

- The Internal Security Act, 1982 which provides in section 54 for jurisdiction of the Courts over a person "... in the Republic or elsewhere ..." who committed an act of terrorism against the constitutional sovereignty of the Republic.

CXI. SPAIN¹¹⁴

SUMMARY OF LEGISLATION OF SPAIN RELATED TO TERRORISM

The Spanish Penal Code, which was approved pursuant to Organic Law 10/1995 of 23 November 1995, punishes any act of collaboration with armed groups or terrorist organizations or groups (article 576). The recruitment of members would constitute a form of collaboration.

In addition, Organic Law 7/2000, of 23 December 2000 provides for special measures in cases involving persons under 18 years of age who commit terrorist offences.

Article 573 of the Penal Code provides penalties for the storing of weapons or munitions and the possession or storage of explosive, flammable, incendiary or asphyxiating substances or devices or components thereof, as well as their manufacture, trafficking, transport or supply, in any form, and the mere placement or use of such substances or of other means or contrivances for achieving the same purpose by persons acting at the service of or in collaboration with armed groups, organizations, or terrorist groups.

Article 575 of the Penal Code¹¹⁵ deals with fund-raising and the financing of terrorism in general. Anyone who attempts a crime against property in order to obtain funds for the armed groups, organizations or terrorist groups, or to further their purposes shall be punished with a penalty at the level next highest to the one prescribed for the offence committed, without prejudice to the enforcement of such penalties as are applicable under the article for acts of collaboration.

¹¹⁴ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1246, enclosure), on 26 June 2002 (S/2002/778, enclosure) and on 30 May 2003 (S/2003/628, appendix). Information was also provided in respect of the following: legislation concerning steps to prevent procurement of weapons; the Law 5/1984 of 26 March 1984, on the right of asylum and the status of refugees, as amended by Law 9/1994 of 19 May 1994; the law on the rights and freedoms of foreigners in Spain and their social integration (Organic Law 4/00 of 11 January 2000, amended by Organic Law 8/00 of 22 December 2000); the passive extradition law of 21 March 1985; and prevention of money laundering (Law 19/1993, of 28 December 1993).

¹¹⁵ As amended by Organic Law 7/2000 of 22 December 2000.

In Article 576:

“1. The performance, requesting or facilitation of any act of collaboration with the activities or purposes of an armed group or terrorist organization or group shall be punishable by imprisonment of five to ten years and fines equivalent to 18 to 24 months.

“2. ‘Acts of collaboration’ shall be understood to mean the supply of information on or the surveillance of persons, goods or facilities; the building, fitting-out, transfer or use of lodging or storage facilities; the concealment or movement of persons linked to armed groups or terrorist organizations or groups; the organization of training sessions or attendance at such sessions; and, in general, any other equivalent form of cooperation, assistance or complicity, economic or otherwise, with the activities of the aforementioned armed groups or terrorist organizations or groups.”

Article 579 of the Penal Code¹¹⁶ establishes in paragraph 1 that provocation, conspiracy and proposition to commit the crimes set forth in articles 571 to 578 – crimes of terrorism – are punishable by a sanction which is one or two degrees lower than that corresponding, respectively.

Article 16, paragraph 1 of the Penal Code (Organic Law 10/1995 of 23 November 1995) defines as an attempt to commit a criminal offence every direct and exterior act of initiation of the commission of the crime which implies the performance of all or part of the acts that should objectively lead to the production of the pursued result, but which result is not finally produced by conditions independent from the will of the offender. Article 62 of the Code provides that an attempt to commit an offence is punishable by a sanction which is one or two degrees lower than the prescribed penalty for a consummated crime, to the extent deemed appropriate, with due regard to the danger inherent in the attempt and the degree of execution reached.

The Organic Law on the Safeguarding of Public Security (Organic Law 1/1992 of 23 February 1992) establishes strict guidelines for preventive action and vigilance with respect to the manufacture and repair of weapons, imitations and reproductions thereof and their basic components; explosives, cartridges and pyrotechnic devices; and the circulation, storage and merchandising, acquisition, sale, possession and use of such items.

The Penal Code establishes severe penalties for all terrorist offences which are proportional to the seriousness of the offence committed. Terrorist offences are specifically defined and harsher penalties are prescribed for them than for ordinary offences that are not committed for terrorist purposes. For example:

¹¹⁶ Ibid.

