European Legal Cooperation Against Terrorism

Austria • Belgium • Bulgaria
Channel Islands and Isle of Man
Cyprus • Czech Republic • Estonia
European Union and Council of Europe • France
Germany • Greece • Ireland • Italy • Latvia
Lithuania • Luxembourg • Malta • Netherlands
Poland • Portugal • Slovak Republic • Spain
Switzerland • United Kingdom

September 2002

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Re: LL File No. 2002-13356
August 29, 2002

SUBJECT: European Legal Cooperation Against Terrorism

Attached are 24 reports prepared by the foreign law specialists of the Law Library of Congress that provides an analysis of how European countries and European transitional organizations have responded to the September 11 attacks. The reports describe the legal framework in European countries relating to the fight against terrorism, prior to and post September 11. A separate report provides a comprehensive analysis of the EU's legal efforts to combat terrorism, which includes the Council of Europe as well. The Law Library reports cover 12 of the 15 Member States of the EU, and ten of the 13 countries that are candidates for its membership. The Channel Islands and the Isle of Man, outside the United Kingdom, but part of the British Isles, are separately reported on as well.

Also attached is a chart providing a brief comparative summary of the following major legal issues related to anti-terrorism efforts for each jurisdiction covered by the Law Library reports, both before and after the September 11th attacks on the United States.

- Immigration, asylum, tracking of aliens
- Surveillance, intelligence & cooperation
- Anti-terrorism laws & measures
- Terrorist financing & measures
- Enforcement & counter-terrorist activities

This chart is intended only to highlight in outline form the pertinent activities and developments in each jurisdiction, without attempting to be complete. For more specific information, please consult the individual country reports.

In addition to the named authors of each of these Law Library of Congress reports, valuable research and editorial services were contributed during their creation and production by Donald DeGlopper and Constance Johnson, Senior Legal Research Analysts, and Gwen Higley, Editor. The entire study was coordinated on behalf of the Law Library of Congress by Kersi Shroff, Chief of the Western Law Division. This work has been completed as a joint study by the Law Library of Congress together with the Foreign Affairs, Defense and Trade Division of the Congressional Research Service.

If we may be of further assistance, or provide you with additional legal research or information on these or any other foreign jurisdictions, please call or fax the Director of Legal Research *(tel: 202-707-9148; fax 202-707-1820*). The Law Library of Congress serves the needs of the U.S. Congress for research in international, comparative, and foreign law.

Attachments

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Law Library of Congress
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European Legal Cooperation Against Terrorism

A Comparative Chart

Compiled by :

Constance A. Johnson, Senior Legal Research Analyst, and
Christa McClure, Legal Specialist
Legal Research Directorate
Law Library of Congress
August 2002

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Austria	**pre 9/11:** Act on Aliens, 1997 requires visas, except where waved by agreement, Schengen Agreement member; residence permits granted under restrictive conditions. Ten years residence for naturalization, with exceptions. Asylum to refugees under Asylum Act 1997. Border Control Act 1996 to prevent illegal entry. Register of residency covers anyone staying in Austria. ID cards: citizens must possess ID or passport. **post 9/11**: No new legislation; order for special review of visa applicants from 21 countries.	**pre 9/11:** Wiretapping and audio and visual surveillance permitted with a judicial warrant. Surveillance but not wiretapping also permitted to prevent serious crimes under Security Police Act, 1991. **post 9/11:** Some enhancement of powers through Act on Criminal Procedure.	**pre 9/11:** Ratified all regional and international conventions on terrorism except that on Suppression of the Financing of Terrorism. No specific provision on terrorism, though participation punishable as participation in a criminal organization under Criminal Code. Terrorist acts tried according to general criminal provisions. **post 9/11:** A new section of the Criminal Code penalizes participation in a terrorist organization (more than 2 persons working together to commit terrorist offenses). Terrorist offenses now defined as crimes of violence or public endangerment done with intent of intimidating the populace, coercing agencies, or destroying order.	**pre 9/11:** Terrorist funding not a separate offense, but punishable as financing of armed association or other crimes or as money laundering. Assets of terrorist organization could be seized once criminal proceeding in pretrial phase. Bankers must id customers and report transactions that are over EUR 15,000 or suspicious. **post 9/11:** Terrorist funding made a crime in revised Criminal Code. Procedural provisions enacted on release of banking information. Scope for seizure of terrorist funds increased. Ratification of Convention for the Suppression of Financing of Terrorism pending in legislature.	**post 9/11:** Enacted package in August 2002 to live up to new UN and EU anti-terrorist requirements.

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Belgium	**pre 9/11:** Asylum: Applicants receive provisional certification and permit to stay; are registration as inhabitants; may appeal denial of status. Aliens: may stay w/o permit for up to 3 months; will be registered; thereafter, if legal; permit has the function of an ID. . No tracking. IDs for citizens only. **post 9/11:** Unchanged.	**pre 9/11:** Wiretapping available with court warrant under the provisions of the Code of Criminal Procedure. Office of Financial Information may communicate information to foreign authorities on the basis of reciprocity. **post 9/11:** Unchanged.	**pre 9/11:** Various European Conventions*; Law on Aliens of 1980, and Royal Decree of 1981,* as amended; *Royal Decree 1993 on the Office of Financial Information; Law for the Prevention of Money Laundering* of 1993, as amended 1995 and 1999; *Law on Regulation and Control of Credit Institutions 1993*; Bilateral Treaty with the US on *Mutual Assistance in Criminal Matters*. **post 9/11:** Amendment 2002 to the *Law on the Prevention of Money Laundering;* Decree on the Committee on the Rights on Internet 2001;	**pre 9/11:** The Banking Commission: supervises all domestic and foreign financial institutions; may receive financial information; make on-the-spot-investigations. Office of Financial Information: monitors prevention of money laundering. **post 9/11:** Authority of Bank Commission to obtain financial information from all institutions was expanded - very broad.	**pre 9/11:** The provisions of the Criminal Code and Code of Criminal Procedure cover activities which are elements of terrorism: money laundering; violence against persons and homicide; kidnaping and the taking of hostages; destruction of property, etc.; acts in violation of national security and defense. **post 9/11:** Observation Committee on the Rights of and Activities on the Internet: responsible for monitoring incitement to terrorism.

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Bulgaria	**pre 9/11:** No specific laws; 1998 adoption of principles common to EU countries on requirements for visa, registration, deportation and extradition. **post 9/11:** Amended statutes; extended list of alien registration requirements and reasons for deportation; dual citizenship now prohibited.	**pre 9/11:** Very limited in scope; very little info sharing among government agencies; sole legal basis: *Foreign Trade in Arms Act.* **post 9/11:** Amended statutes authorize wiretapping; opening of mail re bio threats; pending: public blacklisting of suspected terrorists.	**pre 9/11:** None; treated as any other criminal activity. **post 9/11:** *Interior Ministry Act; Post and Postal Services Act; Law Against Funding of Terrorism; Telecommunications Act*; Bulgaria signed International Convention on Suppression of Terrorist Financing.	**pre 9/11:** Signed International Convention on Suppression of Terrorist Financing - awaiting ratification. **post 9/11:** *Law Against Funding of Terrorism*; Adopted U.N. Security Council Resolutions 1368 and 1373;	**pre 9/11:** No enforcement activities specifically related to terrorism. **post 9/11:** *Interior Ministry Act*: Undercover Agents allowed.

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Channel Islands and Isle of Man	**post 9/11:** Isle of Man: Those immigrating to the U.K. free to enter island. Residence Act 2001 (not yet in force) will require maintenance of register of individuals qualified for residence.	**post 9/11:** Communications may be intercepted as needed to prevent or detect acts of terrorism for a period of three months.	**pre 9/11:** Isle of Man & Guernsey: 1990 Prevention of Terrorism Law designed in response to N. Ireland. Jersey: 1996 law on preventing terrorism. **post 9/11:** Isle of Man: Antiterrorism and Crime Bill 2002. Applicable to all forms of domestic or international terrorism. Jersey: In midst of enacting new law on terrorism to lend support to international efforts by ratifying 2 U.N. conventions and to apply 1996 law to domestic terrorism. No detention without trial. Terrorist offence created relating to weapons training.	**pre 9/11:** Established as international financial centers. Money laundering criminalized in each jurisdiction; in Isle of Man it in 1987. Illegal to make funds available for Taliban or Osama bin Laden. **post 9/11:** Late 2001, Orders issued criminalizing giving financial services for those who participate in or control acts of terrorism, freezing their funds, and making it illegal to facilitate making funds available for terrorism. Guernsey: Proposed amendment to authorize police and customs to report suspicious financial transactions to authorities in other jurisdictions without first seeking consent of Guernsey law officer.	**post 9/11:** Jersey: New law on police procedures and evidence (May 2002) to mirror U.K. law. Isle of Man: 2001 amendment to 1998 Act authorizes wiretapping for preventing or detecting terrorism. Guernsey: Proposal to enhance CCTV system at Guernsey Airport.

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Cyprus	**post 9/11:** Several measures taken to improve control of aliens and goods entering the country. Measures taken due to pending EU accession: issuance of uniform format visa, updating information system, new passports w/features to prevent counterfeiting; training border personnel; purchase of forgery detection equipment & maritime surveillance radar. Maintains an alert list of undesirable aliens.	**pre 9/11:** Has bilateral agreements on exchange of information and cooperation against crime with 14 countries; also has agreements for cooperation in legal, judicial, and criminal matters. **post 9/11**: In the process of ratifying mutual legal assistance agreement with the U.S.	**pre 9/11:** Party to ten international conventions on terrorism. **post 9/11:** Ratified two more conventions–the Protocol for Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation and the Convention on the Marking of Plastic Explosives for the Purpose of Detection.	**pre 9/11:** Law of 1996 establishes two bodies to ensure its implementation– Advisory Authority Against Money Laundering and a financial intelligence unit (MOKAS). Suspicious transactions to be monitored. MOKAS can get court order to freeze, confiscate, or disclose accounts. **post 9/11:** Central Bank issued amend-ments to Law requiring ID of all corporate account owners. Nov. 22, 2001, enacted law to ratify UN Convention for the Suppression of the Financing of Terrorism.	**post 9/11:** On Dec. 12, 2001, a task force was set up to combat international terrorism under the office of the Deputy Attorney General of Cyprus. It has investigative authority and may collect data and exchange information with foreign counterparts.

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Czech Republic	**pre 9/11:** No provision on routine check-in for aliens. Foreigners must have passports and stay for a short term of 90 days, long term of 1 year, or establish permanent residence. Must have funds for support on medical insurance. Most countries need no visa. Citizenship is by birth to a Czech parent, being found stateless in the territory, or naturalization after five years or after marriage to citizen. ID cards are issued to all residents over 15, valid for ten years after age 20. **post 9/11:** The Law on Asylum was amended in Nov. 2001. Asylum not granted for economic reasons, but can be for family reunification or humanitarian reasons.	**pre 9/11:** Surveillance and wiretapping may be ordered by a court when serious crimes are being investigated. **post 9/11:** Unchanged.	**pre 9/11:** No special law on terrorism; terrorism not mentioned in the Code. Individual acts are punished, such as violence against persons. Association for the purpose of committing crimes is also punishable. **post 9/11:** Unchanged.	**pre 9/11:** All financial institutes must identify those conduct transactions of over 500,000 *crowns*. **post 9/11**: The Criminal Code was amended with a new article on money laundering in Mar. 2002, outlining punishment for concealing property acquired from crime.	**pre 9/11:** Asylum and entrance laws enforced by Immigration Police. **post 9/11:** The Czech Republic is providing overflight and basing permission to coalition and U.S. forces in war on terrorism. Czech personnel are in Kuwait for training. Military uniforms were donated to the Afghan army and a medical unit was sent.

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Estonia	**pre 9/11:** 1995 *Law on Estonia* abolished dual citizenship; Alien Act 1997: set immigration quota; ID available; aliens are registered; must notify authorities of changes in address; employers must check legality of alien. **post 9/11:** Amendments to Alien , Immigration Act: extended alien registration; lowered immigration quota; introduced electronic IDs; increased border control and checking (persons and baggage)at airports.	**pre 9/11:** Legislation focused to prevent crime of terrorist acts and to help to recover from influx of immigrants and refugees: surveillance allowed; focus on recruitment of qualified personnel to perform surveillance in agencies and private sector; limited restriction of constitutional rights. **post 9/11:** Amendments to laws authorized increased surveillance.	**pre 9/11:** All relevant legislation was revised to comply with EU standards as prerequisite to admission. Emphasis remains on protection of civil liberties. signed European conventions; 1997-1999 enacted: *Data Bank Act; Police Service Act; Surveillance Act; State Secretes Act.* **post 9/11:** Accelerating ratification process of all relevant European and international conventions.	**pre 9/11:** **post 9/11:** Joined European Convention on Money Laundering; Joint European Declaration on the Fight against Terrorism; will enforce international sanctions, freeze assets of named terrorists and related organizations.	**pre 9/11:** Measures included: Recruiting for covert activities; infiltrating suspect organizations; use of property and under cover agents. **post 9/11:** Increase in airport security, allocated funds for air space security monitoring equipment.

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European Union Not a jurisdiction in the traditional sense; supra-national authority to set law for Member states; Regulations and Council decisions are binding with enactment, Directives set policy and objectives; each Member state through implementing legislation integrates policy into its national law and establishes content and procedures.	**pre 9/11:** The *Schengen Agreement* of 1985, and implementing convention of 2000 regulate Members national programs on gradual abolishment of EU internal border control; stemming illegal immigration, and tracking or restricting alien movement; authorize Member States checking at external borders for identification, residence and work permits; detect threats to national security. **post 9/11:** *Schengen* +; applicants must transpose *Schengen* into national law; SIS info system improved tracking of aliens; proposed: Directive on minimum standards for fingerprinting, etc. exclusion etc.	**pre 9/11:** Joint information system SIS to improve coop. between Member police forces and judiciaries–Eurodac, Europol; limited success due to national diverse implementation and high EU standards of protection of civil liberties. **post 9/11:** New measures consider collection of personal data; proposed: Directive on minimum standards for fingerprinting, exclusions of refugees, denial of asylum; Decision on Combating Terrorism 2001 to harmonize and empower tighter controls by Members; Decision on European Warrant; effective 2004, will replace former extradition rules with joint information system (SIS) for improvement of police and judicial cooperation.	**pre 9/11:** *EC Directive on Money Laundering of 1991*; *European Convention on Combating Terrorism,* 2000; several provisions in the *Schengen Agreement*; Paper on issues of return of illegal residents within the Community. **post 9/11:** *Decision on European Arrest Warrant; Decision on Combating Terrorism; Regulation on the Transfer of Cash across the Borders; Directive on Minimum Standards; Decision on Attacks against Information Systems,* must be transposed by 12/2002 as protection against cyber crime.	**pre 9/11:** 1991 directive to set controls on movement of money of assets for money laundering; EU established common position to prohibit sale of arms and related materials; freezing funds and electronic resources. **post 9/11:** Regulations to control movement of cash and other assets across borders of 7/2002 binds all Member states; amounts must be declared; customs may block all traffic of cash; financial institutions must lift secrecy and report specific transactions when source is deemed illegal.	**pre 9/11:** Bases: Joint Action on making participation in illicit organizations a crime, 1998; Directive on arms, 1991; EU Code of Conduct on export of military equipment, 1991; Regulation on Improvement of Air Safety, 1993. **post 9/11:** Decision on Combating Terrorism 2001: enumerates offenses which Member states must punish as terrorist acts; suspect organi-zations may be disqualified to do business within the community; Decision on European Arrest Warrant 2001; comity based on EU citizen-ship and reciprocity among Members; Members may opt out if the warrant would violate national law; warrant covers arrest, searches, detentions, and surrenders to Members.

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France	**pre 9/11:** Processes immigration, asylum requests per Geneva Convention & N.Y. Protocol; long processing time, loses track of many illegal aliens; emergency asylum procedure to grant temp. residency or deportation; border control covered by the *Schengen Agreements*; Foreigners fill out forms at hotels; border inspection of non-private cars; bilateral agreements with border countries on inspection & border control; resident aliens must notify authorities on change of address. **post 9/11:** Plans to simplify asylum procedures, reduce processing time to 1 mo., organize charter flights for returning illegal immigrants, to assign 700 additional law enforcement officers to borders.	**pre 9/11:** Sharing of information with border countries on illegal immigrants and trafficking; since 1991: wiretapping authorized for reasons of national security, anti-terrorism & for detection and investigation of crimes; physical surveillance (videos) allowed; Ministry of Interior authorized to keep any type of information on terrorists on computerized files; monitoring of Internet use to intercept terrorist acts. **post 9/11:** Expanded police authority to search homes and vehicles; stricter controls in airports and ports; telephone and Internet service providers required to keep records of connection identifying users for a year; special agency established to coordinate fight against computer offenses.	**pre 9/11:** Has longstanding experience with terrorism dating back to the 1970s and 1980s. comprehensive body of anti-terrorist laws date from that experience; also, subject to all EU and most intern'l conventions, decisions and directives. **post 9/11:** *Vigiparate* - Security Plan sets forth: deployment of military and law enforcement units at airports and rail to check identity papers, airport security and air defense; *Biotox* - 3-pronged plan against biomedical, nuclear and chemical attacks dissolution of organizations and groups conspiring to bring terrorism to and from France to 3rd countries. Parliament passed temporary anti-terrorist measures valid until Dec. 2003.	**pre 9/11:** Financial institutions must verify domicile and identity of customer, third beneficiary of transaction, organizations and status as officer; must notify central authority (TRACFIN) where suspicion of money laundering or/and terrorist activities. TRACFIN notifies judicial authority on profile; assets may be frozen or confiscated. through administrative or judicial procedures. **post 9/11:** ratified Convention on suppression of financing of terrorism; created new offense of financing of terrorism; extended terrorist definition to include money laundering and/or insider trading when connected to terrorist activities.	**pre 9/11:** arrested and prosecuted suspected fundamentalists; convicted them to imprisonment sentences; dismantled Algerian terrorist network; deported convicted terrorists. **post 9/11:** opened several formal judicial investigations against alleged terrorists; placed them in provisional detention; stripped or is planning to strip convicted terrorists having dual citizenship of their French citizenship; plan to assign 600 additional law enforcement staff to terrorism.

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Germany	**pre 9/11:** Registration of aliens; ID Cards are issued, but tracking through sharing of information is limited by strict interpretation of privacy law. **post 9/11:** New legislation increased official power to: deny entry, deport members of organizations determined to support international terrorism; include biometric data on visas and ID cards, and share recorded information among agencies .	**pre 9/11:** Warrant required for wiretapping, physical surveillance for criminal investigation; parliamentary supervision for intelligence surveillance; little sharing of data between government agencies. **post 9/11:** Increased authority for: Wiretapping, including cell phones; extended range of physical surveillance - coastal surv. up to 50 kilometers; extended authority to investigate under new provision of the Criminal Code; investigative power was expanded; agencies, fed. and state, authorized to share data.	**pre 9/11:** *Aliens Act 1990; Dublin Agreement 1993; Alien Central Registration Act 1994; and earlier versions.* Enforcement limited by courts narrow interpretation of government powers due to protection of individual right of privacy. **post 9/11:** Two major legislative reform packages pertaining to national security; *Antiterrorist Act 2002*; focuses on tracking aliens and intergovernmental sharing of data.	**pre 9/11:** Legal powers limited to cases of money laundering in drug trafficking and organized crime; since 1992 some recovery of assets possible under the European Convention on Suppression of Terrorism. **post 9/11:** Changes in the *Banking Act* allows access to data on and monitoring of private accounts; banks are obligated to keep data on accounts in electronic format for Govt. agencies to access.	**pre 9/11:** Enforcement difficult and hampered by restrictive court decisions, conflicting authority between federal and state agencies, and wide interpretation of right to privacy. **post 9/11:** Exemption for religious organizations was repealed; may be banned where purposes are unlawful or subversive activities; Criminal Code provisions extend to crimes perpetrated outside Germany against foreigners; info sharing authorized; future profiling and data matching; almost no detention allowed.

