

VIII. AUSTRIA¹¹

1. SUMMARY OF LEGISLATION OF AUSTRIA RELATED TO TERRORISM

Under the Austrian Penal Code financing of armed associations (Section 279 of the Penal Code) is punishable by deprivation of liberty of up to 3 years.

Under certain circumstances, the intentional financing of a specific terrorist act would be considered as an act of assistance (participation) to the terrorist act itself (Section 12 of the Penal Code in relation with the offence committed, e.g. murder, intentional endangering by explosives etc.). However, the terrorist act in question would at least have to be attempted in order to make the (financing) participant punishable (Sections 15 Paras. 1 and 2 of the Penal Code). Sanctions would depend on the specific offence committed and would range up to a deprivation of liberty of 10 to 20 years or life imprisonment, depending on the gravity of the offence (Section 12 of the Penal Code in relation with the relevant general offence committed; e.g. murder).

Under certain circumstances, the providing or collecting of money in order to finance the activities of a criminal organization would be considered as participation in the criminal organization as such. In this case, it is not necessary that a specific terrorist act has already been committed or attempted (Section 278a of the Penal Code). This crime is punishable by deprivation of liberty of 6 months to 5 years.

As soon as three or more people conspire with the intent to continually committing criminal offences (criminal organization), this is considered to be a general risk, which law enforcement authorities pursuant to Section 21 of the Security Police Act have to eliminate.

The participation in a criminal organization as defined in Section 278a of the Penal Code constitutes a criminal offence punishable by deprivation of liberty of 6 months to 5 years (Section 278a of the Penal Code).

Section 278b of the Austrian Penal Code criminalizes the leading of and the participation in a terrorist group. For the purpose of further defining the meaning of "participation" Section 278b para. 3 refers to Section 278 para. 3 of the Penal Code, which stipulates that anybody who *inter alia* supports a (criminal) group by providing information or assets or in any other way with the awareness

¹¹ Submitted to the Secretariat by that Government on 20 December 2001 (S/2001/1242, enclosure), on 2 August 2002 (S/2002/969, enclosure) and on 24 February 2003 (S/2003/276, enclosure). Information was also provided in respect of the Austrian Aliens Act.

that he/she thereby promotes the group or its criminal acts participates as member in the group. As has been pointed out explicitly in the explanatory memorandum to the government bill that introduced this concept, “recruiting” is an example for such a support “in another way”.

The recruitment of members for armed associations constitutes a criminal offence punishable by deprivation of liberty for up to 3 years (Section 279 of the Penal Code).

Moreover, conspiracy – with at least one other person – to commit a criminal act such as murder, kidnapping, hijacking of an aircraft or endangering by explosives constitutes a criminal offence, irrespective of the actual attempt or commitment of the specific (terrorist) act (Section 277 of the Penal Code). It is punishable by deprivation of liberty of 6 months to 5 years.

Under certain circumstances, the intentional financing of a specific terrorist act would be considered as an act of assistance (participation) to the terrorist act itself (Section 12 of the Penal Code in relation with the offence committed, e.g. murder, intentional endangering by explosives, etc.). However, the terrorist act in question would at least have to be attempted in order to make the act of the (financing) participant punishable (Section 15 para. 1 und 2 of the Penal Code). Section 279 of the Penal Code relates to the financing of armed associations. Under certain circumstances, the providing or collecting of money in order to finance the activities of a criminal organisation as defined in Section 278a of the Penal Code would be considered as participation in the criminal organisation as such. In this case, it is not necessary that a specific terrorist act has already been committed or attempted. Certain acts of handling assets that belong to a criminal organisation as defined in Section 278a of the Penal Code, if they are used or destined for financing terrorist acts could fall under Section 278a para 2 of the Penal Code when committed with the knowledge that the assets belong to a criminal organisation.

Currently, support for criminal organisations acting outside Austria is punishable in Austria, if the supportive act has been effected in Austrian territory. The recruitment of members for a criminal organisation can be considered as such a supportive act. (In the future legislation, terrorist groups will be covered explicitly).

