

infraction visée aux articles 235, 266, 279 ou 279.1 ou menace de commettre une infraction visée à l'article 431.

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*Article 431. Attaque contre les locaux officiels, le logement privé ou les moyens de transport:* Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans quiconque attaque les locaux officiels, le logement privé ou les moyens de transport d'une personne jouissant d'une protection internationale, de manière à mettre vraisemblablement la vie ou la liberté de cette personne en danger.

## VIII. CHILE<sup>16</sup>

### 1. ACT NO. 18,314 DEFINING TERRORIST ACTS AND ESTABLISHING PENALTIES FOR SUCH ACTS<sup>17</sup>

The Government Junta of the Republic of Chile has adopted the following draft law:

#### CHAPTER I

#### TERRORIST ACTS AND PENALTIES FOR SUCH ACTS

*Article 1.* The acts enumerated in article 2 shall constitute terrorist offences when they are carried out in any of the following circumstances:

(1) The offence is committed with the aim of producing in the population or a part thereof a justified fear of being a victim of such an offence, owing either to the nature and effects of the means employed or to the clear fact that the act is part of a premeditated plan to attack a given category or group of persons.

The purpose of producing such a fear in the population at large shall be presumed, unless there is proof to the contrary, if the offence is committed using explosive or incendiary devices, highly destructive weapons, toxic, corrosive or infectious means or other means which may cause extensive destruction, or through the sending of letters, packages or similar objects which have explosive or toxic effects.

(2) The offence is committed with the intention of forcing the authorities to take certain action, or to impose demands upon them.<sup>18</sup>

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<sup>16</sup> Transmitted to the Secretariat by that Government on 10 November 2000.

<sup>17</sup> Published in the Official Journal of 17 May 1984. See note 1 to the First Book of this Code. See also Act No. 19.172 of 4 November 1992 on effective repentance.

<sup>18</sup> This provision was amended, as it appears in the text by article 2 of Act. No. 19,027 of 24

*Article 2.* If any of the characteristics described in the preceding article apply, the following shall constitute terrorist acts:

(1) Homicide punishable under articles 390 and 391; personal injury punishable under articles 395, 396, 397 and 399; abduction, either in the form of sequestration or detention, or in the form of hostage-taking or abduction of children, punishable under articles 141 and 142; the sending of explosive devices as covered by article 403 bis; arson and criminal damage punishable under articles 474, 475, 476 and 480; infractions against public health as covered by articles 313 (d), 315 and 316; and derailment, covered by articles 323, 324, 325 and 326 of the Penal Code;

(2) Seizure of or attack against a ship, aircraft, railway, bus or other means of public transport in service, or the commission of acts which endanger the life, physical integrity or health of their passengers or crews;

(3) Attack against the life or physical integrity of the Head of State or another political, judicial, military, police or religious authority or persons internationally protected by virtue of their position;

(4) Placing, throwing or firing bombs or other explosive or incendiary devices of any type which affect or may affect the physical integrity of persons or cause damage;

(5) Unlawful association to commit offences which are characterized as terrorist acts in the preceding subparagraphs and in article 1.

Abduction by an unlawful terrorist association, either in the form of sequestration or detention, or in the form of hostage-taking or abduction of children punishable under articles 141 and 142 of the Penal Code, shall always be regarded as a terrorist act.<sup>19</sup>

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## 2. SUMMARY OF CHILEAN LEGISLATION ON TERRORISM

Act No. 18,314 of 17 May 1984 (reproduced above) defines what are regarded as terrorist acts in Chile, fixes penalties for them and prescribes the courts in which these offences are to be tried and the procedures to be followed. This legislation has been the subject of various amendments, substitutions and rescissions, especially those deriving from the provisions of Acts Nos. 18,925 of 20 February 1990 and 18,937 of 22 February 1990, and No. 19,027 of 24 January 1991.

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January 1991.

<sup>19</sup>Paragraph amended as it appears in the text by article 4 of Act No. 19,241 of 28 August 1993.

## OFFENCES

The Chilean legislation stipulates that the offences listed therein are terrorist offences, provided one of the distinguishing features laid down in the statute is present.

The specified factors consist basically of committing the offence for the purpose of instilling among the public or some part of it, "a justified fear of being a victim of such an offence" or where "the offence is committed with the intention of forcing the authorities to take certain action, or to impose demands upon them". There is also a legal presumption that the intention to commit an act of terrorism exists when the criminal activity is carried out for the purpose of causing fear among the public in general, or when the offence is committed through certain means such as explosive devices, highly destructive weapons, toxic or corrosive means or other means capable of causing serious damage.

Among the offences falling within the category of terrorist offences when any of the designated features is present, are ordinary criminal offences such as homicide, wounding, kidnapping, detaining people against their will, abduction of minors, arson and criminal damage. Certain forms of conduct are also designated specifically, such as the seizure of ships, aircraft, trains, buses and other means of public transport.