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Greece	**pre 9/11:** The Law on Entry and Stay of Foreigners in the Greek Territory restricts points of entry and allows refusal of entry to those threatening public safety. Must have a permit to stay, which can be revoked. Asylum granted based on Geneva Convention. Citizenship can be acquired through naturalization, given residence and knowledge of the language, history, and culture. All citizens must have an ID card, valid for ten years or more. Foreigners must have a passport and residence permit. **post 9/11:** Greece has taken additional measures to ensure that travel documents and ID papers are not counterfeited.	**pre 9/11:** Surveillance is limited to actions essential to investigation of felonies. Infiltration, and lifting of confidentiality of communications and audio-visual recording permitted on decision of the competent judicial council; in emergencies may be ordered by prosecutor or investigating judge and brought to council within three days. **post 9/11:** Unchanged.	**pre 9/11:** No specific anti-terrorist law. Law on organized crime adopted in June 2001 amends both the Criminal and Criminal Procedure Codes gave new investigative powers to police. Used to prosecute terrorist group, defined as three or more persons organized to commit certain felonies. **post 9/11:** In May 2002, law on upgrading civil protection was enacted. Distinguishes protection during peace time from that during wars. Also, Mar. 2002 took step toward adopting a specific law on terrorism based on the EU definition.	**pre 9/11:** Law on Prevention and Suppression of the Proceeds of Crime is designed to prevent abuse of the financial system, but is inadequate to deal with prevalent types of money laundering and does not reflect recent EU law on the subject. **post 9/11:** EU law regarding freezing of funds of those involved in terrorism applied in Greece. Committed to incorporating Oct. 2001 recommendations of Financial Action Task Force on money laundering and the financing of terrorism into legal system. Domestic law on crime proceeds being reviewed.	**pre 9/11:** **post 9/11:** Greek authorities have arrested many members of the 17th of November Revolutionary Organization and are pursuing links to other terrorist organizations. Also has increased security controls on entry points on border. Also, in Jan. 2002, signed two agreements for police collaboration with Turkey.

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Ireland	**pre 9/11:** Mechanism to grant refugee status, non-refoulement, denial of status, detention and deportation; consolidated appeals process before the Refugee Appeals Tribunal, and enforcement of exclusion orders. *Illegal Immigration (Trafficking) Act of 2000* allows for fingerprinting of asylum seekers; stiff penalties for violating the Act, and shortened time periods for appeals; registration of aliens when staying for more than 90 days; national security as reason for expulsion or denial of visa; created Garda National Immigration Bureau for tracking. Readmission agreements with Nigeria, Poland and Romania as sources of illegal immigrants. **post 9/11:** Unchanged, legislation pending.	**pre 9/11:** Wiretapping with warrant; Minister may approve prosecutor's proposal to intercept in cases of serious crime and national security; inside and outside the country; Complaints Referee may award damages; Physical surveillance allowed; police has broad powers; very little restraint; law is very fuzzy, also use. Must observe "proportionality" standard under EU law. **post 9/11:** Little change, if any.	**pre 9/11:** Until the influx of immigrants in the 90s not considered an immigration country; had long experience with terrorism and anti-terrorist legislation; Ratified Convention on the status of Refugees in 1956; opted out of *Schengen* border control provisions; Legislation applicable to terrorist acts include *Dublin Convention; Refugee Act 1996* and *Immigration Act 1999* control immigration and asylum; *Interception of Postal Packet & Telecommunication Messages Act 1993*; *Proceeds of Crime Act 1996; Offense against State Act* 1994, as amended 1998; *Electronic Commerce Act 2000.* **post 9/11:** Unchanged., legislation pending	**pre 9/11:** Criminal Justice Act has provisions against money laundering; financial institutions must report suspicious transactions; information is defense against charge of violation of the act; *Offense against the State Act, as amended 1998* provides for issuance and enforcement of suppression orders and freezing of assets. **post 9/11:** Unchanged	**pre 9/11:** Outlawing suspicious organizations under the Offense against the State Act; Counter-terrorist activities allowed; Garda and FBI cooperate in infiltrating republican Irish organizations active in fund-raising in the U.S. **post 9/11:** Continuing efforts against terrorism; new emphasis on international terrorism, cooperating with the U.S. on Irish connection with al-Qaeda.

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Italy	**pre 9/11:** Very little law until "90s; signed Geneva Convention and Dublin Convention; emphasis on: border control, checking of illegal aliens, denial of entry; denial and expulsion order may be appealed; *Immigration Act 1998* makes facilitating illegal immigration a crime; Tracking: alien must document his identity; immigrant/refugee is issued a temporary permit; must notify police of any changes in address and status; Ids not obligatory, digital pilot since 1/2001. **post 9/11:** Unchanged.	**pre 9/11:** Wiretapping, authorized by justice of the preliminary investigation; Code of Criminal Procedure lists circumstances and suspicious activities for order; applies to organized crime; Physical surveillance within the framework of *liberta vigilata*; Cooperation with foreign authorities on the basis of reciprocity regarding money laundering and trafficking; Minister of Transportation determines Airport security as to scope and measures; prohibited organizations are subject to provisions of the Criminal Code. **post 9/11:** All existing laws are made applicable to domestic and international terrorism.	**pre 9/11:** Long history of dealing with (Mafia) terrorism; signed *International Convention on Terrorist Bombing; European Convention on Suppression of Terrorism effective 6/1/89; US-I Extradition Treaty 1983; International Convention on the suppression of Financing of Terrorism* 1999; Law against Cyber Crime covers interception, destruction, setting up of equipment to intercept or destruct any form of communication. **post 9/11:** Emergency Legislation (urgent provisions).	**pre 9/11:** Covered by Criminal Code; law evolved regarding extortion, conversion, concealment, reinvestment of proceeds from crimes; special provisions cover money laundering and increase penalty for abettors in their professional capacity; transfer of assets across the border must be reported; authority to confiscate property and proceeds as tools to commit crimes; **post 9/11:** Authorities increased via "urgent provisions", but law remained unchanged. All extended to terrorism. Committee to collect and co-ordinate information on aliens.	**pre 9/11:** All law enforcement authority under existing law was extended to international terrorism. **post 9/11:** Emergency legislation: established a new crime: harboring of terrorist; including transportation into the country; deals with monitoring and coordinating means of communication; did not address bio-terrorism; remains covered in Decree 374/2001 on weapons and ammunition; Special Plan on Defense under consideration; will address bio threat.

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Latvia	**pre 9/11:** Citizenship very restricted. Naturalization following residency, language, and other requirements. Foreigners need valid travel document and, unless waived by treaty, a visa. To stay longer than 3 months, must obtain residence permit. Temporary residence permit is 6 months; permanent ones issued on limited grounds. Illegal aliens deported. **post 9/11:** A new Law on Identification Documents was enacted in May 2002. When in effect, there will be a two-tier system of IDs and passports, with IDS serving as travel documents. All citizens over 15 will have ID cards indicating place of residence. Separate cards will be issued for non-citizens. A new Law on Asylum complies with EU requirements.	**pre 9/11:** The National Security law defines the jurisdiction of agencies and their role in safeguarding the state and the people. The Investigatory Operations Law specifies what kind of activities can be undertaken in order to prevent criminal and terrorist activities. The Law on the State of Emergency authorizes actions in cases of emergency, including recovery from a terrorist attack. Restrictions on freedom of movement and assembly may be imposed. **post 9/11:** No new provisions.	**pre 9/11:** The Criminal Code includes provisions defining terrorism and terrorist acts. Participates in relevant international conventions. **post 9/11:** In the spring of 2002, the Code was amended, extending the application of provisions on terrorism to terrorist acts against other nations. Punishment extended to the financing of terrorist activities, regardless of where it takes place.	**pre 9/11:** Banks and other financial institutions are obliged to report on suspicious transfers. **post 9/11:** Amendments to the Banking Law and the Law on Prevention of Laundering of Proceeds Derived from Criminal Activity have been proposed by the Government. Amended Criminal Code punishes financing of terrorist actions against Latvia or other nations.	**pre 9/11:** Has mutual legal assistance treaty with the U.S. that extends to the obtaining of testimony, documents, and physical evidence. **Post 9/11:** Responded to many request from abroad regarding legal assistance in the area of banking, as Latvia's banks are broadly used for international transactions.

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Lithuania	**pre 9/11:** Citizenship is by birth, restoration, or naturalization after 10 years of residence. Passports were the only ID documents for those over 16; issuance was poorly controlled. Visas are required for entrance by foreigners from some states. Permanent residents must be registered with local police authorities and inform them of change of abode. **post 9/11:** In May 2002, a new Law on Identification Documents was adopted. When it comes in force, there will be a two-tier system of IDs and passports, with IDS serving as travel documents within the Baltic states. All citizens over 16 will be required to have the ID cards; a separate form will be prepared for aliens.	**pre 9/11:** Under the Code of Criminal Procedure, telecommunications operators must make it possible to monitor the content of tele-communications and provide information to government agencies. **post 9/11:** The Code of Criminal Procedure was amended in Apr. 2002. Police camera street surveillance was initiated in the capital city and other large-scale venues. It is connected with a face ID system to compare data with a photo database. Surveillance policy for telecommunications was simplified.	**pre 9/11:** Lithuania is a party to the relevant international conventions. There is no specific anti-terrorism law. The 1997 Law on the Basics of National Security defined terrorist threats as an external risk. The Criminal Code defines terrorism and terrorist acts as crimes, with punishments listed. **post 9/11:** The Parliament adopted changes to the National Security Strategy. The document names terrorism as a serious threat, largely external to the country. The Code of Criminal Procedure was amended (see at left).	**pre 9/11:** Law on the Prevention of Money Laundering considered major legal act to prevent financing of terrorism. The tax police must collect and commun-icate information to law enforcement. Financial institutions must report suspicious customers and transaction to the tax police, including all operations over US$15,000. Customers with transactions of that amount or more must be identified. **post 9/11:** The law is being enforced. There was an instance of a transfer of US$100,000 from a bank in the country to an individual of Arabic origin linked by the U.S. to terrorism. Lithuanian officials informed the U.S. of the transfer.	**pre 9/11:** The Law on Operational Activities and the Code of Criminal Procedure outline the kind of activities that can be undertaken to prevent terrorist acts and determine the limits of government intrusion on private lives. **post 9/11:** Lithuania entered into an extradition treaty w/ the U.S., signed Oct. 2001 ratified by Lithuania on Jan.2 2002 (not yet by the U.S.)--the first treaty to permit even citizens to be turned over to a foreign country, except if they might be sentenced to death, since Lithuania has abolished the death penalty. Expressed support for U.S. in war against terrorism and gave permission for unlimited use of air space. Military physicians were sent to Afghanistan.

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Luxembourg	**pre 9/11:** Asylum: Governed by Geneva Convention; applicant is issued certificate of application; identity must be certified; appeal of denial of entry; Aliens: Must have passport when staying up to 3 months; beyond requires visa; if granted to stay beyond 12 months, state issues ID. No tracking. **post 9/11:** *Law on Asylum and Immigration of 2002*: Dual citizenship abolished.	**pre 9/11:** Intergovernmental cooperation is based on : Policy of mutual legal assistance; European conventions; Treaty on Mutual Legal Assistance, with the US. Physical Surveillance Law: allows for wiretapping; warrant issued by investigating judge. **post 9/11:** Unchanged.	**pre 9/11:** Party to most international and European conventions; *Law on the Establishment of Surveillance of the Financial Sector 1999;* no specific national anti-terrorism legislation. **post 9/11:** Amendment to *Law on the Establishment of Surveillance of the Financial Sector 1999*;	**pre 9/11:** Commission: establishes and supervises financial institutions; inspects on-the-spot; suspends institutions for cause; asks court to liquidate institution for cause. Institutions are: responsible for matters on money laundering; identification of clients and representatives and organizational officers; reporting of suspicious transactions or clients. **post 9/11:** Authorities and duties increased.	**pre 9/11:** Laws covering financial sector are enforced under the Criminal Code; no special provisions for confiscation or freezing of assets for terrorist activities, but prosecutors and investigating judges have automatic powers to freeze assets in criminal cases in which they can be confiscated by court order; enforcement against criminal organizations under Criminal Code and Code of Criminal Procedure. **post 9/11:** Unchanged.

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Malta	**pre 9/11:** Immigration prohibited to criminals. Residence permit needed to immigrate. All over 14 years of age resident 6 months or more must have ID cards. **post 9/11:** The Refugees Act came into effect in Oct. 2001; no reference to terrorists but they are excluded from refugee status by other provisions. All refugees must report at specified intervals to immigration authorities. Changes to the law on immigration are being considered to match EU regulations on free movement of persons. Also would increase the number of countries from which a visa is required.	**pre 9/11:** Wiretapping and surveillance permitted under Security Services Act. Interception of communications and other activities for security must be authorized in writing by the Prime Minister or Minister for Home Affairs. **post 9/11:** Unchanged.	**pre 9/11:** Malta is a party to the relevant international conventions. No specific law on terrorism. Criminal Code grants authority to search or arrest without warrant in some cases, including an imminent danger of escape of suspect, of loss of evidence, or a crime will be committed that could be prevented. It is an offense for a group of more than three to assemble and act in a manner designed to cause terror. **post 9/11:** A new offense, conspiracy, was added in 2002. It is now illegal to conspire with others inside or outside the country to commit a crime in Malta. In addition, in 2001, a new sub-title was added relating to computer misuse. In 2002 Malta signed the Convention on Cyber-crime.	**pre 9/11:** Prevention Against Money Laundering Act and the Dangerous Drugs Ordinance and Medical and Kindred Professions Ordinance (provisions on drug money) are used to control money laundering. Assets can be frozen. Association regulations require customer ID and record keeping, and the reporting of suspicious transactions. **post 9/11:** Malta distributed the names of organization and individuals suspected of ties to terrorism to financial institutions, so checks can be conducted of their records. Laws on money laundering expanded. An independent Financial Intelligence Unit was created.	**pre 9/11:** Hijacker in a 1985 incident imprisoned for 25 years but released early in 1993 (Malta had told U.S. would be kept until at least 1996). **post 9/11:** Support for war on terrorism appears incidental to meeting Malta's EU obligations. Collaborated with foreign agencies when there was a threat of al-Qaeda groups operation in North Africa. Has been ensuring to the test of its ability that the Islands are not used for money laundering. Ratified a number of terrorist conventions.

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Netherlands	**pre 9/11:** *Law on Aliens 2000; and Decree on Aliens 2000:* Refugee status is processed in accordance with the Geneva Convention; refugees are issued temporary permits; Tracking: Aliens may be required: to carry identification; notify the authorities on change in address; shorter notice period for temporary permits; freedom of movement may be curtailed. No mandatory IDs, but carriage of IDs may be required of certain aliens. **post 9/11:** Obligation to identify oneself at any time. No new obligations imposed on aliens regarding IDS; proposal under discussion to extend obligation to all residents to carry identification papers.	**pre 9/11:** Wiretapping authorized for: Investigation of serious crimes; observation of suspicious organized groups. Physical surveillance: limited in scope; hidden cameras as last resort; use may be challenged before Personal Information Protection Board. **post 9/11:** New convention and amendment to Code of Criminal Procedure broadened authority to use videos, to intercept communications, create investigation teams within the EU; interagency sharing of information.	**pre 9/11:** No specific law on terrorism; general principles of criminal law and procedure apply; party to most European conventions*; Law on Aviation* of 1958 regulates airport security; *Law on Disclosure of Unusual (financial) Transactions 1993; Law on Identification of Financial Services 1993; Sanction Law, as amended.* **post 9/11:** Action Plan against Terrorism; *European Convention on Mutual Assistance in Criminal Matters* 2002;*Convention against Crime in Cyber Space;* amendments to Criminal Code and Code of Criminal Procedure cover computer misuse, extortion, taping of data, bank card forgery and interference w/ personal communication.	**pre 9/11:** Member on several task forces on money laundering; laws obligate financial institutions: to report identify clients; to financial transactions above EUR 18,151. **post 9/11:** Action Plan against Terrorism: Banks obligated to provide names with regard to suspicious transactions; authorities establish list of names; assets may be frozen.	**pre 9/11:** No specific laws on internet use; misuse is covered by Criminal Code; also participation in organizations with the purpose of serious crime; Undercover activities require a warrant for covert investigation; pseudo purchases; ongoing gathering of information. Sharing of information after terrorist acts have occurred; extraterritorial application if act is also punishable under the law of locus operandi. **post 9/11:** Action Plan against Terrorism and new convention broadened authority within the Community re teams for investigation, European warrant, information sharing,, financial reporting and supervision over financial institutions.

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Poland	**pre 9/11:** All immigration issues regulated by Law on Aliens, 1997; entry denied for: suspected terrorist activities or membership in terrorist organization; also if carries across border unauthorized arms, munitions, explosives or radioactive materials; or participates in or organizes such activity. Asylum: may be denied for same reasons. Tracking: Aliens to register with central authority within 48 hrs. of entry; no periodic check; Border Patrol and police may check at random; ID only for citizens; visa required for visitors. **post 9/11:** Many amendments to the 1997 Law on Aliens; new official consolidated version promulgated in Nov. 2001.	**pre 9/11:** Wiretapping, limited to criminal investigations per Code of Criminal Procedure (CCP); Shares information with third countries under international conventions and agreements. **post 9/11:** Government proposal on amendments to the Criminal Code (CC) and CCP includes extending authority for wiretapping and pen register. Information shared under UN Resolution 1373 to combat terrorism. Most important international conventions in various stages of ratification.`	**pre 9/11:** No specific anti-terrorist statute or general definition of a crime of terrorism; Ratified most important international conventions against terrorism, which makes them automatically a part of national law. Various criminal acts constituting terrorist activities punished under CC. **post 9/11:** Government draft amendments of CC and CCP would extend criminalization for some particular terrorist acts. Three new laws in 2002 introduce "extraordinary states": martial law, state of emergency, state of natural disaster. Each may be declared in case of terrorist activities.	**pre 9/11:** Money laundering law of 2000 defines "responsible institutions" (banks and other financial institutions), states obligation of trans-action registration & clients identification and obligation to exchange information on transactions & offenses. Also lists competent authorities & defines conditions for blocking transactions and monitoring activities. (also: Art. 299, CC; 1997 Banking Law, 1999 Criminal Treasury Code.) **post 9/11:** Several amendments to statutes cited above.	**pre 9/11:** No specific statute; Responsible organiza-tions include Office of State Protection (created 1990 under Minister of Interior for intelligence and counter-intelligence), police, military, Office of Government Protection, etc. Anti-terrorist units within these organizations. **post 9/11:** Major reorganization of internal & external security agencies– Office of State Protection abolished; the Agency of Internal Security and the Counterintelligence Agency created under Prime Minister subject to parliamentary supervision. Human rights protections in the Constitution, CC, CCP, Aliens Law, etc. EU membership pending– laws in compliance with EU.