The amended Penal Code and the Code of Criminal Procedure implementing both Resolution 1373 (2001) and the *International Convention for the Suppression of the Financing of Terrorism* provide the possibility to issue an injunction with respect to funds, assets and economic resources of individuals and entities, either resident or non-resident, if they are linked to terrorism. The relevant provisions include funds, assets and economic resources suspected to have been obtained through or could be used for the commitment of a criminal act as defined in Section 278d of the Penal Code. In addition, this procedure applies also to funds, assets and economic resources within the disposition of a criminal organisation or a terrorist group.

Territorial Application

Austrian Penal law requires prosecution of foreign nationals who committed a terrorist offence outside Austria and who are found in Austria and can not be extradited.

Under Section 64 para.1 subpara. 9 of the Penal Code, there is Austrian jurisdiction regarding the following offences committed abroad:

- conspiracy to commit terrorist offences (Section 278b of the Penal Code); and
- terrorist offences (Section 278c of the Penal Code),

provided inter alia that the perpetrator was a foreign national at the time of the commission of the offence and his/her surrender or extradition is refused.

Under Section 64 para. 1 subpara. 10 of the Penal Code, there is Austrian jurisdiction with regard to the offence of financing of terrorism (Section 278d of the Penal Code) committed abroad, provided inter alia that the perpetrator is found in Austria and cannot be extradited to another State. Furthermore, Section 65 para.1 subpara. 2 of the Penal Code provides for Austrian jurisdiction over foreign nationals who have committed criminal offences, including terrorist offences, abroad and are found in Austria and cannot be extradited to another State.

2. PENAL CODE¹²

*Section 20 (Confiscation of Profits)*¹³

(1) Whoever

1. has committed an offence and has obtained economic benefit from it, or
2. has received economic benefit for committing an offence, is to be condemned to payment of an amount of money equivalent to the gained illegal profits. Insofar as the extent of the profits cannot be established at all, or cannot be established without disproportionate expenditure, the court may fix the sum of money to be confiscated according to its conviction.

¹² Unofficial English translation provided by Government.

¹³ BGBl. Nr. I 134/2002.

(2) If the perpetrator

I. has committed crimes (sect. 17) continuously or repeatedly and has obtained economic benefits from, or received for, their commission and has gained during the same period further economic benefits, there being an obvious supposition that these benefits derive from other crimes of the same nature, and the legal acquisition of the benefits not being made credible, these economic benefits have to be taken into consideration in fixing the amount of money to be confiscated.

(3) A perpetrator who, during the period of his membership in a criminal organization (sect. 278a) or in a terrorist group (sect. 278b), has gained economic benefits, is to be condemned to payment of an amount of money the court may fix corresponding to the gained profits according to its conviction, if there is an obvious supposition that these profits derive from offences and their legal acquisition cannot be made credible.

(4) Whoever profits illegally and directly from an offence committed by another person, or from the economic benefit given for the commission of such [an] offence, is to be condemned to payment of an amount of money equivalent to these profits. This applies mutatis mutandis to legal persons and partnerships which have gained profits.

(5) If the person who has gained illegal profits has died, or if the legal person or partnership has ceased to exist, the profits are to be confiscated from the legal successor insofar as they were still existent at the moment of transmission of rights. A majority of persons who have gained illegal profits are to be condemned according to their respective shares. If the share cannot be established, the court has to fix it according to its conviction.

*Section 20b (Forfeiture)*¹⁴

(1) Property being at the disposal of a criminal organization (sect. 278a) or a terrorist group (Sect. 278b) or which has been provided or collected as a means for financing terrorism shall be declared forfeited.

(2) Property deriving from an offence where Austrian jurisdiction is not established under sect. 62 to 65 shall be declared forfeited if the offence is punishable under the law of the State where it was committed.

*Section 41a*¹⁵

(1) If the perpetrator of a criminal offence punishable under sects. 277, 278, 278a or 278b or of a criminal offence being connected with such a

¹⁴ BGBl. I Nr. 134/2002.

