of international understanding, in particular against the peaceful coexistence of people" are also deemed unreliable, and not eligible for weapons permits.

GERMANY

In accordance with international agreements, “exports of weapons, explosives and other sensitive materials are subject to authorization”; in the case of war weapons, the mere handling (i.e., import, export, transit as well as internal transport) is subject to authorization. Transfers of sensitive technologies in intangible form also require authorization. German has banned the development and production of NBC weapons (and all forms of trade related to such weapons). Export of military weapons (machine guns, submachine guns, assault rifles, etc.) is subject to comprehensive licensing requirements. Licenses will be granted for export only to state entities (with proper documentation). The Government may still deny export if the risk of diversion of the equipment to recipients other than those stated on the application is high.

Preventing, Suppressing and Criminalizing the Financing of Terrorism

“Tracing money that is being used or could potentially be used to finance terrorism” is an essential step in preventing and combating terrorism. The German Government is in the process of drafting a bill that would ratify the International Convention for the Suppression of the Financing of Terrorism. The 4th Financial Market Promotion Bill was approved in November 2001, and “is aimed primarily at counteracting non-transparent, global capital flows and financial transactions of criminal origins.” By providing banking institutes with automated access to accounts and expanding the reporting system for banks, it is now easier for authorities to identify and prosecute money laundering and illegal banking practices. In addition, banking institutions are now obligated “to create adequate internal security systems for combating money laundering and fraudulent activities . . .” and to operate under a strict “know your customer” policy.

“Under currently valid law, the financing of terrorist organizations is already considered to be an offense preliminary to money laundering under Section 261 of the German Criminal Code.” Financing of terrorist activities can also be a criminal offense under Section 129a of the German Criminal Code. The penalties for financing of terrorist activities depend on the nature of the individual’s relationship to the terrorists: a ‘backer’ can be sentenced to 3-15 years imprisonment; an “ordinary member,” 1-10 years; and someone not a member of the terrorist organization can be sentenced to 6 months to 5 years imprisonment. Financiers of terrorist activities can also be punished as if they actually committed the crime. “For example, if the perpetrator finances the purchase of weapons used by others to kill people in an attack, imposing punishment for participation in the offence of murder may also be considered.”

The ability to freeze funds and other financial assets quickly is another ability Germany has strived to improve within its legislation. The EC has already created financial sanctions by which Germany, as an EU member, must abide. Germany’s Foreign Trade and Payments Act allows the Government “to restrict legal transactions or activities concerning foreign trade and payments in order to protect against specific risks to” German security, the peaceful co-existence of peoples, and external relations. Sections 111b and 111c of the German Code of Criminal Procedure allow for the securing of objects and seizure of property “that has been used in order to commit, plan or prepare an offence as well as to the proceeds of crime, irrespective of the nationality of the perpetrator of the offence.”

International Cooperation

Germany is a party to all twelve international conventions and protocols against terrorism as well as a party to agreements against proliferation of chemical, biological, and nuclear weapons of mass destruction. A law on the ratification of the International Convention for the Suppression of Terrorist Bombings will take effect in 2003. A law on the ratification of the International Convention on the Suppression of the Financing of Terrorism is being drafted. Germany has also signed the U.N. Conventions on Terrorism, Drugs and Organized Crime. Most have already been implemented.

Many bilateral and multilateral agreements have been established to cover mutual assistance in criminal matters, extradition, and on cooperation against terrorism and organized crime. Germany

GERMANY

provides for mutual assistance in criminal matters through bilateral and multilateral agreements, and on an individual country basis based on the German Act of 23 December 1982 on International Mutual Legal Assistance in Criminal Matters. Germany welcomes the international exchange of information related to smuggling of weapons, explosives, and other sensitive materials and to prevent acts of terrorism. International export control regimes can be used to strengthen this exchange of information and “to counteract effectively the danger of proliferation of weapons of mass destruction.”

At a regional level, “exchange of threat-relevant information between EU Member States is a traditional, integral part of their cooperation.” Europol may be involved in these types of information exchanges. The Federal Intelligence Service of Germany also has well-established international contracts to “facilitate the exchange of relevant information.” Germany also promotes the use of the EC Eurdac database for police purposes. This database contains information on all asylum seekers over the age of 14 and of foreigners apprehended in crossing borders illegally. Germany has also promoted the development of joint visa files and “of a European central register of citizens of third countries who are residing in the territory of the European Union.”

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GERMANY

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