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Portugal	**pre 9/11**: Asylum guaranteed to those persecuted or threatened with persecution. Seekers given temporary residence permit. If admitted gain refugee ID card. Foreigners in country must have an ID card unless and until given residence card. Hotels required to notify of stay of foreigners. Nationality is by birth to citizen parents, by marriage, adoption, or naturalization. **post 9/11**: New law Aug. 2002 will allow the amendment of existing laws so that limits on immigration from outside EU can be imposed and illegal immigrants can be repatriated by force.	**pre 9/11:** Searches must be authorized by the competent court, but in cases of terrorism, or organized crimes, when a crime is imminent that will put life or physical integrity of a person at risk, the court may be notified afterwards. Wiretapping is only by prior order of the court. Undercover operations permitted for certain crimes, including terrorism. **post 9/11**: New measures in Dec. 2001 include special regime of evidence gathering for certain crimes, including terrorism. Derogation of tax and bank secrecy, plus voice and image recording allowed.	**pre 9/11**: Party to conventions on terrorism. Criminal Code has two provisions on terrorist organizations and terrorism. Terror defined as criminal acts done to subvert the State, force public authority to act in some way, or intimidate people. The articles also apply to crimes perpetrated abroad. **post 9/11**: In process: accession to Convention for the Marking of Plastic Explosives for the Purpose	**pre 9/11:** Decree-Law 325/95 (1995) adopted measures to combat money laundering. Financial institutions and other bodies, such as casinos, must identify customers involved in suspicious transactions. **post 9/11:** Money laundering definition extended to include as object of money laundering the trafficking of nuclear material. Accountants, auditors, and other involved in real estate or financial management must report transactions over EUR 123,700. Law 11/2002 punishes non-compliance sanctions of the UN or EU. Ratified Convention on Suppression of Financing of Terrorism Aug. 2002.	**pre 9/11:** The SEA (a law enforcement body) has authority to inspect any facility, including airports, and to collect information on when foreigners check in and out of lodgings. *Ministerio Publico* may detain suspects in cases of terrorism or organized crime until first judicial interrogation, permitting communication only with defender. **post 9/11**: Constitutional Law 1/2001 (Dec. 12, 2001) authorizes implementation of the European arrest order. Extradition inadmissable when death sentence may be imposed. Also considering restructuring intelligence services, defense and police forces.

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Slovakia	**pre 9/11:** Asylum seekers make request at the border and submit written statement. Passports required for all aliens; visas required for those from some countries. No tracking of aliens is done. All permanent residents must have ID cards. Citizenship is by birth to a Slovak parent, birth in the territory is no other citizenship by birth, or by naturalization, generally after 5 years residence, with restrictions. **post 9/11:** Law was amended in Dec. 2001 [based on preparations started in advance of 9/11] Short term visas have been cut from 180 to 90 days; must prove funds, medical insurance. Immigration police now handle requests for permanent residence, in place of the Ministry of the Interior. Permit issued for three years, then extended.	**pre 9/11**: Surveillance and wire-tapping by court order under Code of Criminal Procedure **post 9/11**: No change.	**pre 9/11:** Punishment of crimes likely to be committed by terrorists, such as homicide, threats to life, etc. under Criminal Code. Party to relevant international conventions. **post 9/11:** New article 94 added to Criminal Code by Law on Terrorism of June 2002. Prohibits crimes against life or health of persons and against property done with intent to terrify. Also defines a terrorist group as having at least three people and being set up to commit acts of terror.	**pre 9/11**: Law on Money Laundering originally enacted in Oct. 2000 requires financial institutions to be alert to unusual commercial transactions. Money laundering prohibited by Criminal Code. **post 9/11:** Law amended in July 2002. For all transactions over 15,000 *euros,* a full ID must be obtained. Also anyone entering a casino must be identified. Unusual transactions must be delayed by financial institutions for 48 hours and police must be informed. Fines have increased. In addition, a new law was enacted in Feb. 2002 establishing an Office of Supervision of the Financial Market to oversee financial institutions. It can impose fines and cooperates with counterparts abroad.	**pre 9/11:** Counter-terrorism is handled by the police. **post 9/11:** Criminal code has been amended to define terrorism and terrorist groups. New unit established to track money laundering and cooperate with other nations. Cooperation with the United States in the war against terrorism has included granting blanket overflight and basing rights, dispatching a liaison officer to Central Command HQ, and plans to deploy an engineering unit in Afghanistan, plus offers of further units.

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Spain	**pre 9/11:** Immigration: Civil liberties granted; extradition based on treaty on reciprocity; exception: political crimes; terrorism is not a political crime; *Law on Aliens* of 1985, as amended 2000 provides for: policing of immigrants; special registry; ID issued upon entry; stringent requirements for obtaining legal status; deportation made easier. *Regulation on Law on Aliens* of 2001: increased border control. Asylum: *Asylum and Refugee Law* of 1984, as amended 1994: refugee status granted per Geneva Convention; qualified applicants are issued IDs; qualify for work permit. **post 9/11:** Unchanged	**pre 9/11:** Wiretapping and search and seizure: warrant required; issued by a judge; or the Minister of the Interior, or the Director of Security of State; both have to be confirmed by a judge within 72 hours. Regulation on Law of foreigners of 2001: increased cooperation between government agencies. **post 9/11:** New legislation authorizes: Joint teams of investigators to work in two or more countries, carrying on coordinated operations with Member countries; National Center on Intelligence must inform government of any risk or threat; Cooperate with foreign institutions as authorized by Supreme Tribunal.	**pre 9/11:** Criminal Code has broad anti-terrorism provisions; *Extradition Treaty with the United States of* 1971,with 3 supplements; *European Convention on the Repression of Terrorism 1980; Law on Money Laundering 1993; Agreement on Scientific and Technological Cooperation* of 1995, between Spain and the United States; *Law on Reinsurance of Victims of War and Terrorism 2001.* **post 9/11:** *International Convention on the Repression of the Financing of* Terrorism, ratified 4/2002; Draft *Law on the Regulation of Joint Teams for Criminal Investigation within the European Union* of 2002; *Law on Political Parties of 2002; Law on the National Center on Intelligence 2002.*	**pre 9/11:** Law on Money Laundering: Financial institutions)incl. real estate) must: ask for client identification; closely examine suspicious transactions; retain documents for 5 yrs; submit suspicious information to the Commission for the Prevention of Money Laundering; also: Criminal Code, Art. 577 prohibiting financing of armed gangs and terrorists. **post 9/11:** *Draft Law on the Prevention of Financing of Terrorism and Freeze of* Assets of 2002: Funds connected to terrorist activities may be frozen for 6 months; court may extend freezing period; no warrant needed.	**pre 9/11:** Enforced under Criminal Code and Code of Criminal Procedure: Illegal use of internet; increased penalty for crime of terrorism, incl. abettors; crime of illicit organization (armed band or terrorist group); crime of "hired gun"; crime of inciting or inviting propaganda and conspiracy. Constitution permits: temporary suspension of civil liberties; detention up to 48 hours w/o warrant; arraignment within 72 hours. **post 9/11:** Counter-terrorist activities are limited; Court issued Warrant required for wiretapping; search and seizures; available for law enforcement, but needs judicial approval immediately thereafter; charge of membership

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
Switzerland	**pre 9/11:** Visas required for most aliens; permanent residency after five years of temp. residency; permits must be approved and two registers are kept; asylum discouraged **post 9/11:** Law planned to improve tracking of aliens and citizens–not yet adopted.	**pre 9/11:** Law enforcement given ample discretion to use wiretapping and electronic surveillance. **post 9/11:** Act on the Surveillance of the Mail and of Telecommunications, effective Jan. 2002. More privacy restraints than before, but a framework for activities of the cantons. Regulation on a Domestic Intelligence Information System, adopted Nov. 2001. [Note: Planned before 9/11.]	**pre 9/11:** Criminal Code penalizes acts and planned preparation of acts such as murder, arson, genocide, that may be part of terrorism. Also penalizes participation in secret organizations with criminal goals. **post 9/11:** In June 2002 bill submitted proposing ratification of UN Conventions for the Suppression of Terrorist Bombings and for the Suppression of Financing of Terrorism. Domestic criminal provisions proposed to implement them.	**pre 9/11:** Bank secrecy a tradition. In last 2 decades have allowed information for use in tracking serious crime. In the 1990s, practices put in place to counteract money laundering; banks and other financial institutions required to identify customers and report suspicious actions. **post 9/11:** Criminal provisions proposed that prohibit accumulating assets for use in commission of terrorist acts.	**pre 9/11:** In past cooperation with foreign investigations hampered by power of Swiss cantons over procedure, over the administration of justice, over own police forces. **post 9/11:** Reaction to events shows ability to have cooperation between Federal and canton levels. New legislation now in process will strengthen federal role in investigation of terrorist activities. After 9/11, banks did cooperate with government to identify terrorist and Taliban accounts and freeze them.

Jurisdiction	Immigration, Asylum, Tracking of Aliens	Surveillance, Intelligence, Cooperation	Anti-terrorism Laws & Measures	Terrorist Financing & Measures	Enforcement & Counter-terrorist Activities
U. K.	**pre 9/11:** opted out of *Schengen* re border control; *Immigration and Asylum Act 1999*: flexible and streamlined control of immigration and asylum; no registration or tracking;; mechanisms for arrest and detention; fingerprinting; reporting to immigration officer; assistance for refugee when destitute; transfer to 3rd country. **post 9/11:** *ATCSA* expanded former authorities; UK derogated Art. 5 of Eur. Convention on Human Rights for "SITs" - suspected international terrorist; indefinite detention allowed; under consideration: IDS with bio data.	**pre 9/11:** Intergovernmental sharing of information on aliens by order of the Sec. of State; use of close circuit TV is subject to *Data Protection Act* 1998; other surveillance need warrant. *RIPA* brought extensive rights: access to communications incl. encrypted data without a warrant; communication provider must maintain ability to intercept; restraining orders are valid throughout British Isles; data sharing with 3rd countries where reciprocity or international assistance agreements. **post 9/11:** ATCSA permits retaining of communicant data on national security and crime prevention grounds.	**pre 9/11:** Criminal laws applied to terrorist acts since 1986, as temporary emergency laws; constant renewals made laws permanent; *Terrorism Act of 2000*; Sec. of State may proscribe terrorist organizations, new offenses cover benefitting from such organizations. Party to several international conventions. **post 9/11:** Definition of terrorism expanded; *Computer Misuse Act* reaches conspiracy activities via internet; ATCSA covers areas of police powers.	**pre 9/11:** Proscribing organizations as means to deny access to assets; broad definition of elements constituting money laundering; stiff penalties for abettors; duty of financial institutions to report suspicious activities. **post 9/11:** *Proceeds of Crime Act* 2001 increases disclosure through customer information orders and increased interagency cooperation.	**pre 9/11:** Section 8 of Asylum and Immigration Act prohibits employment of illegal aliens; difficult to enforce. Border patrol may stop, question, search, arrest and detain suspected terrorists for up to nine hours, fines for transporting illegal aliens into the country. **post 9/11:** ATCSA: Restraining orders issued prior to investigation to keep assets in the country. Police given more power to ascertain identity of suspect; reporting duties extended to family members. Extradited suspected terrorists. Assets of suspected terrorists seized.

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AUSTRIA

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Following September 11, 2001, Austria enacted a reform package that penalizes terrorism and terrorist funding and thereby facilitates investigations against terrorist activities. In the same piece of legislation, Austria also complied with EU requirements on the giving of banking information in requests for mutual assistance in criminal matters and enacted further procedural reforms to enhance investigative powers.

Austria has a sizeable Muslim population and is a popular country of transit for migrants and refugees. In the past, Austria had strong statutory protections of banking confidentiality. Current circumstances indicate the need for continued vigilance in the fight against international terrorism.

1. Legislation Prior to September 11

Immigration, Asylum, and Visitors

The Austrian Act on Aliens of 1997[1] purports to allow for the strict control of the entry and sojourn of aliens. Generally, visas are required for visitors, unless bilateral or multilateral agreements waive this requirement, for visits of up to three months. As a member of the Schengen Agreement,[2] that eliminates the internal borders between European Union countries. Schengen visas from other member countries are also accepted. Residence permits are granted under restrictive criteria. Nevertheless, almost 10 percent of the Austrian population are aliens.[3]

The conditions for naturalization are restrictive. As a rule, an alien must have resided in Austria for 10 years before being eligible. There are, however, notable exceptions from this residence requirement. Spouses of Austrian citizens can be naturalized after a residence of three or four years. Other aliens may also be naturalized after a residence of four to six years, under certain conditions,[4] and it appears that there are regional differences in the application of this discretionary provision.

Austria grants asylum to refugees in accordance with the Austrian Asylum Act of 1997[5] that restricts the granting of asylum in keeping with European policies to refugees who have not had an

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[1] Fremdengesetz [FrG] 1997, BUNDESGESETZBLATT [BGBl official law gazette of Austria] I No. 75/1997, as amended.

[2] Übereinkommen über den Abbau der Kontrollen an den gemeinsamen Grenzen, signed at Schengen, June 14, 1985, effective for Austria Jan. 1, 2000, BGBl.III No. 247/1999.

[3] STATISTISCHES JAHRBUCH FÜR DIE REPUBLIK ÖSTERREICH 2002 at 2.01 (Wien, 2002).

[4] Staatsbürgerschaftsgesetz 1985, BGBl, No. 311/1985, as amended, §10 *et seq*.

[5] Asylgesetz 1997, BGBl.I No. 76/1997.

opportunity to seek refuge in another country.[6] Austria is a land-locked country that is surrounded by safe haven countries, and therefore asylum petitioners could lawfully reach Austria only by airplane. Nevertheless, large numbers of refugees apply for asylum in Austria, and these often view Austria as a transit country on their way to a legal or illegal residence elsewhere.[7]

The Austrian Border Control Act[8] aims to prevent illegal entries, particularly on the border between Austria and the neighboring countries to the East [9], which are not members of the Schengen Agreement. The agencies entrusted with border control are the federal police and administrative authorities. These are entitled to require individuals to identify themselves, not only at the border but also within the country, and these agencies are also entitled to obtain personal data from other agencies. One important source for locating aliens within Austria is the register of residency that lists the address of anyone staying in Austria.[10] Also the local police and military may be involved in the patrolling of the borders. It appears that Austria makes a reasonable effort to patrol its external, non-Schengen borders. This at least, was claimed by the Austrian authorities in 1997, when Austria sought admittance to the Schengen Agreement.[11]

Identity Cards

Austrian citizens must possess either a passport or a personal identification card. For privacy reasons, the machine-readable entries in these documents must be limited to name, gender, date of birth, and expiration date. Biometric entries except for passport pictures are not foreseen.[12] Aliens must also be in the possession of a passport, another acceptable travel document, or passport substitute.[13] Aliens are not routinely fingerprinted in Austria when residency is granted, nor are other biometric data taken.

Wiretapping and Surveillance

Wiretapping and audio and visual surveillance are permissible in criminal investigations, pursuant to a judicial warrant.[14] The powers to investigate crimes were increased in 1997, mostly to combat organized crime, and they include the permissibility of computerized searches of data through the matching of profiles.[15] Audio and video surveillance (but apparently not wiretapping) are also permitted

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[6] Austria is a member of the Dublin Agreement (Convention Determining the State Responsible for Asylum Lodged in One of the Member States of the European Communities), signed June 15, 1990, at Dublin, BGBl III, No. 165/1997.

[7] In 2001, some 30,000 refugees applied for asylum in Austria, yet only 1,114 refugees were granted asylum, while some 3,642 petitions were denied [S. Hoener, *Nur wenige erhalten Hilfe vom Staat,* TAGES-ANZEIGER, at 5 (May 8, 2002)].

[8] Grenzkontrollgesetz, BGBl. No. 435/1996.

[9] The Czech Republic, Slovakia, Hungary, and Slovenia.

[10] Meldegesetz 1991, BGBl.I, No. 9/1992.

[11] *Grenzschutzbilanz des Wiener Verteidigungsministeriums,* FRANKFURTER ALLGEMEINE ZEITUNG [FAZ] at 7 (Nov. 7, 1997).

[12] Passgesetz 1992, BGBl. No. 839/92.

[13] FrG. §1 *et seq*.

[14] Strafprozessordnung 1975 [StPO], BGBl No. 631/1975, as amended, §149a *et seq*.

[15] E. Foregger and G. Kodek, DIE ÖSTERREICHISCHE STRAFPROZESSORDNUNG at 212 Wien, (1997).

to certain police units for the prevention of serious crime, in particular, organized crime. This is provided for in the Security Police Act of 1991,[16] which for the first time in Austrian history attempts to impose statutory limits for police surveillance.[17]

Financial Reporting, Terrorist Funding, and Recovery of Assets

Before September 11, 2001, terrorist funding was not a separate offense. Such conduct, however, could, under certain circumstances, have been punishable as the financing of an armed association[18] or as the participation in the kind of a crime that would be committed as a terrorist act, but only if the criminal act was at least attempted.[19] In addition, terrorist funding could have been punished as the participation in a criminal organization.[20] Under certain circumstances, terrorist funding could also have been viewed as amounting to money laundering, which has been a criminal offense in Austria since 1993.[21]

Before September 11, assets of a terrorist organization could have been seized once a criminal proceeding was in the pre-trial phase,[22] and the assets could have been confiscated, even if the criminal organization was located abroad.[23] Such confiscations were made possible in 1996, to fight organized crime, but the statutory provision that authorizes the confiscation appears to be equally applicable to terrorist organizations.

Although Austria has a statutory protection of bank secrecy,[24] this concept was eroded somewhat in November 2000,[25] when Austria had to abolish anonymous savings accounts, in response to international concern over the money-laundering potential of its banking practices. In the same year, the Code of Criminal Procedure was reformed to specify the type of assistance that banks had to give in criminal investigations.[26] Austrian bank secrecy is lifted for domestic criminal investigations and for foreign mutual assistance requests if the treaty conditions or statutory requirements are met.[27] In addition, Austria has enacted requirements for bankers to exercise due care in the identification of their customers

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[16] Sicherheitspolizeigesetz, BGBl No. 566/1991, as amended, §54.

[17] *Sicherheitspolizeigesetz, Einleitung, in* A. Heinl, E. Loebenstein and S. Verosta, DAS OESTERREICHISCHE RECHT, III 60 at 1 (Wien, 1949-).

[18] Strafgesetzbuch [StGB], BGBl No. 60/1974, as amended, §279.

[19] StGB, §12.

[20] StGB, §278a, ¶1.

[21] StGB, §278a, ¶2.

[22] StPO, §144a.

[23] StGB, §20b.

[24] Bankwesengesetz [BWG], July 30, 1993, BGBl No. 532/1993, as amended, §38.

[25] BWG, §31, as amended by Bundesgesetz, BGBl.I No. 33/2000, effective date July 1, 2002.

[26] StPO, §145a, as introduced by Strafprozessnovelle 2000, BGBl No. 108/2000.

[27] Auslieferungs- und Rechtshilfegesetz, BGBl No. 529/79.

and report suspicious transactions or those exceeding €15,000.[28]

Prohibited Organizations

The Criminal Code prohibits criminal organizations.[29] In addition, associations can be banned by the governor of an Austrian state if they endanger national security or pursue criminal or dangerous purposes.[30] Since 1945, the German National Socialist Party has been prohibited, as have all other reoccurrences of National Socialist activity.[31]

International Conventions on Terrorism

Prior to September 11, Austria had ratified all regional and international conventions on terrorism,[32] except for the International Convention for the Suppression of the Financing of Terrorism.[33]

Terrorist Incidents and Infiltration

During the last 50 years, domestic terrorist groups have not developed in Austria. However, as the host country to international conferences, Austria has attracted foreign terrorist action on several occasions. An example of this was the case in the 1975 bombing of an OPEC conference, that was perpetrated by German terrorists that were close to the Red Army Faction.

There is evidence that prior to September 11, 2001, Austria may have been visited by individuals who may have been associated with the September 11 attacks. An Austrian citizen reported to the Austrian police (after September 11) that one month before September 11 he had spoken to an individual who appeared to be a Pakistani national who had told him to watch for September 11 and that he intended to travel to the United States.[34]

There may have been bank accounts of organizations suspected of terrorist complicity in Austria that allegedly were closed in the spring of 2001.[35] Nevertheless, a suspicion was recently raised (August, 2002), that unidentified terrorist funds may still be on deposit in Austrian banks.[36]

Aside from these incidents, there appears to be no specific indication that Austria has harbored

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[28] BWG, §39 *et seq*.