¹⁵ As amended by Federal Law Gazette Nr. I 1997/105, most recently amended by Federal Law Gazette Nr. I 2002/134.

conspiracy, association or organization discloses his knowledge to a prosecution authority about facts whose knowledge contributes essentially

1. to remove or reduce considerably the dangers arising from the conspiracy, association or organization,
2. to promote the clearing up of such an offence in addition to his own complicity or
3. to find a person who participated in such a conspiracy in a leading position or had a leading position in such an association or organization, the sentence may remain under the legal minimum penalty under sect. 41 if this is adequate to the importance of the disclosed facts compared with the guilt of the perpetrator. Sect. 41 para. 3 is applicable *mutatis mutandis*.

(2) Para.1 applies *mutatis mutandis* to the participant in a conspiracy, association or organization being punishable under the prohibition law or to the perpetrator of a criminal offence being connected with such a conspiracy, association or organization. In case the knowledge of the perpetrator relates to criminal offences to which the Austrian penal laws are not applicable, para.1 shall apply nevertheless so far as a legal assistance would be admissible.

Criminal offences abroad being punished irrespective of the laws which are valid for the scene of the crime

Section 64¹⁶

(1) The Austrian penal laws are applicable regardless of the penal laws which are valid for the scene of the crime to the following offences being committed abroad:

1. espionage of a trade or business secret in favour of foreign countries (sect. 124), high treason (sect. 242), preparations for high treason (sect. 244), subversive associations (sect. 246), attacks on the high instruments of state (sects. 249 to 251), treason to the country (sects. 252 to 258) and criminal offences against the Federal Armed Forces (sects.259 and 260);
2. criminal offences committed against an Austrian public officer (sect. 74 n.4) during or for the execution of his functions and committed by an Austrian public officer; false testimony before a court (sect. 288) and perjury or false deposition under oath before an administrative authority (sect. 289) in proceedings pending in an Austrian court or in an Austrian administrative authority;

¹⁶ As amended by Federal Law Gazette Nr. 1987/605, 1996/762, I 1997/112, I 1998/153, I 2000/34 and I 2002/134.

3. extortionate kidnapping (sect. 102), surrender to a foreign power (sect. 103), slave trade (sect. 104), traffic in persons (sect. 217), money counterfeiting (sect. 232), the forgery of particularly protected securities punishable under section 232 (sect. 237), criminal organization (sect. 278a para.1) and the criminal offences punishable under sects. 28 para.2 to 5, 31 para.2 and 32 para.2 of the drug law if Austrian interests have been violated or if the perpetrator cannot be extradited;

4a. gross sexual abuse of minors (sect. 206), sexual abuse of minors (sect. 207) and pornographic representations with minors pursuant to sect. 207a para. 1 and 2 if the perpetrator is an Austrian citizen residing generally in the homeland;

4b. production and distribution of weapons for mass extermination (sect. 177a) if the perpetrators are Austrian citizens, but as to nuclear weapons only so far as the offence did not be committed by order or at the responsibility of a contracting party of the treaty against the distribution of nuclear weapons, Federal Law Gazette Nr. 258/1970, which is a state with nuclear weapons;

5. hijacking (sect. 185) and criminal offences against life and limb in this connection or against the freedom of aviation and its intentional endangering (sect. 186) if the criminal offence is directed against an Austrian aircraft,

a) the aircraft lands in Austria and the perpetrators are still on board;

b) the aircraft has been rented out to someone without a crew who has his business seat in Austria or in default of such a seat resides permanently in Austria; or

c) the perpetrator is in Austria and cannot be extradited;

6. other criminal offences for which Austria is bound to prosecution even if they have been committed abroad, irrespective of the laws which are valid for the scene of the crime;

7. criminal offences which commits an Austrian against an Austrian if both of them have their domicile or general residence in Austria;

8. participation (sect. 12) in a criminal offence which has been committed by the direct perpetrator at home as well as receiving stolen goods (sect. 164) and money laundering (sect. 165) referring to an offence being committed at home;