Additional offences falling within the category of terrorist offences include:

- Attempts on the life or person of the Head of State, and of other national authorities or internationally protected persons;
- The placing, launching or activation of bombs or explosive devices which may affect or are intended to affect the physical integrity of individuals or to cause damage;
- Unlawful association, when its purpose is the commission of any of the foregoing acts.
- The offence of kidnapping, when committed by an unlawful association.

According to article 292 of the Penal Code, any association whose objective is to attack the social order, public mores, individuals, or property, commits an offence solely by conspiring for that purpose.

## PENALTIES

Generally speaking, the penalties for these terrorist offences are established under Chilean legislation, when the offence involved is an ordinary criminal offence punishable under the Penal Code, as the penalty set by that legislation for each individual offence, increased by one or two degrees.

Nevertheless, there are specific types of offence, such as seizure of ships and placing of bombs, for which there are specific penalties under this same Act.

## CONCERNING THE STAGES OF EXECUTION OF TERRORIST OFFENCES

Chilean anti-terrorist legislation also establishes penalties for the following stages of execution of the offence:

**Attempt:** Under Act No. 18,314, article 7, paragraph 1, an attempt to commit a terrorist offence is punishable by the minimum penalty established by law for the completed offence.

**Conspiracy:** Under the final paragraph of the above-mentioned article 7, conspiracy to commit terrorist offences is punishable by the penalty for the completed offence, reduced by one or two degrees.

Lastly, article 7, paragraph 2, should be regarded as setting forth a legal precept whereby a serious and credible threat to commit a terrorist offence is punishable as an attempt (a serious and credible threat being understood as meaning any implicit or explicit threat that produces the conviction that a terrorist offence is being attempted).

## PROCEDURE

Proceedings in respect of offences specified in and punishable under Act No. 18,314, shall be instituted automatically by the courts or pursuant to a report or complaint in accordance with the general norms, that is to say, in accordance with the Code of Criminal Procedure.

Notwithstanding the above, proceedings may also be instituted pursuant to a requisition or report from the Minister of the Interior, regional *intendants*, provincial governors and garrison commanders, in which case the procedure outlined in article 26 and ff. of Act No. 12,927 concerning State security shall be applied, except that in such case, in accordance with article 27 of the said Act, the above-mentioned authorities may not discontinue the proceedings once these have been instituted.

## RELEASE ON BAIL

In accordance with the provisions of article 19, paragraph 7 (e), of the Constitution of Chile, all decisions regarding release on bail shall be subject to consultation proceedings, which shall be heard by one of the chambers of the relevant court of appeals.

## ACT CONCERNING THE VALIDITY OF REPENTANCE

The Chilean legislature promulgated Act No. 19,172, which was published in the *Diario Oficial* on 4 November 1992; this Act regulates the validity of repentance in respect of any person who leaves an unlawful terrorist association of which he/she was a part, provided that he/she does so before a judgement is handed down at the end of a trial.

The purpose of this Act is to exempt from the penalties set forth in Act No. 18,314, article 3, any person who was part of an unlawful terrorist association, and also to exempt from criminal sanction the authors of an attempt, conspiracy or serious and credible threat to commit terrorist offences.

Anyone who has participated in other terrorist offences, that is to say anyone who has committed any of the acts characterized as an offence in Act No. 18,314, article 2, paragraphs 1 to 4, may also claim exemption under this Act.

In such case, a person who invokes the Act concerning the validity of repentance is not exempt from punishment; however, the punishment may be reduced by up to two degrees, provided that the person complies with the following requirements: (a) hands over or reveals to the authorities, information that actually serves to give warning of or to prevent the commission or completion of terrorist offences, and those responsible are named and arrested; and (b) actually helps to disband the unlawful association to which he/she belonged, or a substantial part thereof, by providing information that was not known, such as plans, names of members or the whereabouts of the leaders and members.

The Act establishing the validity of repentance was characterized as a legal text having temporary validity, in that anyone wishing to claim exemption under that Act had four years as from the date of its publication in the *Diario Oficial* in which to do so.

## IX. CHINA<sup>20</sup>

### 1. PROVISIONS OF THE CRIMINAL LAW OF THE PEOPLE'S REPUBLIC OF CHINA AS REVISED AT THE FIFTH MEETING OF THE STANDING COMMITTEE OF THE EIGHTH NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA ON 14 MARCH 1997

*Article 114.* Whoever commits arson, breaches a dike, causes explosion, spreads poison or uses other dangerous means to sabotage any factory, mine, oilfield, harbour, river, water source, warehouse, house, forest, farm, threshing

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<sup>20</sup> Transmitted to the Secretariat by that Government on 26 June 1998. Also available for consultation from the Codification Division, Office of Legal Affairs is the Decision Regarding the Severe Punishment of Criminals who Abduct and Traffic in or Kidnap Women or Children, 1991.