[29] StGB, §§278 and 278a.

[30] Vereinsgesetz, BGBl No. 233/51, as amended, §6.

[31] Verbotsgesetz, BGBl No. 13/1945.

[32] UN Security Council, report by Austria to the Committee established under ¶6 of Resolution No. 1373 (2001), *at* www.un.org.

[33] Signed Dec. 9, 1999, 39 INTERNATIONAL LEGAL MATERIALS, 249 (1998).

[34] *Spur der Terroristen führt möglicherweise auch nach Österreich,* AP WORLDSTREAM – GERMAN, Sept. 14, 2001 [LEXIS/NEWS].

[35] K. Moechel, *Terror verliert sich in Wien,* WIRTSCHAFTSBLATT at 8 (Nov. 9, 2001).

[36] C. Lynch, *War on Al Qaeda Funds Stalled,* THE WASHINGTON POST at 26 (Aug. 29, 2002).

terrorists, yet this possibility may not be totally excluded, according to statements attributed to the Austrian Minster of the Interior, because Austria has more than 300,000 Muslim residents, some of whom belong to radical groups.[37]

2. Legal Enforcement Against Terrorism

Criminal Laws

Until September 11, Austria did not have a specific criminal provision for terrorism, although participation in a terrorist organization could be punished as a participation in a criminal organization according to section 278a of the Criminal Code. This provision was enacted in the 1990s to combat organized crime. Aside from this provision, the perpetration of a terrorist offense was to be tried according to the general provisions that penalized the particular criminal act, and the terrorist motivation did not make the act a separate offense.

Austria has a conspiracy provision[38] that penalizes conspiracies for the commission of certain enumerated serious offenses, such as murder or kidnaping.

Legal Restraints

Certain limits on the investigation of terrorist offenses may have resulted from the lack of specific criminal provisions for terrorist activities and terrorist funding. The absence of such provisions may have hampered investigations by not giving a statutory justification and therefore, reducing the possibility to obtain a warrant for surveillance and other intrusive investigative methods.

3. Legislation Enacted After September 11, 2001

In General

Austria responded to the events of September 11 by drafting a reform package[39] that purports to live up to the newly formulated anti-terrorist requirements of the United Nations and the European Union. This legislative package became enacted in August 2002 as the 2002 Criminal Reform Act.[40] The most important feature of this reform legislation is the introduction of new criminal provisions on terrorism and terrorist funding because these expand investigative powers and facilitate the recovery of terrorist funds.

Immigration

No new legislation was created after September 11, 2001, related to immigration, but the Federal Ministry of the Interior has given the order that visas from a list of 21 countries can be granted only after

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[37] *Drohangriffe und Angst vor Schläfern in Österreich,* FAZ at 7 (Sept. 15, 2001).

[38] StGB, §277.

[39] Regierungsvorlage, STENOGRAPHISCHE PROTOKOLLE DES NATIONALRATES [NR], XXI. Gesetzgebungsperiode [GP], Beilage No. 1166.

[40] Strafrechtsänderungsgesetz 2002, BGBl.I No. 134/2002.

review by the Ministry.[41]

Criminal Provisions

The new section 278b of the Criminal Code enacted in August 2002 penalizes participation in a terrorist organization, which is defined as a joinder of more than two persons for the purpose of committing terrorist offenses. Terrorist offenses are defined in the new section 278c of the Criminal Code as the commission of certain listed serious crimes of violence or public endangerment, provided that the deeds are apt to disturb public life or the economy and that their perpetration is motivated by the intent of intimidating the population, coercing national or international agencies or organizations, or destroying or disturbing fundamental principles and structures of the national or international order. In addition, terrorist funding was made a separate offense (section 278d).

Wiretapping and Surveillance

Some enhancements of these powers were made through changes in the Act on Criminal Procedure[42]; however, the most important increase for the scope of these activities comes from the new criminal provisions.

Financial Reporting and Recovery of Assets

New procedural provisions were enacted in August 2002[43] to facilitate the providing of banking information in requests for mutual assistance in criminal matters, and these new provisions implement the European Union Protocol to the Convention on Criminal Matters of October 2001.[44] In addition, the scope for the seizure of terrorist funds was increased.[45]

International Conventions on Terrorism

Ratification of the International Convention for the Suppression of the Financing of Terrorism is pending in the Austrian legislature.[46]

4. Limits on Counter-Terrorist Activity

Austrian criminal investigations, Austrian activities of intelligence surveillance, and the detention of suspects in Austria are limited by domestic legislation that is in accordance with Austrian constitutional

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[41] *Supra* note 32.

[42] STPO [supra note 14] §§ 144a, *et seq*, as recently amended.

[43] StPO, §145a as amended.

[44] Council Act, Oct. 16, 2001, OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES, C 326/01.

[45] StGB, §20b.

[46] NR GP XXI, Beilage 996.

requirements and to the due process requirements of the European Human Rights Convention.[47] It appears, however, that the Austrian investigative capabilities have been enhanced through the new anti terrorist legislation.

According to Austrian newspaper accounts, United States officials requested shortly after September 11 that Austria arrest several suspects. Austria, however, allegedly denied these requests for lack of grounds for detention according to Austrian law.[48] It is possible that the newly enacted substantive and procedural provisions may have made it somewhat easier for the Austrian authorities to detain those suspected of terrorist crimes.

Austrian bank secrecy may continue to be an area of concern, considering that there is suspicion that al-Qaeda funds may be deposited in Austrian bank accounts under the names of unidentified intermediaries.[49] In August 2002 Austria complied with the October 2001 European Union Protocol to the Convention on Criminal Matters[50] by enacting appropriate procedural provisions that allow for an increased sharing of banking information.[51] It may be of interest to observe the application of these provisions.

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[47] Convention for the Protection of Human Rights and Fundamental Freedoms, signed Nov. 4, 1950, EUROPEAN TREATY SERIES No. 5.

[48] Moechel *supra* note 35.

[49] *Supra* note 34.

[50] *Supra* note 44.

[51] *Supra* note 43.

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BELGIUM

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Belgium does not have a special law on terrorism, but the subject is covered under the provisions for the punishment of acts actually committed. Belgium is a party to the European Convention on the Suppression of Terrorism, and to the conventions dealing with the suppression of terrorist acts. Belgium is a member of the European Union and of NATO, and the headquarters of NATO are located in the Belgian capital Brussels.

Introduction

Belgium is a small country located in a strategic position in Europe, across the North Sea from Britain, between France, Germany and the Netherlands. It is densely populated and has about 10 million inhabitants. It has both the Flemish (Dutch) speaking and the French speaking population with a small German speaking minority. It has a very strong industry of all kinds, including shipping and armament industries. It thus attracts immigrants and asylants to work in its various industries.

1. Legislation Prior to September 11, 2001

Asylum

Asylum is regulated by the Law on Foreigners 1980,[1] and by Royal Decree of 1981[2] made thereunder, both as amended.

A foreigner may declare himself a refugee and request asylum at the border by a declaration to the border police or within eight days to the office of community administration at his place of stay. He/she is issued a provisional certificate of a refugee and permission to stay. He/she is entitled to free accommodation, food, health care, and other services. A final decision is made by the Ministry of the Interior. If favorable, he/she is entitled to stay, is entered in the register of inhabitants, and is issued an identity card. If it is not established that he/she is entitled to the status of a refugee as defined by the Convention on the Status of Refugees of July 28, 1951 (189 UNTS 150), the Ministry cancels the provisional certificate and orders the applicant to leave. He/she can appeal the decision within eight days to the Ministry of Justice. If successful, a new examination will be held, and a new adverse decision can be appealed to the Council of State for a final decision.

Foreigners

Entry by foreigners is regulated by the Law on Foreigners 1980, and by Royal Decree of 1981

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[1] Law of Dec. 15, 1980, on Foreigners, MONITEUR BELGE, Dec. 31, 1980, as amended.

[2] Royal Decree of Oct. 8, 1981, on the Entry, Stay, and Removal of Foreigners, MONITEUR BELGE, Oct. 27, 1981, as amended.

made thereunder, both as amended.[3]

Passport holders of most countries of the world may enter for a stay of less than three months. Others require a visa. Those of western European countries may stay for more than three months. Their stay is unlimited when approved by the Ministry of the Interior. They are entered in the register of foreigners in the place of their residence. A permit of the Ministry of the Interior is required for permanent residence. Its holder is entered in the register of inhabitants in his/her place of residence.

Tracking of Immigrants/Visitors

There is no provision that aliens should check-in with the authorities within a certain time.

Acquisition of Citizenship[4]

By declaration: Belgian citizenship may be acquired by a declaration before the pertinent civil registrar by a foreigner born in Belgium and residing there since his/her birth, as well as by a foreigner who has resided in Belgium for at least seven years and who, at the time of his/her declaration, was admitted to permanent residence. He/she must be 18 years of age at the time of his/her declaration.

By option: A child born in Belgium may acquire Belgian citizenship by option. The application is made to the pertinent civil registrar. The applicant must be over the age of 18 and below 22, must have had his/her principal residence in Belgium for the preceding 12 months, and from the time he/she was 14 until 18, or for at least 9 years; however, this is not required if, at the time of his/her birth, one of his/her parents or adopters was Belgian by birth.

By marriage: Although marriage itself has no effect on citizenship, the spouse of a Belgian citizen who has resided with his/her Belgian spouse in Belgium for at least three years may acquire Belgian citizenship by a declaration made before the pertinent civil registrar. He/she may make such a declaration after six months if he/she was admitted to stay in Belgium for over three months or if he/she was admitted to permanent residence at least three years prior to making the declaration.

The grant of citizenship is in all cases subject to government approval.

By naturalization: An alien having permanent residence in Belgium for at least three years (for refugees, at least two years) and who is 18 years of age, may request to be naturalized. The request is made before the pertinent civil registrar or is sent to the House of Parliament. If approved by the House at the request of the Ministry of Justice, citizenship is conferred by publication in the Moniteur Belge.

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[3] *Supra* notes 1 and 2.

[4] Code of Belgian Citizenship, J. Servais & E. Mechelynck, comps., 1 LES CODES BELGES 603 (Bruxelles, Bruylant, 2001).

Mutual Legal Assistance Treaties

Belgium has a Treaty on Mutual Legal Assistance in Criminal Matters with the United States[5] and is a party to the European Convention on Mutual Assistance in Criminal Matters.[6]

Identity Cards

Every Belgian 15 years of age and older must have an identity card.[7] Identity cards are issued by the office of local administration of the holder's place of residence. Data are printed on a special security paper and the card is laminated. It displays a photograph of the holder and lists: first and last names, citizenship, sex, date and place of birth, place of residence, and address at the time of issue. It is signed by the holder. It is valid for 10 years; however, those issued to persons below age 22 are valid for 5 years. The card certifies the holder's entry in the register of inhabitants.

Physical Surveillance and Wiretapping

Physical surveillance and wiretapping[8] may be ordered by the investigating judge in the investigation of serious crimes, such as threats to life, taking of hostages, abduction of minors, homicide, and robbery.

Financial Reporting

The Royal Decree of 1935 established a Banking Commission. The status and function of this Commission was redefined in the 1993 Law on the Regulation and Control of Establishments of Credit.[9] It regulates the establishment, activities, and supervision of all establishments of credit, i.e., banks, savings banks, public loan establishments, and municipal savings institutions, including branches of foreign establishments. The Banking Commission supervises the establishments. It may request information on pertinent business matters and may carry out on-the-spot inspections and make copies of pertinent documents. In addition, audits by approved audit firms may be undertaken. If the Banking Commission finds deficiencies, it will take steps to remedy them, and if they are not remedied, it may suspend the activities of the establishment and may eventually de-register it. The Commission's decisions may be appealed to the Ministry of Finance and eventually to the Commercial Court.

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[5] Treaty on Mutual Legal Assistance in Criminal Matters, with attachment, signed at Washington Jan. 28, 1988; entered into force Jan. 1, 2000, Treaty Doc. No. 100-16.

[6] European Convention on Mutual Assistance in Criminal Matters of Apr. 20, 1959, in force June 12, 1962. Belgium signed it Apr. 20, 1959, ratified it on Aug. 13, 1975, and it entered into force for Belgium on Nov. 11, 1975, Council of Europe, Treaty No. 30, Chart of Signatures and Ratifications, July 22, 2002.

[7] Royal Decree of July 29, 1985, on Identity Cards, MONITEUR BELGE, Sept. 7, 1985, as amended by Royal Decree of July 4, 2001, MONITEUR BELGE, Aug.1, 2001.

[8] Code of Criminal Procedure, arts. 90bis-90decies,J.Servais & E. Mechelynck, comps., 2 Les Codes Belges 100-100/2 (Bruxelles, Bruylant, 2001).

[9] Royal Decree No. 185 of July 9, 1935 ,on the Banking Commission, arts. 4, 7, and 8, MONITEUR BELGE, July 10, 1935, as redefined by Law of Mar. 22, 1993, on the Regulation and Control of Establishments of Credit, art. 46, J. Servais & E. Mechelynck, comps., 2 Les Codes Belges 423-425, 452/62/61-452/62/72 (Bruxelles, Bruylant, 2001).

The Royal Decree of 1993 on the Office of Financial Information[10] established the office within the Ministries of Justice and Finance to monitor financial transactions with a view to the prevention of money laundering. The office can obtain information on financial dealings from all establishments of credit and any firm or individual so engaged, including real estate agents, notaries, auditors, and tax experts. Officers may conduct on-the-spot investigation and study the documents.

Banking secrecy does not apply when the establishment is called to give evidence in court. The Banking Commission may communicate confidential information to auditors, Belgian authorities exercising supervision of financial markets, and the proper ministries. The Commission may also communicate with foreign authorities on the basis of reciprocity. It may cooperate with such foreign authorities concerning the operation in Belgium of the branches of establishments domiciled in their countries and the operation abroad of branches of Belgian establishments.

The Law for the Prevention of Money Laundering 1993,[11] amended 1995,[12] further implemented in 1999[13] and 2002,[14] requires all credit institutions and all others working in the financial sector to cooperate with the authorities in the struggle against money laundering by supplying all information at the request of the authorities and also by informing the Office of Financial Information on their own initiative of all facts which may indicate money laundering. The government may, at the recommendation of the Office, require that information be given on transactions by institutions and persons registered or established in states or territories, for which international authorities consider the legislation inadequate or which in their judgment impedes the struggle against money laundering. Credit institutions and all others working in the financial sector must stop carrying out transactions they know or suspect to be linked to money laundering and are prohibited from informing the client or third persons that information has been given to the Office. They must introduce proper internal measures to prevent money laundering.

The Law on the Prevention of Money Laundering includes the following as sources of illegal capital used in money laundering: terrorism; organized crime; illegal dealing in narcotics; illegal dealing in arms, property, and goods; traffic in illegal workers; traffic in human beings; the exploitation of prostitution; traffic in illegal substances of a hormonal, anti-hormonal, or beta-adrenergic nature that are to be given to animals, or dealings that stimulate the production or the illegal trade in these substances; illegal traffic in human organs or tissues; fraud to the detriment of financial interests of the European Union; serious and organized tax fraud that uses complex mechanisms or that is carried out at the international level; corrupt practices of public officials; funds originating in stock exchange offenses, the illegal public collection of money, or financial fraud; the taking of hostages; theft, extortion with violence, or threats; fraudulent bankruptcy; and the purchase or sale of casino tokens.

Money laundering is punishable by provisions of the Criminal Code. The punishment is imprisonment from 15 days to 5 years and/or a fine up to 2,500 Euros and, in certain cases, imprisonment

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[10] Royal Decree of June 11, 1993, on the Office of Financial Information, MONITEUR BELGE, June 22, 1993.

[11] Law of Jan. 11, 1993, on the Prevention of Money Laundering, MONITEUR BELGE, Jan.28, 1993.

[12] Law of Apr. 7, 1995, on the Prevention of Money Laundering, MONITEUR BELGE, May 10, 1995.

[13] Royal Decree of May 6, 1999, on the Prevention of Money Laundering, MONITEUR BELGE June 1, 1999.

[14] Law of May 3, 2002, on the Prevention of Money Laundering, MONITEUR BELGE, June 29, 2002.

up to 30 years, for those who have:[15]

- concealed entirely or in part, property taken, converted, or obtained by a criminal act
- bought, received in exchange or as a gift, or held or managed property directly originating in an offense, property and assets substituted for that property, and income derived from such investments when they knew or should have known its origin
- converted or transferred property with the intent to conceal or disguise its illegal origin or to assist the person involved in the commission of the offense from which the property originates, in order to avoid legal consequences of such acts
- concealed or disguised the nature, origin, location, disposition, change, or character of such property when they knew or should have known its origin.

Prohibited Organizations

The Belgian Constitution guarantees the right of association. This right may not be subjected to any prior restriction.[16] Citizens may associate for any legitimate purpose. However, the right is subject to limitations contained in the Criminal Code. An association for the purpose to commit criminal acts against persons or property is prohibited and the very act of association is punishable.[17] A criminal organization is defined as an association of two or more persons formed with the objective of committing certain offenses (those punishable by imprisonment of three years or more) in order to directly or indirectly obtain material advantages, either by the use of intimidation, threats, violence, fraud or corruption or by the use of commercial or other establishments to conceal or facilitate the commission of the offenses.

Use of Internet

Belgium does not have a law or regulation specifically dealing with the Internet. There is no law or regulation to restrict the content/materials of Internet communications which would provide "how to" information. However, all provisions prohibiting the disclosure of certain information by any means would cover Internet transmission of such information. They are, e.g., provisions on the protection of the security of the state prohibiting the disclosure of information on national defense;[18] on the security of the state in the area of nuclear energy;[19] and a regulation made thereunder, which prohibits the disclosure of information on nuclear research and methods of nuclear production.[20]

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[15] Criminal Code, arts. 505, 506, J. Servais & E. Mechelynck, comps., 2 Les Codes Belges. 77 (Bruxelles, Bruylant, 2001).

[16] Constitution of Belgium, art. 20, J. Servais & E. Mechelynck, comps., 2 Les Codes Belges 12 (Bruxelles, Bruylant, 2001).

[17] Criminal Code, *supra* note 15, arts. 322-326.

[18] Royal Decree No. 30 of Aug. 25, 1939, MONITEUR BELGE, Aug. 26, 1939, confirmed by Law of June 16, 1947.

[19] Law of Aug. 4, 1955, MONITEUR BELGE, Aug. 19, 1955.

[20] Royal Decree of Mar. 14, 1956, MONITEUR BELGE, Mar. 17, 1956.

International Conventions on Terrorism

Belgium is a party to the following conventions:

- European Convention on the Suppression of Terrorism[21]
- Convention for the Suppression of Unlawful Seizure of Aircraft[22]
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction[23]
- International Convention against the Taking of Hostages[24]
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes[25]

Belgium also signed the Convention for the Suppression of Terrorist Bombings[26] and the Convention for the Suppression of Financing of Terrorism.[27]

2. Legal Enforcement Against Terrorism

Belgium does not have any special legislation on terrorism; however, individual acts are punishable by existing provisions of the Criminal Code. For example, violence against persons and homicide are punishable by imprisonment up to imprisonment for life;[28] kidnapping and the taking of hostages is punishable by imprisonment from 15 years to life;[29] the destruction by any means of buildings, bridges, dams, railroads, flood-gates, warehouses, docks, hangars, ships, airplanes, and the like, is

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[21] European Convention on the Suppression of Terrorism of Jan. 27, 1977, in force Aug. 4, 1978, Belgium signed it Jan. 27, 1977, ratified it on Oct. 31, 1985, and it entered into force for Belgium on Feb. 1, 1986, Council of Europe, Treaty No. 90, Chart of Signatures and Ratifications, July 22, 2002.