9. terrorist association (sect. 278b) and terrorist criminal offences (sect. 278c) as well as criminal offences under sections 128 to 131, 144 and 145 and 223 to 224, which have been committed in this connection, if

a) the perpetrator has been an Austrian at the time of the offence or he has gained the Austrian citizenship afterwards and is still in its possession at the time of the institution of penal proceedings;

b) the perpetrator has his domicile or general residence at home;

c) the offence has been committed in favour of a legal entity having its seat in Austria;

d) the offence has been committed against the National Parliament, the Federal Parliament, the Federal Assembly, the Federal Government, a Provincial Parliament, a Provincial Government, the Constitutional Court, the Administrative Court, the Supreme Court, any other court or administrative authority or against the people of the Republic of Austria;

e) the offence has been committed against an authority of the European Union or against an entity under the treaties for the institution of the European Communities or the treaty on the European Union, having its seat in the Republic of Austria;

f) the perpetrator has been a foreigner at the time of the offence, is now in Austria and cannot be extradited.

10. financing of terrorism (sect. 278d) if

a) the perpetrator has been an Austrian at the time of the offence or he has gained the Austrian citizenship afterwards and is still in its possession at the time of the institution of penal proceedings; or

b) the perpetrator has been a foreigner at the time of the offence, is now in Austria and cannot be extradited.

(2) If the penal laws mentioned in para. 1 cannot be applied only for the reason that there has been committed a criminal offence which is punished by a severer sanction, the offence being committed abroad shall be punished nevertheless irrespective of the penal laws which are valid for the scene of the crime pursuant to the Austrian penal laws.

Criminal acts committed abroad which are subject to prosecution only if they are punishable also according to the law of the State where the act was committed

Section 65

(1) For other criminal acts committed abroad than those referred to in sections 63 and 64 applies the Austrian criminal law, if the act is punishable also according to the law of the state where the act was committed:

1. if the perpetrator has been an Austrian national at the time of the criminal act or if he acquired Austrian nationality later on and still is Austrian national at the time of the trial; if the perpetrator has been foreigner at the time of the criminal act, is being caught in Austria and can not be extradited to a foreign state for other reasons than the nature or characteristics of the criminal act.

(2) The penalty is to be determined so that the perpetrator in general is not treated less favorably than he would have been according to the laws of the state where he committed the criminal act.

(3) It is sufficient that the act is criminalized according to Austrian law if no criminal justice exists at the place where the criminal act was committed.

Section 165 (Money laundering)¹⁷

(1) Whoever conceals property items that derive from the crime of another person, from such an offense under sections 223, 224, 225, 229, 230, 269, 278, 278d, 288, 289, 293, 295 or 304 to 308, or from such a tax offense of smuggling or evasion of import or export taxes (insofar as these fall within the competence of the courts), or disguises the origin thereof, particularly by giving in legal relations false information regarding the origin or true nature of those property items, the ownership of or other rights to them, the right to dispose of them, their transfer or their location, shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding 360 daily rates.

(2) Whoever knowingly acquires such property items, holds them in custody, invests, administers, converts, realizes, or transfers them to a third party, shall be liable in the same way.

(3) Whoever commits the offence involving items worth more than 40,000 Euro or as the member of a criminal group associated for the purpose of continuous money laundering shall be liable to imprisonment for a term of six months to five years.

(4) A property item shall be deemed to derive from an offense when the perpetrator of the crime has obtained it through that offense or received it for the

¹⁷ BGBl. I Nr. 134/2002

commission of that offence, or when it represents the value of the originally obtained or received property item.

(5) Whoever knowingly, acting on behalf or in the interest of a criminal organization (sect. 278a) or of a terrorist group (sect. 278b), acquires property items of that organization or group, holds them in custody, invests, administers, converts, realizes, or transfers them to a third party, shall be liable to imprisonment for a term not exceeding three years; whoever commits the offence involving items worth more than 40,000 Euro, to imprisonment for a term from six months to five years.

Section 278 (Criminal association)¹⁸

(1) A person who founds a criminal association or participates in such an association as member is to be sentenced to imprisonment up to three years.

(2) A criminal association is an union planned for a longer time of more than two persons aiming the commitment of one or more crimes by one or more members of the association, other considerable acts of violence against life and limb, not only petty damages to property, thefts or frauds or misdemeanours under sects. 165, 177b, 223 to 239, 304 or 307 or under sects. 104 or 105 of the Aliens Act.

