

## XVIII. GERMANY<sup>55</sup>

### 1. SUMMARY OF THE GERMAN LAWS AND REGULATIONS REGARDING THE PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM

In Germany terrorism *per se* is not considered a separate criminal offence. Thus, there is no article penalizing "Terrorism" in the German Penal Code. Instead, terrorism is dealt with by using general criminal and procedural regulations of the Penal Code (Strafgesetzbuch, StGB) and Code of Criminal Procedure (Strafprozeßordnung, StPO). If, for example, people are killed during a terrorist bomb attack, the offence is "Murder" according to paragraph 211 and "Causing a bomb explosion" according to paragraph 308 of the Penal Code. Paragraphs 129 ("Formation of a criminal organization") and 129a ("Formation of a terrorist organization") of the Penal Code supplement the general criminal offences and can be viewed as the center piece of the fight against terrorists.

1. The Supplementary Act to the First Act on the reform of the law of criminal procedure of December 20, 1974 (Federal Law Gazette 1974 I, 3686), which entered into force on January 1, 1975, contains, *inter alia*, the following regulations:

- The determination of a maximum number of defence attorneys selected by the defendant, (paragraph 137 of the Code of Criminal Procedure).

- The prohibition for an attorney to defend more than one accused person in the same proceeding or, if the charges relate to the same incident, in separate proceedings, (paragraph 146 of the Code of Criminal Procedure).

- The authorization to continue the trial in the absence of the defendant in case the defendant is incapable of taking part in the trial through his or her own fault, or due to irregular conduct (paragraphs 213a, 213b of the Code of Criminal Procedure).

- The possibility that the decision regarding the exclusion of the public is announced in a non-open hearing, (paragraph 174 of the Judiciary Act (Gerichtsverfassungsgesetz, GVG)).

- The strengthening of the court's jurisdiction over offences against the administration of justice in the trial, (paragraphs 177, 178 of the Judiciary Act).

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<sup>55</sup> Transmitted to the Secretariat by that Government on 5 April 2000. Reference to the term "paragraph" in the summary should be understood as being equivalent to "Article".

2. The so-called "Anti-terrorism Act" of August 18, 1976 (Federal Law Gazette 1976 I, 2181) was intended to improve the struggle against terrorism. Following a consistent concept, it amends substantive (StGB) and procedural (StPO) criminal law as well as the law of the judiciary (GVG) and the law regulating the conduct of attorneys.

A key element involving an amendment to the substantive criminal law is the introduction of the offence of a "Formation of a terrorist organization" in paragraph 129a of the Penal Code. The Act includes the following procedural and organizational changes related to charges regarding this offence:

- Easier imposition of pre-trial arrest, (paragraph 112 (3) of the Code of Criminal Procedure).

- Monitoring of written communication between the accused and his defence counsel, (paragraphs 148, 148a of the Code of Criminal Procedure).

- Primary investigative responsibility of the Federal Public Prosecutor and jurisdiction at first instance of the High Court (Oberlandesgericht), (paragraphs 120 and 142a of the Judiciary Act).

3. The so-called "Ban on Contact Act" of September 30, 1977 (Federal Law Gazette 1977 I, 1877) allows, through the introduction of paragraphs 31 to 38 to the "Introductory Act to the Judiciary Act" (Einführungsgesetz zum Gerichtsverfassungsgesetz, EGGVG), for the complete interruption of contact between imprisoned terrorists and non-official persons outside the detention facility.

4. The Amendment Act to the Code of Criminal Procedure (April 14, 1978, Federal Law Gazette 1978 I, 497) contains provisions which make it easier to exclude a defence counsel from a trial involving the offence of "Formation of a terrorist organization" and from all other proceedings against the accused person. In addition this Act contains authorizations for a number of further enforcement measures against a person accused of a formation of a terrorist organization. In particular it introduces new regulations regarding identity check, check points and the search of blocks of houses (paragraphs 103, 111, 127, 163b, 163c of the Code of Criminal Procedure).

5. A further legal initiative to combat terrorism led to the introduction of the so-called "principal witness-regulation" in case of terrorist acts (Article 4 of the Amendment Act to the Penal Code, Code of Criminal Procedures and others, of June 9, 1989, Federal Law Gazette 1989 I, 1059). This regulation was primarily intended to prevent future terrorist acts. At the same time it was meant to promote the solution of committed terrorist acts and to make members of terrorist organizations feel insecure by weakening their mutual trust. The term for the principal witness regulation was at first limited to December 31, 1992. The provision was extended several times, regarding both its term (to December 31, 1995, eventually to December 31, 1999) and its scope (extension to the field of

organized crime). On January 1, 2000, the principal witness regulation expired because the German Federal Parliament had decided not to extend its term again.

## **XIX. GUATEMALA<sup>56</sup>**

### **1. PENAL CODE**

#### **Chapter IV**

#### **Crimes against public order**

*Article 391 — (Terrorism)* Persons who, with the objective of attacking the constitutional system or disrupting public order, commit acts intended to cause fire, destruction to railway, maritime, river or air disasters, shall be sentenced to five to 15 years' imprisonment.

If explosives of high destructive force are used in the commission of such crimes, or if, as a result thereof, one or more persons are killed or seriously wounded, the perpetrator shall be sentenced to 10 to 30 years' imprisonment.

*Article 392 — (Public intimidation)* Persons who, with the objective of spreading public terror, causing alarm or inciting disturbances or disorder, set off small explosives or any other similar device or use explosives or make public threats concerning a common danger, shall be sentenced to six months to two years' imprisonment.

*Article 393 — (Aggravated public intimidation)* If the acts covered by the previous article were committed in a large assembly of people, or caused fire, destruction or any other disaster or catastrophe, the perpetrator shall be sentenced to three to 10 years' imprisonment.

*Article 394 — (Incitement to crime)* Persons who publicly incite the commission of a specific crime shall be sentenced to one to four years' imprisonment.

*Article 395 — (Support for crimes)* Persons who publicly express support for a crime or for a person convicted of a crime shall be punished by a fine of between 100 and 1,000 quetzales.

*Article 396 — (Illegal associations)* Persons who promote the organization or operation of associations which act in agreement with or on the orders of international bodies which advocate communist ideology or any other totalitarian system, or aim to commit crimes or to take part in them, shall be sentenced to two to six years' imprisonment.

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<sup>56</sup> Transmitted to the Secretariat by that Government on 5 June 2000 and 8 June 2001.