[22] Convention for Suppression of Unlawful Seizure of Aircraft (Highjacking), done at The Hague Dec. 16, 1970; entered into force Oct. 14, 1971, 22 UST 1641; TIAS 7192; 1973 UNTS 106.

[23] Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London, and Moscow Apr. 10, 1972; entered into force Mar. 26, 1975, 26 UST 583; TIAS 8062; 1015 UNTS 163.

[24] International Convention against the Taking of Hostages, done at New York Dec. 17, 1979; entered in force June 3, 1983. TIAS 11081.

[25] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes, done at Paris Jan. 13, 1993; entered into force Apr. 29, 1997, [Senate] Treaty Doc. 103-21, 32 I.L.M. 800 (1993).

[26] Convention for the Suppression of Terrorist Bombings, UN Res. A/RES/54-164, Dec. 15, 1997, opened for signature at New York, Jan. 12, 1998.

[27] Convention for the Suppression of Financing of Terrorism, UN Res. A/RES/54-109, Dec. 9, 1999, opened for signature at New York, Jan. 10, 2000.

[28] Criminal Code, *supra* note 15, arts. 392-410.

[29] *Id.* art. 347*bis*.

punishable by imprisonment from 5 to 30 years.[30]

The association of persons for the purpose of commission of crimes is punishable by imprisonment from 5 to 10 years. Accessories and persons supplying the group with weapons, ammunition, lodging, etc. are punishable by imprisonment from 6 months to 5 years.[31]

The making of threats on the life of persons or their property is punishable by imprisonment from 6 months to 5 years,[32] and the threat to use nuclear materials is punishable by imprisonment of up to 30 years.[33] Criminal proceedings instituted against an accused are subject to due process of law.[34]

3. Legislation Enacted After September 11, 2001

Belgium has not enacted any special laws on terrorism. Acts of terrorism are dealt with under the provisions of offenses actually committed, such as homicide, violence against persons, kidnapping, the taking of hostages, the destruction by any means of buildings, bridges, dams, railroads, flood-gates, warehouses, docks, hangars, ships, and airplanes, as described in Section 2 above.

Financial Reporting

The Law on the Prevention of Money Laundering was amended by the Law of May 3, 2002, *Moniteur Belge*, June 29, 2002, as described in Section 1 above. Under the amendment the government may, at the recommendation of the Office of Financial Information, require that information be given on transactions by institutions and persons registered or established in states or territories for which the legislation is considered inadequate by international authorities or which in their judgement impede the struggle against money laundering.

Use of Internet

The government created an Observation Committee on the Rights of Internet within the Ministry of Economic Affairs to study the problems raised by the development of electronic commerce and analyze the impact of new technologies of information and communication.[35] The committee is required to submit annually a report on its findings and recommendations to the government. The Committee is composed of a presiding officer and of four university experts on the Internet, four representatives of users, four representatives of service suppliers, a representative of the Ministry of Economic Affairs, and a representative of the Ministry of the Middle Classes. They are appointed by the Minister of Economic Affairs for a four-year term and may be reappointed.

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[30] *Id.* arts. 510 and 521.

[31] *Id.* arts. 322-326.

[32] *Id.* arts. 327-331.

[33] *Id.* art. 331*bis*.

[34] Constitution of Belgium, *supra* note 16, arts. 12-14.

[35] Royal Decree of Nov. 26, 2001, on the Creation of an Observatory Committee on the Rights of Internet, MONITEUR BELGE, Dec. 15, 2001.

4. Limits on Counter-Terrorist Activities

According to the Belgian police, 19,050 blank Belgian passports have been stolen since 1990. This may be a record, although other countries which have similar problems, such as Italy, Argentina, and South Africa, refuse to confirm such numbers. All these Belgian passports were not stolen in a few grand heists. Rather, small stashes were taken from various town halls, embassies, consulates, and honorary consulates. Sold on the black market for as much as $7,500, they have subsequently been used by human traffickers, sex traffickers, gun runners, and drug dealers, as well as terrorists. For terrorists making excursions outside the Middle East, Belgian passports are often the document of choice. Ahmed Ressam, the Algerian convicted of plotting to blow up Los Angeles International Airport in 1999, trafficked in a number of false passports, at least one of which was linked to a theft from a town hall in Belgium, and the two members of an al-Qaeda group who assassinated the Northern Alliance leader Ahmed Shah Massoud just before September 11 traveled from Brussels to London to Karachi on stolen Belgian passports. The Belgian police are now desperately trying to tighten security. But even if they succeed, terrorists are determined and the desire for fake passports is great. Moreover, thousands of stolen Belgian documents remain circulating around the world.[36]

Investigations carried out in circles close to the terrorist al-Qaeda network are continuing in Belgium. Under the direction of Christian de Valkeneer, the Brussels the investigating magistrate who is in charge of many terrorism-related cases, searches were carried out simultaneously in Antwerpen, Mechelen, and Brussels on April 30, but they failed to lead to any arrests.[37]

The UN Security Council Resolution 1373 (2001) on threats to the international peace and security caused by terrorist acts requested Member States to take firm action against terrorism in all its aspects. Belgium prepared a Report to the UN Security Council Counter-Terrorism Committee Pursuant to that Resolution.[38]

The legislative framework for the prevention and suppression of international terrorism and regulating the detection and punishment of perpetrators of terrorist acts includes applicable instruments of international law, to which Belgium is a party, as well as Belgian domestic legislation. It is described in the report by Belgium to the United Nations Security Council Counter-Terrorism Committee and this report. The laws are enforced by the police.

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[36] *How to fake a passport*, THE NEW YORK TIMES, Section 6, pg 44, Column 1; Magazine Desk, Feb. 10, 2002, Sunday, Late Edition - Final.

[37] *Belgian police carry out searches in three towns in terror probe*, BBC Broadcasting Corporation, BBC Monitoring Europe-Political, supplied by BBC Worldwide Monitoring, May 2, 2002.

[38] UN Doc. S/2001/1266.

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BULGARIA

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Bulgaria's involvement in the European legal cooperation against terrorism is dominated by its aspiration to join NATO and the European Union.

The main task of Bulgarian legislators during the last seven years was to bring domestic laws, especially in the field of immigration policy, identification documents, and border control into conformity with the EU requirements. Bulgarian legislation provides for relatively liberal acquisition of citizenship and does not distinguish between foreigners and Bulgarian citizens in granting rights and obligations. Bulgaria participates in all major international legal agreements aimed at the fight against terrorism and its domestic anti-terrorism legislation has been recently modified reflecting the tightened border control and simplified criminal investigation procedures. After the events of September 11, 2001, Bulgarian legislation was amended with provisions strengthening criminal liability for terrorism-related activities and focusing on prevention of the financing of terrorism.

The issue of cooperation with the European countries in the fight against terrorism is of special importance to Bulgaria, which expects to be admitted into the European Union and NATO in the near future. Thus Bulgaria is making extensive revisions to its national legislation in order to meet EU standards. Major laws and codes were significantly amended or newly adopted in the late 1990s, based on principles protected by the Bulgarian national Constitution of July 12, 1991.

1. Legislation Prior to September 11, 2001

Citizenship Issues

The Constitution guarantees Bulgarian citizenship to anyone who has at least one parent who is a Bulgarian citizen or anyone who was born in the territory of the Republic of Bulgaria, unless he/she has acquired other citizenship by birth. The conditions and procedures for acquiring, keeping, or losing Bulgarian citizenship are regulated by the Citizenship Act of 1998, amended in December 2001.[1] According to the Act, citizenship can be acquired through birth or naturalization.

The decision on issues of acquisition, reinstatement, release from, or deprivation of Bulgarian citizenship, as well as revocation of naturalization is an administrative decision and shall be made by the President of Bulgaria based on the opinion of the Citizenship Council, established under the Minister of Justice. All applications for naturalization shall be considered by the Citizenship Council. The Minister of Justice and Prosecutor General may propose the revocation of naturalization or deprivation of Bulgarian citizenship. Issues of citizenship cannot be resolved through legal proceedings.

To acquire Bulgarian citizenship through naturalization one must be of the age of majority, a permanent resident for a term of no less than five years, and meet the following requirements: to have a

[1] DURZHAVEN VESTNIK [Bulgarian official gazette] No. 36/1998, 41/2001.

command of the Bulgarian language, to have an income and occupation enabling him/her to support himself/herself in Bulgaria, and to have not been sentenced by a Bulgarian court for a general crime or subject to criminal proceedings for such a crime. For those who arrived in Bulgaria as refugees, the waiting period is shortened to three years of permanent residency. Contraction or dissolution of marriage between a Bulgarian citizen and an alien does not affect the citizenship of a foreign spouse who acquires Bulgarian citizenship according to the general procedure.

Status of Foreigners

The status of foreigners and the procedure for entry into and exit from Bulgaria is regulated by the Foreigners in Bulgaria Act of 1998, amended 2002.[2] Bulgarian legislation grants foreigners all rights and obligations under national laws and all ratified international treaties to which Bulgaria is a signatory, except those rights and obligations expressly requiring Bulgarian citizenship. The main document granting the right to enter the territory of Bulgaria is the entry visa issued by the Ministry of Foreign Affairs. As determined by the Law, the Ministry shall deny a visa and entry into the country in the following cases:

- a foreigner has, by his actions, endangered the security or the interests of the Bulgarian state, or there is evidence that he has been acting against this country's security
- there is information that the foreigner belongs to a criminal group or organization, or that he has been involved in terrorist activities
- the foreigner was previously expelled from Bulgaria; attempted to enter or transit Bulgaria using counterfeit or forged documents, and during his previous stay violated the border-crossing, passport, and visa regulations
- the foreigner has committed a premeditated crime within Bulgarian territory

After September 11, 2001, this Law was amended, and the list of circumstances when a foreigner may be denied a visa has been expanded (see section 3 for details).

Foreigners are allowed to stay in Bulgaria for a period of 90 days. This term may be extended by the services exercising administrative control over foreigners, and a longer stay may be granted by the authorities on a case-by-case basis. Permanent residency is granted to foreigners who are of Bulgarian origin, are married at least two years to a Bulgarian citizen, have stayed lawfully over five years in the country, or invested more than US$250,000 in the Bulgarian economy.

In regard to foreigners, Bulgarian authorities apply the following coercive administrative measures:

- revocation of the right to stay in the Republic of Bulgaria
- forcible escort to the border of the country
- expulsion
- ban on entering Bulgaria
- ban on leaving Bulgaria

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[2] *Id.* 153/1998, 70/1999, 42/2001, 112/2001, 45/2002.

These measures can be imposed by local and national police authorities, border control service, or the Department of Identity and Foreigners' Documents at the Interior Ministry. In such cases, all associated costs are the responsibility of the concerned foreigner or the person or organization responsible for his/her entry. The legislation does not provide for judicial procedures to dispute the administrative measures undertaken. Refugee and asylum legislation was adopted in May 2002 and is discussed in section 3 of this report.

Identification Documents and Visas

Because of the mandatory registration of residency in Bulgaria, the Minister of Justice shall notify municipal councils or mayor's offices of the places of permanent residence of the persons concerned for registration, of changes in the Vital records, and of issuance or withdrawal of identity documents. The only identity document is the unified national passport of the Bulgarian citizen, which is issued to every Bulgarian national who is 16 years old. Foreigners in Bulgaria receive a special certificate issued by the Minister of Justice, which shall be registered with local police authorities.

Following a two-year campaign to bring national identity documents in line with Western European standards, which was a part of Bulgaria's bid to join the European Union, on January 1, 2002, the deadline expired when Bulgarian citizens could renew their identity cards, driving licenses, and passports. The new identity documents feature up-to-date protection against forgery and are intended to curb illegal migration. The same applies to the identity documents of foreigners in Bulgaria. Reportedly, about 35,000 identity cards for continued and/or permanent stay were issued. The European Union certified the full compliance of visas issued by the Bulgarian Foreign Ministry and consular services to persons visiting Bulgaria with the requirements of the EU. On October 24, 2001, Bulgaria became the first country in Europe to begin issuing visas with an integrated scanned photo, a requirement introduced by an EU order and due for implementation in Europe by 2005.

2. Legal Enforcement Against Terrorism

Speaking at the NATO Parliamentary Assembly session in May 2002, the Minister of Interior of Bulgaria stated that no terrorist acts or preparations for such acts had been detected in Bulgaria. He said that no information was available indicating any involvement of international terrorist organizations in bomb attacks perpetrated or attempted in Bulgaria.[3]

There is no specific law on combating terrorism in Bulgaria. The bill on Suppression of Terrorism has been proposed by the Government and is presently under the consideration of legislators. Terrorism-related issues currently dealt with in other statutes related to the regulation of the financial system, investments, and foreign trade, e.g., Foreign Trade in Arms Act.[4]

Criminal Laws

Articles on prosecution and punishment of terrorism-related activities are included in the Criminal Code of the Republic of Bulgaria. Terrorism is defined there as using murder, injury, arson, abduction, bombing, or other acts of this kind for the purpose of disturbing or intimidating the public, threatening

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[3] BBC Monitoring, May 26, 2002.

[4] *Supra* note 1, 32/1999.

or forcing a lawful authority, a foreign country, or an international organization to refrain from doing something that it would normally do. The Code contains provisions defining terrorism and terrorist acts as an especially grave crime punishable with imprisonment from 15 to 30 years or, if the activities have resulted in the death of an individual, 30 years without parole. One of the most recent amendments to the Code specifies that a terrorist attack which has damaged a cultural or historic monument is a crime with extraordinarily grave circumstances, and provides for the punishment of such attack the same way as for a terrorist attack that resulted in loss of human lives. The Criminal Code defines the following terrorism related activities as crimes:

- plans to liquidate a certain national, ethnic, racial, or religious group
- propaganda advocating war
- threat to commit a crime and rising justified fear of its implementation
- manufacturing, possession, or transport of arms

Unauthorized use of police uniforms and insignia is punishable by a fine in the amount of 5,000 *leva* (US$2,530). The use of the police insignia for the perpetration of crimes carries a 30-year prison sentence.

International Cooperation

Bulgaria is a signatory to the International Convention on the Suppression of Terrorist Financing; however, this Convention is not ratified yet. Among other international legal agreements to which Bulgaria is a signatory are:

- Additional Protocol to the Council of Europe Convention on Extradition
- Second Additional Protocol to the Council of Europe Convention on Extradition
- European Convention on the Suppression of Terrorism
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

All these documents have been ratified by the Bulgarian legislature.

Government Structures in Charge of Fighting Terrorism

The fight against terrorism and terrorist organizations was the duty of the National Security Service, which shared this task with the National Service for Combating Organized Crime and the Economic Police. Even though in 1999, the anti-terrorist squad directly subordinated to the Interior Minister was established, it is not considered a reliable force due to constant information leaks, relations between the officers and criminal groupings, and other illegal activities of its staff.[5] The creation of rapid reaction units to fight particularly dangerous crimes under each police service and regional police directorate was recently proposed by the Interior Ministry. In 1998, the Financial Intelligence Bureau was created to prevent and investigate money laundering. However, according to some media reports, even though the agency is allowed to look into the accounts of companies without having to ask for authorization from the courts and to use information from commercial contracts and bank transfers at will, its work was not effective until Spring 2002, when the Bureau was charged with the duty to fight the

[5] *Discord Between Interior Minister, Chief Secretary*. SOFIA KAPITAL [Bulgarian weekly], May 24-31, 2002, at 12; translated by FBIS, Document ID: EUP2002200527000042.

financing of terrorist organizations.[6] Presently, Bulgaria maintains cooperation in this area with 45 countries, including all members of the EU and the United States.

3. Legislation Enacted After September 11, 2001

Speaking at the United Nations after the September 11, 2001, attack, the Vice-Minister for Foreign Affairs of Bulgaria said that Bulgaria firmly believes that terrorism is inadmissible in all its forms and manifestations and emphasized Bulgaria's intention to act adequately, through effective and legitimate mechanisms and procedures, to prevent and punish terrorist acts.[7] Bulgaria voted for the adoption of UN Security Council Resolution 1368 and Resolution 1373, against the financing of terrorism.

Changes in Investigative Methods

The general perception reported earlier in the Bulgarian media was that Bulgaria is not vulnerable to terrorists or to security threats.[8] However, in the aftermath of the attack on the United States, Bulgarian national legislation was significantly amended with provisions focused on fighting terrorism. Among the most important is the amendment to the Telecommunications Act in 2002, which obliges mobile telecom operators and the national telephone system to have the equipment for wiretapping.[9] The Post and Postal Services Act was amended in 2002 with the provision which makes the opening of letters and parcels by police officers lawful in cases where it is suspected that shipments may contain biological spores or weapons. In such cases, a warrant is not required.[10] The 2002 amendment to the Interior Ministry Act allows the National Service for Organized Crime Control to plant undercover agents in criminal groupings and in state institutions targeted by criminal elements.[11]

Criminal Procedure and Financial Disclosure

The amendment to the Code of Criminal Procedure authorizes the Minister of Interior (national police chief) to block for a three-day period all financial operations of individuals and legal entities suspected of financing terrorist activities. In emergencies the Minister can also block cash, property, or financial assets of a suspected person for a period of 30 days. By a prosecutor's ordinance, this term can be extended for another 20 days. These measures correspond with those proposed by the Law Against Funding of Terrorists. This proposed law, which has not been completely approved yet by the legislature, is viewed as emergency legislation because it intends to grant wide-ranging powers to the Interior Minister and the possibility of freezing funds and assets belonging to individuals and corporate entities regardless of who controls these funds and assets. All newly acquired assets shall also be frozen. Under the proposed Law, freezing means the termination of any kind of legal or actual disposal, management, use, control of the assets, as well as a ban on any actions that could result in changes in the quantity, nature,

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[6] M. Popova. *Intelligence Service Never Caught The Drug Money*. TRUD, Sofia, in Bulgarian, May 21, 2002, at 8, translated by FBIS, Document ID: EUP20020521000044.

[7] BBC Monitoring, October 12, 2002.

[8] BTA BULGARIAN NEWS AGENCY, Daily Report, June 27, 2002, at www.securities.co.uk.

[9] *Supra* note 1, 45/2002.

[10] *Id.* 42/2002

[11] *Id.*

location, ownership, and purpose of the assets or rights. Only the Minister of Finance will be authorized to allow payments from frozen funds. It will only be possible to use money from frozen accounts to pay for medical treatment, taxes and other dues to the state, salaries, and social security taxes of employees.

Pending Bills

The Bill on the Suppression of Terrorism approved by the Government in May 2002,[12] and submitted to the legislature for adoption provides, among other measures, for the publication in the State Gazette of a list of physical and juridical persons involved in terrorism. The list shall be prepared by the Minister of Interior and Prosecutor General and will include names of individuals convicted on terrorism-related charges in Bulgaria and all people against whom a penal investigation in terrorism related-matters has been initiated. It is not clear whether the recommendation of American consultants to include in this list names of Bulgarian residents who have been convicted of terrorist offenses in other countries will be accepted. Once the bill has been approved, the list must be updated by the Government every six months. Individuals would be able to appeal the inclusion of their names in the list at the Supreme Administrative Court. Some commentators argue that the inclusion of individuals and companies who are under investigation but have not been tried could open the way for abuse of power by police and prosecutors. They are concerned that a case may be opened against someone for the purpose of blocking his/her accounts and assets only to serve someone else's economic interest. The Bill was strongly criticized by the Magistrates, and is considered to be an attempt by the Prime Minister to show himself in good light to Western partners that want decisive anti-terrorist measures.[13]

Changes in Citizenship Legislation and Laws on Foreigners

A new provision has been added to the Citizenship Act of 1998, which requires from an applicant for naturalization in Bulgaria a special renunciation of his/her previous citizenship and submission of evidence that he/she is released from his/her citizenship or will be released as of the moment of acquiring Bulgarian citizenship (art. 12.6).[14]

An additional article has been added in 2002 to the 1998 Foreigner in Bulgaria Act, which extends the list of circumstances when a foreigner may be denied the Bulgarian entry visa at the discretion of the Bulgarian authorities.[15] These are the following:

- there is information that the foreigner wishes to enter the country in order to commit a crime or a violation of the public order
- the foreigner has during a previous stay in Bulgaria committed a violation of the public order
- the foreigner's entry will cause detriment to Bulgaria's relations with another country
- the foreigner fails to provide reasonable grounds for the declared purpose of travel.