(3) As member participates in a criminal association who commits a criminal offence within the scope of its criminal orientation or participates in its activities by providing for information or assets or in another way with the awareness that he promotes thereby the association or its criminal acts.

(4) If the association did not lead to a criminal offence in the planned way no member shall be punished if the association dissolves itself voluntarily or it results from its conduct that it has given up its plan voluntarily. Furthermore a person shall not be punished for criminal association who withdraws voluntarily from the association before an offence in the planned way has been committed or attempted; but a person who participated in the association in a leading position only in case he effects by an information of the authority (Sect.151 para. 3) or in another way that the danger is removed which arises from the association.

Section 278a (Criminal organization)¹⁹

Whoever establishes an association of a considerable number of persons, intended to last a longer period of time and similar to an enterprise, or who participates in such an association as a member (sect. 278 para. 3), shall be liable to imprisonment for a term of six months to five years if the association

¹⁸ As amended by Federal Law Gazette Nr. 1 2002/134.

¹⁹ BGBl. 1 Nr. 134/2002.

1. is oriented, even if not exclusively, towards the repeated and planned commission of grave offences against life and limb, freedom, or property, or of grave offences relating to the sexual exploitation of human beings, smuggling of aliens, illegal trafficking in military weapons, nuclear and radioactive material, dangerous waste, counterfeit money or drugs, and
2. aims at profits on a high scale or at considerable influence on politics or economy and
3. undertakes to corrupt, or intimidate, others, or to particularly screen itself against prosecution measures.

Section 278, para. 4, shall apply mutatis mutandis.

Section 278b (Terrorist association)²⁰

(1) A person who leads a terrorist association (para. 3) is to be sentenced to imprisonment from five to fifteen years. A person who leads a terrorist association which confines itself to threaten with terrorist offences (sect. 278c para. 1) is to be sentenced to imprisonment from one year to ten years.

(2) A person who participates in a terrorist association as member (sect. 278 para. 3) is to be sentenced to imprisonment from one year to ten years. A terrorist association is an union planned for a longer time of more than two persons aiming the commitment of one or more terrorist criminal offences (sect. 278c) by one or more members of the association.

Section 278c (Terrorist criminal offences)²¹

- (1) Terrorist criminal offences are
1. murder (sect.75),
 2. bodily injuries under sections 84 to 87,
 3. extortionate kidnapping (sect. 102),
 4. gross intimidation (sect. 106),
 5. dangerous threat sect. 107 para.2),
 6. gross damage to property (sect. 126) and damaging of data (sect. 126a) if thereby a danger to the life of another person or a danger to the property of another person to a large extent can be caused,

²⁰ As amended by Federal Law Gazette 1 2002/134.

²¹ As amended by Federal Law Gazette Nr. 1 2002/134.

7. intentional offences of dangerousness to public safety (sects. 169, 171, 173, 175, 176, 177a, 177b, 178) or intentional infringement of environment (sect. 180),

8. hijacking (sect. 185),

9. intentional danger to the safety of aviation (sect. 186) or

10. a criminal offence punishable under section 50 of the Weapons Act 1996 or section 7 of the War Material Act, if the offence is appropriate to cause a severe interference with the public life or such an interference for a longer time or to cause a severe damage to the economic life being committed with the intent to intimidate the people in a serious manner or to force public authorities or an international organization to an action, permission or omission or to convulse or destroy the politic, constitutional, economic or social basic structures of a state or an international organization.

(2) A person who commits a criminal offence under para. 1 shall be punished pursuant to the law applicable to the offence mentioned there, and the maximum penalty is to be increased by half of the penalty being prescribed respectively, but not exceeding twenty years.

(3) The offence is not regarded as terrorist criminal offence if it is directed to the establishment or re-establishment of a democratic and constitutional situation or the exercise or observance of human rights.