- Murder: 15 to 20 years
- Murder for terrorist ends: 20 to 30 years

Under the Penal Code, in all cases of offences linked with terrorist activities, a sentence handed down by foreign judges or courts is brought in line with the equivalent sentence that would be applied by Spanish judges and courts, when the aggravating circumstance of repeat offences exists (article 580).

Prosecution of terrorist offences may be carried out through either ordinary or summary proceedings, depending on the penalty stipulated for the act. In either case, the guarantees set forth in article 24 of the Constitution are provided, namely, effective protection, a judge presiding over ordinary proceedings as established by law, right to legal counsel and assistance, public trial without undue delay and with guarantees, use of means of proof for the defence, right not to incriminate oneself and not to confess guilt, and right to the presumption of innocence.

Territorial application

The Organic Law of the judiciary branch (Organic Law 6/1965 of 1 July 1965) establishes that Spanish courts are competent to take cognizance of acts that constitute terrorist offences under Spanish law which are committed by Spanish nationals and foreigners outside the national territory.

The Organic Law of the judiciary branch assigns responsibility for considering terrorist offences to a judicial body which has competence throughout the national territory, i.e., the Audiencia Nacional. Article 23, paragraph 4 of Organic Law 6/1985 of 1 July 1985, on the judiciary, gives Spanish judges and tribunals jurisdiction over acts committed by Spanish nationals or foreigners outside Spain that are categorized as acts of terrorism under Spanish law.

The commission of the crime abroad does not rule out punishment for the crime in Spain, provided that the initiation of the commission of the crime occurred in Spain. In the case where an attempt or a conspiracy of two or more persons to commit a crime also occurs in Spain or in the case of provocation, conspiracy or proposition to commit a crime (principle of territoriality in respect of the competence of the Spanish judiciary, as set forth in article 23, paragraph 1 of Organic Law 6/1985, on the judiciary).

Procedure

Procedural legislation provides for certain steps to be taken in connection with the investigation of terrorist offences covered by article 55 of the Spanish Constitution. Under article 55, an organic law may stipulate how and in what cases – with the requisite court order and adequate parliamentary oversight – the rights referred to in article 17, paragraph.2 (maximum duration of preventive detention) and article 18, paragraphs 2 and 3 (inviolability of domicile and secrecy

of communications) may be suspended for certain persons in connection with investigations pertaining to the action of armed bands or terrorists.

Thus, the legislation on penal procedures provides:

Detention by the police may be extended 48 hours beyond the initial 72 hours, provided that such extension is requested in a formal, well-founded communication within the first 48 hours of detention and that it is authorized by the judge within the next 24 hours (article 520 bis of the criminal prosecution act).

Detainees may be kept incommunicado, by court order (article 520 bis).

Police authorities may detain suspected terrorists in whatever place or domicile they may be hiding or taking refuge and, in connection with the detention, they may conduct searches in those places and seize the effects and instruments they may find there which might be linked to the offence committed (article 553 of the criminal prosecution act).

Eavesdropping is allowed when ordered by the Minister of the Interior or, in his absence, by the Director of State Security. The relevant order must be immediately transmitted in writing to the competent judge, who must either revoke or confirm it within a maximum period of 72 hours, clearly stating the reasons for his decision (article 579, paragraph 4).

CXII. SRI LANKA¹¹⁷

SUMMARY OF LEGISLATION OF SRI LANKA RELATED TO TERRORISM

The United Nations Act (No. 45 of 1968) provides that if the Security Council of the United Nations, acting under Article 41 of the Charter of the United Nations, calls upon the Government of Sri Lanka to apply any measures necessary to give effect to any decision of that Council, the Minister in charge of the subject of Foreign Affairs may, by regulations, make such provisions as appear to him necessary or expedient to enable those measures to be effectively applied. These

¹¹⁷ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1282, enclosure), on 15 July 2002 (S/2002/861, enclosure) and on 13 August 2003 (S/2003/840, enclosure). Information was also provided in respect of the Suppression of Terrorist Bombings Act No. 11 of 1999 and Prevention of Terrorism Act, No. 48 of 1979 (for texts and other texts of legislation on terrorism, see *National Laws and Regulations on the Prevention and Suppression of International Terrorism, Part I, United Nations Legislative Series ST/LEG/SER.B/22*). Information was also provided in respect of the following: the Firearms Ordinance for the regulation of the use of firearms and the Offensive Weapons Act; the Immigrants & Emigrants Act; the Exchange Control Act; the Criminal Procedure Code; and the Mutual Legal Assistance in Criminal Matters Act.