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[12] *Supra* note 8, May 17, 2002.

[13] *Bulgaria: Commentary Analyzes Draft Law Against Financing Terrorism,* SEGA [Sofia-based newspaper], May 16, 2002, at 13; translated by FBIS, Document ID: EUP20020516000082.

[14] *Supra* note 1, 54/2002.

[15] *Id.*

The newly adopted Bulgarian Law on Refugees[16] determines the status of those who are seeking refuge or asylum in Bulgaria. There are three types of protection stipulated by the law: a refugee status, a humanitarian status, and temporary protection. The Law envisages that a foreigner seeking asylum cannot be repatriated to a state in which his/her life or freedom are in danger. Only persons considered to be a threat to the national security will not enjoy this right. The Law provides for temporary protection in case of an influx of foreigners forced to leave their own country by an armed conflict, violation of human rights, or large-scale violence. Such protection will be valid for up to a year and may be extended by another year at the most. Protection will not be granted or is revocable where strong reason exists to believe that a foreigner has committed a war crime or a crime against peace and humanity, or a crime of a nonpolitical nature outside Bulgaria, and if deported would only be deported to a country that recognizes his/her human rights. The Law envisages a differentiated procedure for establishing and recognizing legal status in order to strike a balance between the interests of the Bulgarian residents, the state, the priorities in the country's fiscal policy, and the country's international obligations.

According to the newly established procedure, within a month of the application for protection, the interviewing body will have to issue a position which will be forwarded to the chief of the State Agency for Refugees for a final decision. An extra three months may be taken where the information for the specific case is believed to be insufficient. The law provides for an accelerated procedure also. The applicant is interviewed immediately and within three days of the application registration, the competent authority makes a decision whether to turn down the applicant, to discontinue the procedure, or to forward the case for the standard procedure. A decision to turn down an application or discontinue the procedure may be contested within seven days.

Since 1992, 9,900 people have applied for protection in Bulgaria; 1,584 applications were turned down, 1,317 had their refugee status recognized, and 2,317 received humanitarian protection. Most asylum seekers came from Afghanistan, Iran, and Iraq.[17] On June 28, 2002, the European Court for Human Rights ruled in favor of Darius Al-Nashif who had filed a human rights lawsuit against Bulgaria for his deportation in 1999 on the national security grounds. In a ruling the Court said that Bulgaria had not provided Al-Nashif, a Palestinian, with safeguards against arbitrariness and had denied him the right to appeal to a court against his detention and deportation on grounds of unregulated religious activity. Regardless of this decision and adoption of a new law, which provides for the possibility to challenge the deportation order in a court, Bulgarian authorities declared that the new rules will not be retroactive and will not apply to cases which had been heard before.

4. Limits on Counter-Terrorist Activity

Efforts by the Bulgarian Government to fight against terrorism are strongly supported by the national legislature, which adopted almost all legislative acts proposed by the executive branch after the September 11 attacks in a timely manner and without introducing significant changes to them. The implementation of anti-terrorist legislation in Bulgaria is not limited by special legal provisions, except by the requirements of the Constitution and major criminal and procedural laws to respect human rights, individual's privacy, and due process; however, it is subject to inspection by the interested EU institutions. The adoption of new legislation aimed to increase the effectiveness of police activities, financial control, and migration control was supported by all political forces in the country.

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[16] *Id,* 28/2002.

[17] *Supra* note 7, May 15, 2002.

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CHANNEL ISLANDS AND ISLE OF MAN

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

As providers of a range of international financial services, the Channel Islands and the Isle of Man, constituting separate and independent legal jurisdictions within the British Isles, have been responsive to concerns that their financial institutions may provide a cover for the transfer and holding of terrorist finances. The jurisdictions considered in this report, Guernsey, Jersey and the Isle of Man, earlier introduced legislative reforms for the prevention of money laundering and more recently against the funding of terrorism. They also have enacted or are strengthening measures that reflect laws on the British mainland aimed at combating terrorism that arose from the situation in Northern Ireland and now in its international manifestations.

This report deals with the Isle of Man and the Channel Islands of Jersey and Guernsey, which are self-governing territories within the British Isles. These Crown Dependencies are not part of the United Kingdom, although the government in London is responsible for their defense and international relations. Nor are they within the European Union with which they have a special relationship only with regard to the customs territory, but EU regulations generally do not apply to them. Each of the jurisdictions has its own legislature and independent legal system, considered to be unique in the world.[1] Certain regulations relating to the international relations of the jurisdictions, however, are issued by the British Parliament. All three have well established financial services industries comprising banking, insurance, investment and fiduciary services, which attract capital from across the world. As low tax jurisdictions, and for their services as commercial and corporate havens, their importance is increased beyond their size and population. Thus, the per capita income of the Isle of Man, whose financial sector accounts for more than 30 percent of the Gross Domestic Product, is greater than the United Kingdom.[2]

Introduction

Following the terrorist atrocities on September 11, there has been an increased concern about the use of offshore financial centers to fund terrorist activities. It is reported: "There is much circumstantial evidence that terrorist money to fund the attacks was shifted through some well known offshore centers."[3] While there is no evidence that centers such as the Isle of Man, or other European jurisdictions were involved in this money laundering, "there is little doubt that the shield of discretion surrounding nearly all offshore jurisdictions has provided the cover for terrorists to ship money around the globe."[4]

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[1] The Isle of Man is reputed to have the world's oldest continuous Parliament " Tynwald, the 1000 Year Parliament," a legacy of its Viking ancestors, *at* www.tynwald.org.im.

[2] NEW GDP FIGURES REVEAL ISLE OF MAN IS WEALTHIER THAN UK, Tax-News.com, Oct. 8, 2001.

[3] TIGHTER RULES ARE NECESSARY FOR SURVIVAL, International Financial Adviser, June 13, 2002.

[4] *Id.*

Jersey, Guernsey, and the Isle of Man have formally responded to international moves to curtail the use of their financial services for the financing of terrorism. In February 2001, concerning the rule of the Taliban in Afghanistan, several regulations were extended from London to the three jurisdictions in compliance of Resolution 1333 adopted in December 2000 by the Security Council of United Nations.[5] These Orders provide for the freezing of funds owned or controlled directly or indirectly by the Taliban or reasonably suspected to belong to Osama bin Ladin or held on his behalf; and, among other things, making it a criminal offense:

- to make any funds available to or for the benefit of the Taliban or to Osama bin Laden and associates
- to contravene any notice directing that funds are not made available to the Taliban or Osama bin Ladin
- to knowingly and intentionally engage in any activities the object of which is to enable or facilitate the commission of the above two offenses
- for a licensed financial institution to fail to disclose knowledge or suspicion of dealings in the course of its business with the Taliban or Osama bin Ladin or persons connected with them
- to establish or maintain any office or other premises under the name of "the Taliban" or "the Islamic Emirates of Afghanistan."

The adoption on September 28, 2001 of Resolution 1373 by the Security Council on terrorist financing was followed by several orders issued in London to give effect to the Resolution in the Isle of Man and the Channel Islands.[6] Among the measures included in these Orders are:

- making it an offense to make any funds or financial services available to or for the benefit of: persons who commit, participate, etc., in the commission of terrorism; persons controlled by those who commit, etc., acts of terrorism; and, persons who act on behalf of or on the direction of persons who commit, etc., acts of terrorism
- the freezing of funds reasonably suspected to be used by those who commit, etc., acts of terrorism
- making it an offense to intentionally facilitate activities knowing that the object is to make funds available for terrorism and to fail to disclose knowledge acquired during the course of business of activities relating to terrorism.

All three jurisdictions have also undertaken legal measures to curtail money laundering generally although, because of their limited relationship with the EU, they are not part of the EU Money Laundering Directive. For example, the Isle of Man criminalized money laundering related to drug trafficking in 1987.[7] In 1990 it also enacted the Prevention of Terrorism Act 1990 which criminalized the funding of terrorism and made it an offense to conceal or transfer such funds. In 2001, the US Federal Bureau of

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[5] The Afghanistan (United Nations Sanctions) (Channel Islands) Order 2001, S.I. 2001, No. 393; the Afghanistan (United Nations Sanctions) (Isle of Man) Order 2001, S.I. 2001, No. 394.

[6] The Terrorism (United Nations Measures) (Channel Islands) Order 2001, S.I. 2001, No. 3363; the Terrorism (United Nations Measures) (Isle of Man) Order 2001, S.I. 2001, No. 3364.

[7] The Drug Trafficking Offences Act 1987.

Investigation commended the island for its money laundering legislation and a demonstrated willingness to cooperate with and provide assistance to foreign authorities.[8] According to its Chief Minister, "The Isle of Man has consolidated its position as an offshore jurisdiction that plays by the rules. We will not tolerate tax evasion or other unlawful activities and have arguably the toughest controls to combat money laundering of any jurisdiction, large or small."[9]

In 2002 the three jurisdictions were also removed from the Organization for Economic Cooperation and Development's list of "shamed tax havens which … are refusing to cooperate with its efforts to end harmful tax practices and tax evasion."[10] In response to the push by the OECD, financial services regulators in the three jurisdictions tightened conditions governing transactions by individuals or organizations blacklisted for various offenses, "including suspected links with terrorist organisations and money laundering."[11] Under the new guidelines, financial institutions on the islands are now required to know and verify the identity of all customers or the principals behind the clients when an account is held on behalf of another. In a move stated to be influenced by the international fight against terrorism, a paper issued by the regulators entitled "Overriding Principle for a Revised Know Your Customer Framework" requires that the ultimate beneficial owners and anyone with direct or indirect control over offshore companies and their assets must be identified.[12] The three regulators further stated that they were meeting international standards and expressed a determination that while ensuring the success of their islands in attracting honest money opportunities, they are not made available for use by "criminals, terrorists or corrupt leaders and their associates."[13] The cooperation by the regulators and government officials was also acknowledged in testimony before the United States Senate Permanent Subcommittee on Investigations by Robert M. Morgenthau, Manhattan District Attorney, New York. [14]

The Financial Action Task Force on Money Laundering (FATF), however, expressed concern in October 2000 among other issues about a series of high-profile cases of money laundering involving high officials from Bulgaria, Nigeria, the Russian Federation and Zimbabwe.[15] In October 2001 Jersey was investigating al-Muwafaq, an Islamic charity, a trust that had been dormant for the past three years, following allegations that it could have links with Osama bin Laden's terrorist network. Al-Muwafaq, meaning blessed relief, is reported to genuinely help the victims of famine and war and in 1997 received part of $2 million grant from UNICEF for relief work in the Sudan, but a former member of a British anti-

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[8] The FBI Law Enforcement Bulletin, Feb. 1, 2001, cited in Trifin J. Roule and Micahel Salak, THE STATUS OF MONEY LAUNDERING ENFORCEMENT IN THE ISLE OF MAN, 18 International Enforcement Law Reporter, Aug. 2002.

[9] Richard Corkill, NOT INTERESTED IN TAINTED MONEY; ISLE OF MAN, The International Herald Tribune, May 10, 2002 (The author contributed the article which is not to be reproduced without his permission).

[10] Michael Glackin, 'ROGUE' TAX HAVENS NAMED AND SHAMED, The Scotsman, April 19, 2002; also see http://www.oecd.org/EN/about/0,,EN-about-103-3-no-no-no-103,00.html.

[11] ISLANDS TIGHTEN NOOSE ON MONEY LAUNDERING, The Financial Gazette, April 18, 2002.

[12] CROWN DEPENDENCIES INCREASE TRANSPARENCY FOR TRUSTS, International Money Laundering, March 18, 2002.

[13] Heather Stewart, TAX HAVEN ISLANDS CLEAN UP THEIR ACT, The Guardian (London), Feb. 23, 2002.

[14] Hearing on WHAT IS THE U.S. POSITION ON OFFSHORE TAX HAVENS? July 18, 2001. Speaking on dealings with authorities on the Isle of Man in connection with several securities fraud cases, Mr. Morgenthau observed: "The Manx cooperation, like that of Jersey and Guernsey officials in other cases, has been invaluable in bringing criminal charges against American swindlers stealing from Americans. More such cooperation is needed." *Id.* at 9.

[15] Roule and Salak, *supra* note 8.

terrorist squad believes that UNICEF should have steered clear of al-Muwafaq, as Western intelligence has had doubts about the organization for some time.[16] Two other ostensibly philanthropic organizations, the Safa Trust and the Success Foundation, are reported to have been conduits for cash to al-Qaeda and other terrorist groups that have, according to Newsweek, transferred large sums of cash into entities in the Isle of Man.[17] The charities are stated to be linked to the al-Rajhi Saudi banking family.[18]

Overall, the Channel Islands and the Isle of Man reflect the laws of the United Kingdom on preventive legislation for the financial and credit sectors and the "Channel Islands do not diverge in any substantial way from the regulatory framework in place in European Union financial centres."[19]

The jurisdictions are also stated to reflect "a change in legislation across the globe" to close the loophole through which terrorist organizations obtain funding through "clean" sources, such as a wealthy benefactor.[20]

Recent Developments in the Three Jurisdictions

Guernsey

The Bailiwick of Guernsey consists of the islands of Guernsey, Herm, Jethon, Alderney and Sark, the latter two having a separate constitutional status (only Guernsey is discussed in this section). Legislation in Guernsey emanates from the States of Deliberation, its legislature.[21] Certain British Acts are specifically made applicable to the Channel Islands. While historically the international banking sector and trust services providers are areas of risk for money laundering, Guernsey "has demonstrated the political will to ensure that its financial institutions and services industry are not used to launder money."[22]

The Drug Trafficking (Bailiwick of Guernsey) Law, 2000 places a direct obligation to report to the Police or Customs knowledge or suspicion arising during the course of trade, business, profession or employment of money laundering transactions involving drug trafficking money. Failure to disclose the information is an offense punishable with up to five years imprisonment and/or an unlimited fine. The Law also authorizes the Police and Customs to seize sums of more than £10,000 imported or exported from the island when there are reasonable grounds for suspecting the money is directly or indirectly related to drug trafficking. However, provisions in the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 do not require reports of suspicions of criminality other than for trafficking

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[16] Minnesota Public Radio, Market Place, aired Oct. 22, 2001 (6:30 PM ET), anchored by David Brown, reporter Stephen Beard.

[17] The New Republic 8, Apr. 15, 2002.

[18] Press Association, Mar. 26, 2002.

[19] Ernesto U. Savona, EUROPEAN MONEY TRAILS 160 (2002).

[20] OFFSHORE INVESTMENT: A TIGHTER GRIP, Money Marketing, Jan. 24, 2002.

[21] For a description of the legal system, *see* Geoffrey Rowland, THE BAILWICK OF GUERNSEY, 23 The Law Librarian, 181 (1992).

[22] U.S. Dept. of State, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, 1999, 59-60 *at* http://www.state.gov/www/global/nar…/1999_narc_report.

monies. Similarly, the 1999 Law does not provide for the seizure of cash relating to suspicious non-drug trafficking crime.

The evaluation reports of the FATF noted that it made little sense for two different reporting requirements for drug trafficking offenses and other crimes, and that there was a weakness in the legislation not to authorize the seizure of money in relation to non-drug trafficking offenses. In order to meet the concerns of the FATF evaluations, Guernsey is enacting several provisions relating to the obligation to report suspicious transactions. The new enactments would demonstrate to international organizations and foreign law enforcement and regulatory bodies Guernsey's determination to deter criminals and to indicate full support for the international battle against serious and organized crime.[23] Amendments will also be made to the 1999 Act to allow the Police and Customs to disseminate information on suspicious financial transactions to law information authorities in other jurisdictions without first seeking the consent of the Law Officer of Guernsey.

The Financial Intelligence Service, a Guernsey financial services regulator, announced recently that there had been an almost 30 percent increase in the number of suspicious transactions reported to it during the first six months of 2002, compared to the same period in the previous year.[24] The new United Kingdom Minister with responsibility for the Channel Islands on a recent visit to Guernsey hinted that the British government will give it a free rein with regard to financial services sector…up to a point.[25]

In 1989, Guernsey installed a 24-hour closed circuit television (CCTV) surveillance system to assist in the policing of the Prevention of Terrorism Law. The importance of the CCTV system has become more evident to Guernsey authorities following the atrocities of September 11 and it is recognized that it has a vital role to play in the deterrence of terrorist activity. In March 2002 a Policy Letter was issued seeking approval of the legislature to replace the existing CCTV system at Guernsey Airport with an enhanced system to be shared by the Police, Customs, Immigration Departments and the Airports Authority. The proposed system will be digital and will provide high quality images which could be used as evidence in court.[26]

Isle of Man[27]

Based on the UK Terrorism Act 2000, and some provisions from the UK Anti-terrorism, Crime and Security Act 2001, the Isle of Man has drafted a Anti-Terrorism and Crime Bill 2002. When enacted the measure will replace a 1990 law designed in response to terrorism connected to Northern Ireland. The Bill will be applicable to all forms of terrorism, domestic and international. The Isle of Man is also

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[23] IX BILLET D'ETAT 716-24, May 29, 2002, reproducing a letter dated April 23, 2002 to the President, States of Guernsey from the President of the States Advisory and Finance Committee.

[24] Carla Johnson, GUERNSEY'S FIS ANNOUNCES 30% INCREASE IN SUSPICIOUS TRANSACTIONS REPORTING, Investors Offshore.com Aug. 14, 2002.

[25] UK APPOINTS NEW MINISTER FOR THE CHANNEL ISLANDS, Tax-News.com Aug. 12, 2002. A Guernsey press report quoted the Minister as stating that: The UK respects, of course, the fact that Guernsey makes its own domestic policy. But there are as well, of course, areas where we would wish to be working together and I think that that is something that is well understood on both sides of the equation, if you like."

[26] *Id.* pp. 728-731.

[27] For background on the legal system, see ANALYSIS OF THE ISLE OF MAN AS A JURISDICTION, (Sept. 2001) prepared by Cains Advocates, Ltd., *at* www.cains.co.im.

reported to have agreed to adopt the UN Convention for the Suppression of Terrorist Financing and will be implementing changes in domestic law as soon as possible.[28]

Individuals entitled to enter the United Kingdom under immigration statutes may freely enter the island. For those intending to reside on the island, the Residence Act 2001, ch. 7, which has not yet been brought into force, will require the maintenance of a register of individuals qualified to reside in the island, containing the name, sex, date of birth and the last known address of each registered individual. The taking up of employment is governed under the Control of Employment Acts requiring the obtaining of work permits generally by those who are not born in the island and who have not been resident for at least five years.

Under its Criminal Justice (Exclusion of Non-Resident Offenders) Act 1998, ch. 10, criminal courts are authorized to make orders excluding from the island for five years certain non-resident persons who are convicted on the island for an offense punishable with custody. The court must be satisfied that the exclusion would be to the public good and that it would not breach any international obligation of the United Kingdom. An exclusion order is not appealable before any other court, except to the staff of the government division. Failure to comply with an exclusion order is itself an offense, making the person liable on summary conviction to custody for up to six months or a fine not exceeding £5,000 or both.

The Criminal Justice Act 2001, section 44- 48, deals with the confiscation of the proceeds of crime and increases the penalties for the breach of money laundering codes.[29] "Know your customer" rules applicable to non-banking businesses such as accountants, attorneys, etc., issued in 1998 were at first applicable only to accounts opened after November 1998. After criticism from the financial regulators, the 2001 Act requires the identification of customers whose accounts predated December 1999.