Section 278d (Financing of terrorism)²²

(1) A person who provides for assets of property or collect them with the intent that they are used for the commitment

1. of a hijacking (sect. 185) or an intentional danger to the safety of aviation (sect. 186),

2. of an extortionate kidnapping (sect. 102), or the threat with it,

3. of an attack on life and limb or the freedom of a person protected by international law or a violent attack on an apartment, the official premises or the means of transportation of such a person which is appropriate to expose this person to a danger to life and limb or freedom or a threat with it;

4. of an intentional endangering by nuclear energy or ionized radiation (sect. 171) or a threat with it, of a unlawful use of nuclear materials or radioactive substances (sect. 177b), of any other criminal offence to obtain nuclear materials or radioactive substances or of the threat to

²² As amended by Federal Law Gazette Nr. 1 2002/134.

commit a theft or robbery of nuclear materials or radioactive substances aiming to force another person to an action, permission or omission,

5. of a considerable attack on life and limb of another person on an airport serving the international civil aviation, of an destruction or considerable damaging of such an airport or a civil aircraft being on it or an interruption of the services on the airport, so far as the offence is committed by the use of a weapon or other device and is appropriate to endanger the security of the airport;

6. of a criminal offence committed in a way mentioned in sects. 185 or 186 against a vessel or a fixed platform, against a person being on board of a vessel or a fixed platform or against the cargo loaded on a ship or an equipment of the ship;

7. of the transportation of a blasting composition or another deadly device in a public place, to a governmental or public institution or a public traffic system or services of supply or of the operation of these means aiming to cause the death or a grievous bodily injury of another person or the destruction of the place, institution or system to a high degree, as far as the destruction is appropriate to bring about a considerable economic damage;

8. of a criminal offence which shall effect the death or a grievous bodily injury of a civil person or another person not being actively involved in the hostilities of an armed conflict if this act is aimed for the reason of its nature and the circumstances at threatening a group of the population or forcing a government or an international organization to an action or omission; is to be sentenced to imprisonment from six months to five years. But the nature and extent of the sentence must not be severer than the penalty provided for the financed offence.

(2) The offender shall not be punished under para. 1 if the offence is subject to a severer penalty under another provision.

3. CODE OF CRIMINAL PROCEDURE

Section 144a

(1) If there is suspicion of illegal profits, and it is supposed that these profits will be confiscated according to section 20 of the Penal Code, or if there is suspicion that property is at the disposal of a criminal or terrorist organization (sect. 278a and 278b Penal Code), was provided or collected for the purpose of financing terrorism (sect. 278d Penal Code), or derives from an offence, and it is supposed that this property will be declared forfeited according to section 20b of the Penal Code, the investigating judge must, upon application by the public prosecutor, issue a provisional injunction safeguarding such order, if there is concern that the enforcement of such order would otherwise be in danger or

substantially impeded. The provisions of the Code of Civil Execution are to be applied to such injunctions *mutatis mutandis*, if not interfering with the following provisions.

(2) The following means of safeguarding may be ordered by the investigating judge according to the purpose of safeguarding in the actual case:

1. the custody or administration of movable tangible goods (sections 259 ff of the Code of Civil Execution) belonging to the person against whom the provisional injunction is issued, including the payment into court;
2. the prohibition of transfer or pledge of movable tangible goods;
3. the third-party prohibition if the person against whom the provisional injunction is issued, has pecuniary claims or other claims to performance or restoration against a third party;
4. the prohibition to transfer real property, or rights incorporated in public registers, or to submit it to charges or encumbrances.

(3) A provisional injunction may be issued even if the exact amount to be safeguarded is not yet known.

(4) In the provisional injunction, an amount of money has to be fixed, by the payment of which the execution of the injunction is suspended. After the payment, the injunction is insofar to be lifted, upon application of the party concerned. The amount of money is to be fixed so that it covers the presumable confiscation of profits or the presumable forfeiture.

(5) The provisional injunction must be lifted as soon as its prerequisites cease to apply; in particular, if it is supposed that confiscation of profits or forfeiture will be abstained from for the reasons set out in sections 20a para. 2 and 20c of the Penal Code. The public prosecutor, the person charged and other parties concerned (section 444) may appeal against the court decision ordering or lifting the provisional injunction, to the appellate court.

(6) The Federal State can be made liable for pecuniary loss caused by a provisional injunction, its execution or a decision to lift it, only under the provisions of the Law on Public Liability.