The Interception of Communications Act 2001[30] amended a 1988 Act on the subject to authorize the interception of communications necessary for the purpose of preventing or detecting acts of terrorism relating to communications sent during a period not exceeding three months.

The responsibility for the investigation and prosecution of cash smuggling, drug trafficking and money laundering is shared between the Constabulary Financial Crime Unit and the Customs & Excise Division.[31] The cooperation between the two agencies is "robust" and the amount of funds confiscated by the island authorities greatly increased in 2001.[32]

Jersey

Jersey is in the midst of enacting a new Terrorism (Jersey) Law 2002 which was referred to the Privy Council on August 7, 2002.[33] Prior to September 11, the Prevention of Terrorism (Jersey) Law

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[28] *Id.*

[29] Ch. 4.

[30] Ch. 23, § 1, amending the Interception of Communications Act 1988, ch. 16, §3(4).

[31] Roule and Salak, *supra* note .

[32] *Id.*

[33] Jersey Legal Information Board at: www.jerseylegalinfor.je/Law/LawsAdopted/DisplayLA.asp?URL

1996 was in the process of being updated for two reasons. First, to lend support to the international efforts to combat terrorism by ratifying two United Nations conventions on preventing terrorism. Secondly, the 1996 Law was designed to respond to terrorism connected to Northern Ireland and did not apply to domestic terrorism. The new law would lift restrictions to allow counter-terrorist measures to apply to all forms of terrorism: Irish, domestic and international. September 11 brought about a heightened sense of priority for updating the law and it was decided to mirror changes brought about in the United Kingdom by the Terrorism Act 2000. Thus, many of the provisions shortly thereafter enacted in the United Kingdom under the Anti-Terrorism, Crime and Security Act 2001, were not included in the Jersey draft law. None of the controversial provisions, such as, the detention without trial of suspected terrorist asylum seekers, are found in the proposed Jersey law. New provisions to be enacted in Jersey include:

- New safeguard provisions with reference to the right of removal from the list of proscribed organizations
- New money laundering provisions; greater police cooperation and new requirements on financial institutions to disclose suspicious activities to the police
- A new power of forfeiture of terrorist funds without a conviction; a court order required after the seizure would be decided on a balance of probabilities
- Authority to cordon off an area for terrorist investigation, and the grant of greater police powers in those area
- A requirement of judicial authority for extended detention of suspects
- The creation of terrorist offenses relating to weapons training; directing a terrorist organization; possession of articles for terrorist purposes; collecting information useful for acts of terrorism; inciting terrorism overseas; and causing terrorist bombing.[34]

A Draft Police Procedures and Criminal Evidence Law 2002, was lodged on May 28, 2002, to introduce measures which mirror the United Kingdom's Police and Criminal Evidence Act 1984. The Draft is stated to provide a backbone for police procedures and guarantee suspects' rights. The legislation is to be considered by the States of Jersey on September 24, 2002.

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[34] States of Jersey, States Greffe,Report by the Home Affairs Committee providing background to the draft law: www.statesassembly.gov.je/documents/propositions/18262-16000.

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CYPRUS

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

After the September 11, 2001, terrorist attacks, the government of Cyprus joined the international community in expressing its commitment and solidarity to the United States in its efforts to eradicate terrorism. While Cyprus' membership to the European Union will be considered at the end of 2002, Cyprus is moving fast towards harmonizing its legislation with the Acquis Communaitaire of the EU, including those on terrorism issues. As a UN member, Cyprus is fully complying with the relevant UN resolutions on measures against terrorists.

Introduction[1]

Cyprus, which is strategically situated in the north-east end of the Mediterranean sea, became a sovereign and independent state in 1960, after a struggle against British colonial rule. Since then, Cyprus has become a member of the Council of Europe, the Organization of Security and Cooperation in Europe, the Non-Aligned Movement, the Commonwealth, and others.

In 1974, Cyprus was invaded by Turkey. As a result, 37 percent of the Cyprus territory is still under Turkish military occupation. The Cyprus government exercises authority on the south part of the island, which constitutes 63 percent of the territory. The government of the northern part of Cyprus has not been recognized by the international community, except Turkey. There is an estimated force of about 30,000 Turkish troops in the North, while a large number (approximately between 45,000 to 55,000) of settlers has moved to the north. The United Nations Force (UNFICYP) occupies the cease-fire line.

Cyprus initially concluded a customs union agreement with the European Union, and in 1990 applied for membership to the European Union. It has almost completed harmonizing its domestic legislation with the *acquis communataire* of the EU, by closing 29 chapters of the required 31. Cyprus, despite its political problems, over the years has evolved into an important financial center with the establishment of a large number of offshore banking units and a booming economy. In comparison, the northern part, has remained to a large extent underdeveloped and mainly an agricultural area.

1. Legislation Prior to September 11, 2001

Money Laundering

The U.S. State Department in its 2001 International Narcotics Control Strategy Report lists Cyprus among those jurisdictions of "primary concern," along with other certain countries. The *Financial Times* has recently alleged that the money that was sent to Cyprus from Yugoslavia in the 1990s was used to violate a UN embargo. The Central Bank of Cyprus, which is authorized to supervise all Cyprus banks, stated that such money "was not used for trade involving Yugoslavia or transfers to personal accounts of

[1]This report focuses on a few issues only and is based mainly on the report prepared by the Cyprus government in compliance with the United Nations Security Council Resolution 1373.

Yugoslav officials or arms trading or other transactions prohibited under UN sanctions." But it also admitted that part of the money may have been used in a manner that impinged upon UN sanctions. "However, despite the best efforts of the Cypriot authorities at the time, it would not have been possible to have known of this then."[2] On the other hand, the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures in its 1998 evaluation report which was requested by Cyprus stated that "Cyprus is to be congratulated on the very comprehensive legal framework that has been put in place. It compares favourably with others in place in larger countries which are members of the Financial Action Task Force (FATF)." In 2000, FATF performed an evaluation survey of the anti-money laundering legislation in Cyprus and did not list Cyprus as a non-cooperative country in the fight against money laundering.

The basic legislation on money laundering is Law 61 enacted in 1996 and circulars issued of the Central Bank of Cyprus. The Law has been amended several times[3] in order to align it with international standards and harmonize it with EU legislation. The domestic financial sector and International Banking Units (IBUs) are within the scope of this Law. IBUs are subject to additional entry requirements to ensure that only banks of a reputable name, originating in the areas where supervisory control is exercised, are allowed to be established in Cyprus.

The Law provided for the establishment of two bodies to ensure the effective implementation of its provisions: an Advisory Authority Against Money Laundering in 1997, and a financial intelligence unit–the so-called MOKAS (Unit for Combating Money Laundering). Its tasks include the following:

- strict monitoring of all reports of suspicious transactions by individuals and professionals who are engaged in financial and non-financial business. MOKAS is empowered to apply to the court and obtain freezing, confiscation, and disclosure orders. Under a disclosure order, bank confidentiality is lifted.
- analysis and preparation of policy issues on money laundering.
- training activities and awareness-raising seminars of the public and private sectors.

Individuals and legal persons who are engaged in financial and non-financial businesses, including lawyers and accountants, must report suspicious transactions to MOKAS. Failure to do so constitutes an offense punishable with imprisonment not exceeding five years and/or a fine not exceeding £3,000. The 2000 report of MOKAS includes the following activities: opening 123 new cases, closing 142, freezing US$3 million in assets, and issuing 90 Information Disclosure Orders.

MOKAS cooperates with counterparts in other countries and exchanges information with other financial intelligence units. It also participates in the Committee of Experts on the Evaluation of Anti-Money Laundering Measures established by the Council of Europe.

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[2] *Cyprus Refutes Sanctions Report*, HE KATHIMERINI [The Daily], July 29, 2002.

[3] Laws No. 25/1997, No. 41/1998, No. 129/1999, and No. 152/2000.

2. Legislation Enacted After September 11, 2001

Terrorist Funding – Money Laundering

On November 22, 2001, the House of Representatives enacted the Ratification Law of the UN Convention for the Suppression of the Financing of Terrorism. It provides for a 15 year imprisonment and/or a fine of £1,000,000. Pursuant to article 8 of the Ratification Law "acts which constitute offenses prescribed in section 2 of the Convention, are considered to be 'predicate offenses.'" Thus, the relevant provisions of the Prevention and Suppression of Money Laundering Activities Law stated above are directly applicable to offenses provided for in the Convention.

The freezing of funds occurs after the following steps are taken. Initially, the Attorney General submits to the Council of Ministers all lists of persons or organizations linked with terrorist activities issued either by the UN Security Council or any other Authority. Consequently, the Council of Ministers orders the necessary investigation by the Central Bank in order to identify and freeze any such assets.

In a question posed by the UN Counter-Terrorism Committee which was established pursuant to Resolution No. 1371, as to whether funds from charitable organizations may be diverted to terrorist activities, the Cyprus government stated that there are very few charitable organizations in Cyprus and that those are also subject to the same anti-money laundering regulations.

Money Laundering

Since September 11, the Central Bank of Cyprus issued a number of amendments to the Money Laundering Law, including the following:

- As of September 17, 2001, all banks are required to identify, without any exception, the beneficial owners of companies applying for the opening of an account.
- In November 26, 2001, the Central Bank of Cyprus introduced the following amendments in its Guidance Note on customer identification requirements, trusts, and nominees acting for third persons:
  - for accounts of corporate customers, banks are prohibited from opening accounts for companies (other than public companies listed on a recognized stock exchange) without establishing in all cases the identity of the natural person who is true beneficial owner.
  - for accounts of trusts and nominees of third persons, banks are required, without exception, when opening the above accounts to verify the identity of all the settlers and the true beneficiaries of the accounts. Under no circumstances are banks permitted to assign their obligations to trustees or nominees.

On May 1, 2002, the MOKAS submitted to the FATF a "Self Assessment Exercise" pertaining to the FATF Special Recommendation on Terrorist Financing.

Within the first six months of 2002, the Cyprus Attorney General was authorized to take action to freeze the assets of terrorists and terrorists organizations listed in the UN Security Council resolutions and those listed in the European Union legal instruments.

Criminal Organizations

On February 14, 2002, the Criminal Code was amended by Law 12(I) to establish participation in a terrorist organization as a criminal offense. [4]

Asylum, Immigration

Cyprus has taken several measures to improve control of aliens and goods entering its territory. Among the measures taken, which are prompted due to pending EU accession, are:

- issuance of a uniform format visa as provided for in the Schengen Acquis
- updating the nation information system
- issuance of new passports with security features in order to prevent counterfeiting
- personnel training in border control matters
- purchase of forgery detection equipment to identify forged travel documents
- purchase of equipment for maritime border surveillance radar systems
  Any undesirable alien is placed on an alert list.

Illegal Arms and Explosives

On December 12, 2001, a Coordinating Task Force (MOKAT) was established to combat international terrorism. It operates under the office of the Deputy Attorney General of Cyprus. The areas of responsibility include illegal arms sales, illegal trafficking of arms, explosives, weapons of mass destruction, chemical and biological substances, and dual-use items. The Coordinating Unit is granted investigative authorities. It is also empowered to collect data and exchange information with the appropriate counterparts in other countries.

International Agreements – Bilateral Agreements

Prior to September 11, Cyprus was a party to ten international conventions related to terrorism.[5] Two additional conventions were ratified by Cyprus after September 11:

- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, which is supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (December 31, 2001)
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (June 21, 2002)

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[4] Episeme Ephemerida tes Kypriakes Demokratias [Official Gazette for the Republic of Cyprus] , Supplement A, Part I (February 14, 2002).

[5]
- Convention on Offenses and Certain Other Offenses Committed on Board Aircraft;
- Convention for the Unlawful Seizure of Aircraft;
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aircraft;
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents;
- European Convention for the Suppression of Terrorism;
- Convention Against the Taking of Hostages;
- Convention on the Physical Protection of Nuclear Materials
- Convention for the Suppression of Unlawful Acts Against the Safety of Marine Navigation;
- Protocol for the Suppression of Terrorist Bombings
- International Convention for the Suppression of the Financing of Terrorism

Prior to September 11, Cyprus had also concluded several bilateral agreements which deal with the exchange of information and cooperation in combating organized and other forms on crime. The countries are: Syria, Italy, Poland, Czech Republic, Slovak Republic, Greece, Egypt, China, Israel, Romania, Hungary, Malta, Cuba, and Russian Federation. There are also bilateral agreements for cooperation in legal, judicial and criminal matters.

Mutual Legal Assistance Agreement

Cyprus is currently in the process of ratifying an agreement with the United States on Mutual Legal Assistance.

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CZECH REPUBLIC

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

The Czech Republic does not have a special law concerning terrorism, nor is terrorism mentioned in the Criminal Code in general terms. The Czech Republic is, however, a party to the European Convention on the Suppression of Terrorism, and to other conventions dealing with the suppression of terrorist acts. Although the Czech law does not have an explicit provision on terrorism, the subject is covered under the provisions for the punishment of acts actually committed. The Czech Republic is a member of NATO and is participating in the United Nations actions in the Balkans, formerly Yugoslavia. It is not a member of the European Union but is doing its utmost to acquire EU membership in the near future.

Introduction

The Czech Republic is a small land-locked country in the heart of Europe. It has only about 10 million inhabitants. It has a very strong industrial sector, both light and heavy and is manufacturing machinery of all kinds. It has a considerable production of automobiles and aircrafts. It is also self-sufficient in food production. By agreement with the neighboring Slovak Republic, these two entities dissolved the existing federation of Czechoslovakia as of January 1, 1993. Many immigrants and asylum seekers from the East pass through the Czech Republic, generally trying to reach Germany and the other countries of Western Europe, rather than remain in the country. The Czech Republic has not had any incidences of terrorist activities.

1. Legislation Prior to September 11, 2001

Asylum

Asylum is regulated by the Law on Asylum of 1999, amended 2002.[1] Those granted asylum are entitled to free accommodation, food, health care, and other services. An application for asylum must be filed with the Ministry of Interior, which will grant asylum if it is found that the person is being persecuted for political reasons in his/her state of residence or is fearful of persecution because of race, religion, nationality, membership in a particular social group, or adherence to certain political views.

The Minister of Interior will make a decision within 90 days of initiation of the proceedings. An appeal may be filed with the Minister of Interior against a denial of asylum; he/she will decide on the recommendation of a special commission to consider the appeal. A further appeal may be made to the court. The applicant must leave the country within 30 days of denial of an appeal made to the court.

Foreigners

[1] Law of Nov. 11, 1999, on Asylum, No. 325, COLLECTION OF LAWS, as amended by Law of Nov. 27, 2001, No. 2 of 2002, COLLECTION OF LAWS. See section 3 for a discussion of the amendments after Sept. 11, 2001.

Foreigners must hold a passport. They may enter the Republic for a short-term stay up to 90 days, a long-term stay up to 365 days, or they may establish permanent residence. They have to carry proof of medical insurance for payment of all costs of hospitalization and medical care, and show evidence of funds to pay for their stay at the minimum amount of US$35 per person per day in any convertible currency. Most European as well as major non-European countries arrange for visa-free entries for their citizens of usually 30-days' duration. The 30-day stay may be extended upon request up to 90 days, and the long-term stay may be freely extended for another period of 365 days at any time. Permanent residence may be granted upon application to the Immigration Police.

Foreigners who enter or stay in the Republic without authorization may be expelled. The decision is made by the Immigration Police.[2] Foreigners may also be expelled by an order of deportation made by a court as a punishment in a criminal matter.[3]

Tracking of Immigrants/Visitors

There is no provision that aliens should check-in with the authorities within a certain time.

Acquisition of Citizenship

By birth:[4] Citizenship is acquired by birth if at least one of the parents is a Czech citizen, or if the parents are stateless, at least one of them resides permanently in the Republic and the child is born there.

By finding:[5] A person less than 15 years of age found in the Republic, acquires Czech citizenship unless it is shown that he/she acquired another citizenship by birth.

By naturalization:[6] Citizenship may be acquired by an applicant who has permanently resided in the Republic for at least five years; who shows that he/she was released from his/her citizenship of his/her previous country or lost his/her other citizenship upon acquiring that of the Republic, unless he/she is stateless; has no criminal record of an intentional criminal offense; and demonstrates knowledge of the Czech language. The requirement of five years' residence may be waived if the foreigner marries a citizen.

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[2] Law of Nov. 30, 1999, on the Stay of Foreigners, No. 326, COLLECTION OF LAWS, as amended by Law No. 140/2001.

[3] Criminal Code, Law of Nov. 29, 1961, No. 140, COLLECTION OF LAWS, consolidated text of Apr. 7, 1994, No. 65, COLLECTION OF LAWS, as amended, art. 57.

[4] Law of Dec. 29, 1992, on the Acquisition and Loss of Czech Citizenship, No. 40 of 1993, COLLECTION OF LAWS, as amended by Law of July 29, 1999, No. 194, COLLECTION OF LAWS, art. 3.

[5] *Id.* art. 5.

[6] *Id.* arts. 7 and 11.

Mutual Legal Assistance Treaties

The Czech Republic has a Treaty on Mutual Legal Assistance in Criminal Matters with the United States[7] and is a party to the European Convention on Mutual Assistance in Criminal Matters.[8]

Identity Cards

Every person 15 years and older permanently residing in the Republic must have an identity card. The card is machine readable and lists the following: name; surname; surname at birth; date, place, and district of birth (if born abroad, only the name of the state where born); personal number; sex; citizenship; marital status; permanent residence; date of issue; issuing office; and signature of holder. Further data includes the number and series of the identity card and expiration date. Optional data are: university degree; name, surname, and personal number of spouse; name, surname, and personal number of children below the age of 15. Identity cards are issued by the district offices of public administration.[9] They are valid for 10 years, but those issued to persons below the age of 20 are valid for 5 years.

Physical Surveillance and Wiretapping

Physical surveillance and wiretapping may be ordered by the court in investigations of serious crimes, such as homicide, robbery, abduction of minors, and the taking of hostages.[10]

Financial Reporting

All financial institutions such as banks, investment agencies, funds, insurance companies, casinos, betting agencies, etc. and all physical and legal persons who engage in transactions dealing with money, national or foreign currency, and property must identify all physical and legal persons who engage in dealings in excess of 500,000 crowns (US$1= ca. 32 crowns).[11] They have to obtain the full name, identification number or date of birth, permanent address, and, in case of foreigners, their citizenship and number of passport. The information must be kept for 10 years. Suspicious transactions, e.g., dealings exceeding the scope of normal activities of the client, or increased turnover which is out of the scope of usual operations, must be promptly reported to the Financial Analytical Unit of the Ministry of Finance. Such suspicious dealings may be carried out only after 24 hours from notification by the Unit to that effect. The Unit may postpone its decision for 72 hours. Any loss accruing to the parties due to the delay

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[7] Treaty on Mutual Legal Assistance in Criminal Matters. Signed at Washington, Feb. 4, 1998; entered into force May 7, 2000. Treaty Doc. No. 105-47.

[8] European Convention on Mutual Assistance in Criminal Matters of Apr. 20, 1959. In force June 12, 1962. Czech republic signed it Feb. 13, 1992, ratified it Apr. 15, 1992, and it entered into force for the Czech Republic on Jan. 1, 1993. Council of Europe, Treaty No. 30, Chart of Signatures and Ratifications, July 22, 2002.

[9] Law of Nov. 30, 1999, on Identity Cards, No. 328, COLLECTION OF LAWS, and Regulations made thereunder of June 27, 2000, No. 177, and of July 23, 2001, No. 248, COLLECTION OF LAWS.

[10] Code of Criminal Procedure, Law of Nov. 29, 1961, No. 141, COLLECTION OF LAWS, Consolidated Text of Feb. 8, 2002, No. 43, as amended, art. 88.