*Section 145a*²³

(1) As far as credit or financial institutes are not obliged to keep the banker's discretion sect. 38 para.2 n.1 of the Banking Act, Federal Law Gazette Nr.

²³ BGBl. I Nr. 134/2002 (As amended by Federal Law Gazette Nr. I 2000/108, most recently amended by Federal Law Gazette Nr. I 2002/134).

532/1993 and supposing that it seems to be necessary for clearing up a crime or offence within the jurisdiction of a court of first instance they and their persons are obligated

1. to disclose the name and other data being known to them about the identity of the holder of a business connection as well as his address;

2. to give information whether a suspected person holds a business connection with this institute, is economically empowered by it or authorized to it and in the affirmative to make all statements being necessary for the precise characterization of this business connection as well as to produce all documents about the identity of the holder of such a business connection and about his right of disposal;

3. to hand over all documents and any records about the nature and the extent of the business connection and business activities being connected with it and other business events of a certain period in the past or in the future if it must be supposed for certain reasons

a) that the business connection of a person with the credit or financial institute is related to the commission of the penal offence and either the holder of the account is personally suspicious to have committed the offence or it is to be expected that a person being suspected of the offence has realized a transaction through the account or will realize it; or that the business connection is used for the transaction of a profit which has been obtained by penal offences or received for them (sect. 20 of the Penal Code or which is at the disposal of a criminal organization or terrorist group or has been provided or collected as a means for financing terrorism (Sect. 20b of the Penal Code);

(1a) On the conditions mentioned under para.1 the persons being employed with the credit or financial institute must make a statement as a witness about facts which have been entrusted or made accessible to them by reason of the business connection.

(1b) An judicial order about the existence of the obligations under para.1 is only admissible if the proportionality for the purpose of the measure is observed. In this connection it shall be particularly taken into consideration that the aimed success is justifiably proportionate to the presumably effected infringement upon the rights of disinterested third parties and it shall be examined whether there could be also a reasonable chance of the aimed success by taking less incisive measures.

(2) Instead of the originals of documents and other records copies may be handed over as far as they correspond with the Original beyond doubt. In case of the use of data mediums the credit or financial institute must hand over reproductions being legible without any auxiliary means or arrange for such

reproductions; if an automatic data processing is used for the business connection an electronic data medium must be transmitted which shall have a size in common use.

(3) The existence of the obligations under para. 1 has to be determined by an order the investigating judge. This order must contain

1. the proceedings and the offence being the reason for the investigation,
2. the credit or financial institute,
3. the documents and other records which have to be handed over as well as the information which must be given,
4. the facts from which arise the necessity and proportionality of the obligations pursuant to para. 1,
5. in case of para. 1 n. 3 the period concerned and the facts from which arises the relation between the business connection and the subject of the investigation.

(4) An order under para. 1 must be served upon the credit or financial institute, the accused and the persons being authorized to dispose by virtue of the business connection as soon as they are known to the court. The service upon the accused and the persons being authorized to dispose may be suspended so long as the purpose of the investigation would be endangered. About that the credit or financial institute must be informed which is obliged to keep all the facts and occurrences in connection with the judicial order temporarily a secret from costumers and third parties.

(5) In case the credit or financial institute is not willing to hand over certain documents or other records or to give certain information the actions under sects. 143 para. 2 and 145 para. 2 shall be taken.

Section 443

(1) As to confiscation of profits, forfeiture, confiscation and other pecuniary sanctions liability for fines, forfeiture and value compensation, the decision shall be made in the penal judgement, save it is provided, in this chapter in another way.

(2) If the results of the penal proceedings as such or after carrying out simple additional investigations are insufficient to judge reliably the pecuniary sanctions mentioned in para. 1, their determination may be reserved by an order for a separate decision (sects. 445, 445a); apart from this case any further order regarding the assets and objects concerned is admissible.

(3) The decision on pecuniary sanctions is - save the case under sect. 445a - equal to the imposition of a penalty and may be appealed in favour and against the convicted or the other persons concerned by the decision (sect. 444).

Section 445²⁴

(1) If there are reasons to suppose that the prerequisites for confiscation of profits (section 20 of the Penal Code), for forfeiture (section 20b of the Penal Code) or for confiscation (section 26 of the Penal Code) are fulfilled, and if it is not possible to issue the order in a penal proceeding or in a proceeding on preventive measures involving deprivation of liberty, the public prosecutor has to make an independent application to order such pecuniary sanction.

(2) On an application for confiscation of profits or for forfeiture the competent court has to decide by judgement in an independent proceeding after public and oral trial; the competent court is the court which was or would have been competent for the trial and judgement of the underlying offence; but in absence of such competence the competent court is the court of first instance where the profits or property is located. The court of first instance decides through single judge. In case a court of lay assessors or a jury court has decided on the offence which shall be the basis for the order or has reserved the decision (sect. 443 para. 2), its presiding judge is competent as single judge.

(3) On an application for confiscation the district court has to decide where the offence has been committed; but if this place is unknown or situated abroad the district court has to decide where the object is located; the decision shall be made as a rule (sect.445a) by judgement in an independent proceeding after public and oral trial. The provisions regarding the trial before district courts as well as section 444 are applicable *mutatis mutandis*.

(4) By application of sects. 463 to 468 (sect. 489) *mutatis mutandis* the judgement may be appealed in favour and against the person concerned; section 444 para. 1 last sentence is applicable accordingly.

Section 445a²⁵

(1) On an application for confiscation in an independent proceeding the district court may decide after hearing the public prosecutor and the persons concerned (sect. 444) by an order if the value of the object underlying the confiscation does not exceed 726 Euro or the possession of this object is generally prohibited. In case the residence of the person concerned is abroad or cannot be established without a particular expenditure of proceedings, the hearing of that person may be dropped.

²⁴ Federal Law Gazette Nr. 1996/762.

²⁵ As amended by Federal Law Gazette Nr. 1996/762, most recently amended by federal Law Gazette Nr. 1 2001/130.

(2) Against an order under para. 1 the person concerned and the public prosecutor are entitled to lodge an appeal to the superior court within 14 days. The appeal has to be served on the opposing party with the instruction that a counter-statement may be filed within 14 days.

IX. AZERBAIJAN²⁶

SUMMARY OF LEGISLATION OF AZERBAIJAN RELATED TO TERRORISM

(a) Constitutional Provisions

Under articles 148 and 151 of the Constitution of the Republic of Azerbaijan, international treaties to which Azerbaijan is a party constitute an integral part of the legislative system of Azerbaijan and in the event of any conflict between the country's normative legal acts and those international treaties, the norms embodied in the international treaties shall apply.

(b) Counter-Terrorism Act

The legislation of the Republic of Azerbaijan in the field of counter-terrorism has been brought into line with international legal instruments and is currently being further refined. The most significant domestic legal standard in this field is the Counter-Terrorism Act of the Republic of Azerbaijan of 18 June 1999. A decree promulgating the act was issued on 30 August 1999.

The Counter-Terrorism Act establishes the legal and institutional groundwork for counter-terrorism efforts in Azerbaijan, coordinates the action of State agencies engaged in counter-terrorism and sets out the rights and duties of such agencies and of citizens.²⁷

(c) Criminal Code

Criminal liability for terrorism is also provided for in art. 214 on terrorism and art. 277 on attempts on the life of a State or public figure (terrorist act) of the *Criminal Code of the Republic of Azerbaijan of 2000*. The offences

²⁶ Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1325, annex), on 9 September 2002 (S/2002/1022, annex), and on 6 November 2003 (S/2003/1085, annex). Information was also provided in respect of the *Act of the Republic of Azerbaijan on the Status of Refugees and Forcibly (Internally) Displaced Persons* of 8 July 1999, *Act of the Republic of Azerbaijan on Grants* of 17 April 1998, and *Act of the Republic of Azerbaijan on Non-Governmental Organizations (Voluntary Associations and Funds)*.

²⁷ The text of the Counter-Terrorism Act is reproduced in Part 1 of the present publication, (ST/LEG/SER.B/22) pp. 72-80.