[11] Financial disclosure and money laundering is regulated by Law of Feb. 15, 1996, on Measures against Legalization of Proceeds of Criminal Activity, No. 61, COLLECTION OF LAWS, as amended by Laws of May 18, 2000, No. 159, and of Mar. 15, 2002, No. 134, COLLECTION OF LAWS, and Regulations of the Ministry of Finance of June 24, 1996, No. 183, and of July 11, 2000, No. 223, COLLECTION OF LAWS.

of the transactions found harmless will be paid by the State. Financial institutions are required to submit to the Ministry of Finance, at its request, information on financial transactions subject to the identification of parties. Financial institutions must introduce their own system of vigilance concerning money laundering. For the breach of these provisions, the Ministry of Finance may impose fines up to two million crowns and for subsequent offenses occurring within 12 months up to 10 million crowns. Money laundering was punishable under articles 251a and 252 of the Criminal Code.[12]

Prohibited Organizations

The Czech Constitution guarantees the right of association. This right may be limited by law only if it is necessary for the security of state, public security and public order, the prevention of crime, or the protection of the rights and freedoms of others.[13] Association is prohibited for the purpose of limiting the rights of persons because of their nationality, race, sex, origin, political or other views, religion, or the promotion of intolerance and hatred.[14] An association for the purpose of committing criminal acts against persons or property is prohibited and the very act of association is punishable by imprisonment from 2 to 10 years or by confiscation of property. It is defined as an association of several persons with an internal structure and division of activity aimed at profit by engaging in a systematic exercise of criminal activity.[15]

Use of Internet

The Czech Republic does not have a law or regulation dealing specifically with the Internet. There is no law or regulation to restrict the content of Internet communications which would provide "how to" information.

All provisions protecting secrecy, e.g., provisions of articles 106 and 107 of the Criminal Code, which prohibit the disclosure of classified information by any means, are also applicable to disclosure via the Internet.[16]

International Conventions on Terrorism

The Czech Republic is a party to the following conventions:

- European Convention on the Suppression of Terrorism[17]

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[12] Criminal Code, *supra* note 3, arts. 251a & 252.

[13] Charter of Fundamental Rights and Freedoms, Resolution of the Presidium of the Czech National Council of Dec. 16, 1992, Law No. 2 of 1993, COLLECTION OF LAWS, art. 20.

[14] Law of Mar. 27, 1990, on Association, No. 83, COLLECTION OF LAWS, as amended, art. 4.

[15] Criminal Code, *supra* note 3, arts. 89 (17), 163a.

[16] Id., arts. 106, 107.

[17] European Convention on the Suppression of Terrorism of January 27, 1977. It entered into force on August 4, 1978. The Czech Republic signed the Convention on February 13, 1992 and ratified it on April 15, 1992; it entered into force for the Czech Republic on January 1, 1993. Council of Europe, Treaty No. 90, Chart of Signatures and Ratifications, July 22, 2002.

- Convention for the Suppression of Unlawful Seizure of Aircraft[18]
- International Convention Against the Taking of Hostages[19]
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction[20]
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes[21]

The Republic also signed the following conventions:

- Convention for the Suppression of Terrorist Bombings[22]
- Convention for the Suppression of Financing of Terrorism.[23]

2. Legal Enforcement Against Terrorism

The Czech Republic does not have a special law on terrorism, nor is terrorism mentioned in the Criminal Code in general terms. Terrorism is dealt with under the provisions of offenses actually committed, such as homicide, violence against persons, kidnapping, the taking of hostages, the exposure of persons to the danger of death or severe injury, or the exposure of property to destruction by fire, flood, explosives, gas, electricity, or other means. Individual acts are punishable by existing provisions of the Criminal Code. For example: violence against persons and homicide are punishable by imprisonment up to imprisonment for life;[24] kidnapping and the taking of hostages is punishable by imprisonment from 3 to 15 years;[25] the exposure of persons to the danger of death or severe injury or the exposure of property to destruction by fire, flood, explosives, gas, electricity or other means is punishable by imprisonment up to imprisonment for life.[26]

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[18] Convention for the Suppression of Unlawful Seizure of Aircraft (Highjacking). Done at The Hague December 16, 1970; entered into force October 14, 1971. 22 UST 1641; TIAS 7192; 1973 UNTS 106.

[19] International Convention against the Taking of Hostages. Done at New York, December 17, 1979; entered into force June 3, 1983. TIAS 11081.

[20] Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. Done at Washington, London and Moscow April 10, 1972; entered into force March 26, 1975; 26 UST 583; TIAS 8062; 1015 UNTS 163.

[21] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes. Done at Paris January 13, 1993; entered into force April 29, 1997; [Senate] Treaty Doc. 103-21. 32 I.L.M. 800 (1993).

[22] Convention for the Suppression of Terrorist Bombings, UN Res. A/RES/54-164 Dec. 15. 1997, opened for signature at New York, Jan. 12, 1998.

[23] Convention for the Suppression of Financing of Terrorism, UN Res. A/RES/54-109 Dec. 9, 1999, opened for signature at New York, Jan. 10, 2000.

[24] CRIMINAL CODE, *supra* note 3, arts. 219-222.

[25] *Id.* arts. 232, 234a.

[26] *Id.* art. 179.

The association of persons for the purpose of commission of crimes is punishable by imprisonment from 2 to 10 years. Accessories and persons supplying the group with weapons, ammunition, lodging, etc. are equally punishable.[27] The making of threats on the life of persons or their property is punishable by imprisonment of up to two years.[28] Proceedings instituted against the accused are subject to due process of law.[29]

3. Legislation Enacted After September 11, 2001

Pilots, nuclear power plant employees, chemical factory employees, and other employees might have to undergo security vetting, according to a bill passed by the Chamber of Deputies (lower house of parliament) in March 2002. The vetting aim will be to find out whether the employees are reliable from the security point of view, and whether they are prone to committing terrorist and other dangerous acts. The government will say which groups of employees will have to be vetted.[30]

Asylum

As amended November 27, 2001, the Law on Asylum now states that an asylum seeker can make a declaration of intention to apply for asylum, orally or in writing, to the police at the border, at the office of the police, or to the Minister of Interior within seven days of being informed by the police that he/she can do so. An entry visa is issued for a stay of 30 days. Asylum can now also be granted for family reunification and humanitarian reasons, but will not be granted if the applicant lists only economic reasons, comes from a state considered to be safe country, has more than one citizenship and did not settle in a country which is safe, makes claims that are clearly untrustworthy, or destroys or conceals travel documents. An asylum application can be denied for apparent untrustworthiness only within 30 days of the initiation of asylum proceedings.

Financial Reporting

The Law of March 15, 2002, on the Amendment of the Criminal Code, No. 134, Collection of Laws, introduced a new article 252a of the Criminal Code, on money laundering.[31] It punishes with imprisonment of up to two years or by a fine anyone guilty of the concealment of property acquired by criminal activity, or the failure to ascertain the source of such property. Punishment is imprisonment from one to five years if the act is committed for profit or as a member of an organized group or considerable gain is realized. If the property originates from dealings with narcotic drugs, psychotropic substances or from another especially serious criminal act, the punishment is imprisonment from two to eight years.

4. Limits on Counter-Terrorist Activity

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[27] *Id*. arts. 89 (17), 163a.

[28] *Id*. arts. 154, 156, 196, 197a.

[29] Charter of Fundamental Rights and Freedoms, *supra* note 13, arts. 8, 36-40.

[30] Czech parliament's bill extends vetting to pilots, nuclear plants staff, FBIS Document ID: EUP20020327000506, Entry Date: 03/27/2002, Version Number: 01.

[31] Criminal Code, *supra* note 3.

The Czech State decided to take over the Pardubice-based Explosia ammunition plant where the plastic explosive Semtex is manufactured. The government's decision was made within the framework of the international campaign against terrorism which was launched after September 11, 2001. Semtex was used by terrorists in different parts of the world many times in the past.[32]

Czech security forces lack the basic equipment for the fight against terrorist and criminal gangs, which is why Interior Minister Stanislav Gross wants the cabinet to earmark 625 million *korunas* (US$1 is about 35.41 *korunas*) for these squads. The police and the fire rescue corps, like the army and the Security Intelligence Service counterintelligence service, do not have some of the basic devices, or they are so outdated that they endanger their readiness for action. The police lack cars, recording and bugging devices, special arms, and protective means; and fire fighters lack cistern cars.[33]

The Czech envoy to the UN, Hynek Kmonicek, has confirmed that an Iraqi agent met suspected September 11 hijacker Mohammed Atta in Prague.[34] Kmonicek made this confirmation several weeks after U.S. representatives dismissed the existence of any evidence of Atta's last year's meeting with diplomat and alleged agent Ahmed Khalil Ibrahim Samir al-Ani in Prague. Kmonicek, a former deputy foreign minister, said he had ordered al-Ani's expulsion in April of 2001. However, he refused to label al-Ani a spy, despite the fact that the Czech government had collected detailed evidence of the encounter between al-Ani and Atta. Kmonicek declined to elaborate on the nature of the evidence.[35]

NATO Summit in Prague in November 2002: "Danger, because of which I sleep a little less peacefully" are the words that Interior Minister Stanislav Gross used to describe his concerns about the possible security risks during the planned November NATO summit in Prague. The nightmare he mentioned is the stealthy threat of terrorism. As Gross has already conceded several times, the fact that 50 presidents, prime ministers, foreign ministers, and other top representatives of NATO countries and Partnership for Peace countries are getting ready to travel to the capital of the Czech Republic, could be a target for world terrorism, but thus far, there has been no specific information about actual threats.[36]

Anti-Terror Commandos: European anti-terror commandos held international exercises near the Czech capital in light of the November NATO summit. Specially trained and armed policemen from the Italian unit NOCS, the Dutch BBE, the Czech URNA, the German GSG, and Belgian SIE took part. of the operation announces: "Three surrendered, seven resisted and the boys shot them."[37]

Counterintelligence: The Iranian military attache last year gathered information on important

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[32] State to take over producer of Czech Semtex explosive in crackdown on Terror, FBIS Document ID:EUP20020123000546. Entry Date:0l/23/2002, Version Number:01.

[33] Czech ministry seeks more funds to combat terrorism, FBIS Document ID: EUP 2002032500085, Entry Date: 03/25/2002. Version Number:1.

[34] According to the Internet edition of the Prague Post, Kmonicek gave an interview in New York to reporter Frank Griffin.

[35] Senior Czech diplomat insists on Att's meeting with Iraqi official. FBIS Document ID: EUP20020604000392. Entry Date: 06/04/2002. Version Number: 01.

[36] Czech Daily Reports Authorities' Preparations for Terror Attack on NATO, FBIS Document ID: EUP20020628000278, Entry Date: 06/28/2002, Version Number: 01.

[37] European Anti-Terror Commandos Hold International Exercise Near Czech Capital, FBIS Document ID: EUP20020628000295, Entry Date: 06/28/2002, Version Number: 01.

facilities and the location of state bodies in the Czech Republic, according to the annual report of the Security Information Service for last year. The report has now been made public. The counterintelligence service revealed that, following the September 11 terrorist attack on the United States, the interest of Islamic secret services in the Czech Republic did not decrease, on the contrary, they increased. The Iranian side is interested, first and foremost, in direct transactions between Iranian and Czech businesses. Negotiations in engineering companies and supplies of equipment are taking place. Agents are trying to ascertain whether Iran is attempting to misuse machine tool technology to manufacture weapons. The counterintelligence service has noted the interest of various foreign entities in Czech companies where there could be a potential risk of the illegal manipulation of military materiel.[38]

UN Security Council Resolution 1373 (2001) on threats to the international peace and security caused by terrorist acts requested Member States to take firm action against terrorism in all its aspects. The Czech Republic is determined to meet the challenge posed by terrorism. Accordingly, the Czech Republic is devoting special attention to the fight against international terrorism and has initiated a range of specific measures in this area. The Czech Republic is fulfilling the obligation to combat terrorism by the formulation of the National Action Plan of the Czech Republic to Combat Terrorism, which will set out the tasks and coordination roles of the individual departments in this area, according to the Czech Republic Report to the UN Security Council Counter-Terrorism Committee Pursuant to Security Council Resolution 1373 (2001)[39]

The legislative framework for the prevention and suppression of international terrorism and regulating the detection and punishment of perpetrators of terrorist acts includes applicable instruments of international law, to which the Czech Republic is a party, as well as the Czech domestic legislation. It is described in the report by the Czech Republic to the United Nations Security Council Counter-Terrorism Committee and this report. No act of terrorism has occurred to date in the Czech Republic.

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[38] Czech Counterintelligence Notes Activities of Iranian, Iraqi Agents in Country, FBIS Document ID: EUP2002082100037, Entry Date: 08/21/2002, Version Number: 01.

[39] UN Doc. S/2001/1302.

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ESTONIA

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Estonia's involvement in the European legal cooperation against terrorism is dominated by its aspiration to accede to NATO and the European Union. Long before the terrorist attack on the United States, Estonian legislation covered all major issues related to the fight against terrorism. Taking into account specifics of post-Soviet development, Estonian citizenship legislation focuses on such issues as registration and supervision of aliens, immigration control, and identification documents. Estonia is often criticized for its overly conservative immigration laws, which are to be brought into conformance with the EU requirements. Estonia's participation in international legal agreements aimed at the fight against terrorism and close cooperation with the antiterrorist coalition partners is valued by the EU representatives. After the events of September 11, 2001, Estonian legislation was amended with provisions strengthening criminal liability for terrorism-related activities, tightening border control, and regulating the recovery from a potential terrorist attack.

Estonia is the smallest and most prosperous among the three Baltic states. It is currently seeking accession to NATO and the European Union and is working cooperatively with the institutions of these organizations in order to bring its domestic legislation into conformance with the EU standards. In order to eliminate old Soviet laws, which remained in force in Estonia after the collapse of the Soviet Union in 1991, the Estonian legislature has been very active in developing national laws during the last decade.

1. Legislation Prior to September 11, 2001

Estonian legislation covers all major issues related to the fight against terrorism, emergency situations, martial law, and criminal procedure. Because of the national identity problem and the necessity to increase the involvement of the native population in national affairs, citizenship legislation and laws regarding the status of foreigners were among the most developed legal areas.

Citizenship Issues

The Law on Estonian Citizenship adopted on January 19, 1995,[1] is based on the Constitution of Estonia of 1992. This Law superseded all of the previous numerous regulations concerning citizenship and the complicated requirements for the acquisition of Estonian citizenship, including the Law on Estonian Language Requirements for Applicants for Citizenship of February 10, 1993. The Law excluded dual nationality and stated that an Estonian national cannot be a citizen of another country. Estonia has rejected a proposal by the Russian Federation that ethnic Russians living in Estonia be accorded the status of dual Russian-Estonian citizenship. The Law stipulated the conditions for acquiring Estonian nationality by birth, by naturalization, and by restoration. In order to naturalized, an individual shall reside in Estonia for no less than five years, pass tests on language comprehension and knowledge of the Estonian Constitution, and have a lawful income. The capacity for comprehending and, at least partially, speaking

[1] ESTONIAN LEGISLATION IN TRANSLATION, 1996, No. 1.

the Estonian language is a requirement for obtaining Estonian citizenship. The law determines the level of knowledge necessary for naturalization. Estonian citizens living abroad or any other ethnic Estonian living outside the country is exempt from the immigration quota and has the right to settle in Estonia without restrictions. The loss of Estonian citizenship occurs when the citizen is released from Estonian citizenship, when citizenship is revoked, or when an individual accepts the citizenship of another state or country. According to the data of the Citizenship and Immigration Board, Estonian citizenship has been granted to 1,714 people during the first six months of 2002, and 218 persons have renounced their Estonian citizenship. Eleven applications for an Estonian passport were turned down for the same period, and nine people were denied citizenship because of a criminal record.[2]

Status of Foreigners

The status of foreigners is regulated by the Aliens Act and the Refugees Act, both of July 11, 1997[3]. Presently, there are nearly 270,000 aliens living in Estonia, of whom 216,000 are based on a permanent residence permit. In keeping with Estonia's international obligations, these laws guarantee to every alien in Estonia fundamental rights and liberties, with the exception of those which the Constitution or the laws of the country grant only to the citizens. According to the Law, the annual immigration quota, established by the Government, may not exceed 0.1 percent of the population of Estonia. However, following the events of September 11, 2001, this quota was decreased. The Estonian Government set the immigration quota for 2002 at 665 people.[4] The Law on Aliens regulates the issuance of entry visas, residence permits, and employment permits to aliens. The issuance of entry visas is conducted according to the requirements of the Schengen Agreement. Residence and employment permits issued to the aliens are temporary and may be issued for a term of up to five years.

Under the Law, aliens are obliged to inform competent government authorities of any changes in their status and of other relevant circumstances, such as a change of a residence, premature termination of an employment contract, changes in marital status, interruption of studies, or expulsion from an educational institution. Also, the Law requires that domestic organizations dealing with foreigners (employers, educational institutions, bureaus of vital statistics, etc.) provide authorized government agencies with information about the aliens. Local police authorities are responsible for the registration of foreigners in Estonia. Legislation that regulates the stay in Estonia of applicants for asylum and refugees is based on the United Nations Convention Relating to the Status of Refugees and the 1967 Protocol. According to established procedures, all applicants upon submission of an application and initial interview with government officials shall be placed in a special reception center where they stay the whole time while their application is reviewed. Grant of refugee and asylum status is temporarily and may be revoked.

Estonia is often criticized for its overly conservative interpretation of the 1951 Geneva Convention. Out of 63 asylum-seekers, Estonia has given refugee status to four in five years. According to the Citizenship and Migration Board, the number of asylum-seekers was the highest in 1998, when 23 people applied for asylum in Estonia. Last year the number of applicants was 12.[5]

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[2] BBC Monitoring, July 19, 2002.

[3] *Supra* note 1, 1997 No. 11.

[4] RIIGI TEATAJA I Osa {Estonian official gazette] June 11, 2002, no. 48, Item 304.

[5] BALTIC NEWS SERVICE DAILY NEWS, July 4, 2002, in English, *at* www.securities.com.

International Legal Cooperation

Legal cooperation on cases of refugees and political asylum seekers is based on the established international documents. Estonia participates in the following European conventions related to the issue of legal cooperation in criminal matters and matters related to combating terrorism:

- European Convention on the Transfer of Proceedings in Criminal Matters
- Additional Protocol to the Council of Europe Convention on Extradition
- Second Additional Protocol to the Council of Europe Convention on Extradition
- European Convention on the Suppression of Terrorism
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

All of these documents have been ratified by the Estonian legislature, and the process for Estonian ratification of the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism was accelerated.

Since 1997, Estonia acceded to various Council of Europe conventions on extradition and exchange of prisoners. Estonia has not rejected any foreign country's extradition application. During the first six months of 2002, Estonia received 12 applications for the extradition of crime suspects, six of them for Estonian citizens. Nine applications are already approved by the Government, based on Justice Ministry proposals. Finland and Germany filed the most applications for extradition. Over the same period, Estonia applied for extradition from other countries of 10 crime suspects, seven of them Estonian citizens. The applications were made to Great Britain, Spain, Germany, and Sweden, and five of the suspects have been extradited to Estonia.[6]

Identification Documents

Recently, the Estonian Government started to issue electronic identification cards to its citizens which can be used in crossing the borders of three Baltic states. Estonian border services are already prepared technically to accept electronic ID cards as travel documents. The Prime Ministers of neighboring Latvia and Lithuania agreed to join the project in order to introduce a unified identification document for the citizens of the Baltic states.[7] The majority of Estonian inhabitants will get the new ID card during the regular replacement of personal identification documents during 2002-2005 since that is when passports issued at the beginning of 1990s will become invalid.

[6] BBC Monitoring July 26, 2002.

[7] *Baltic States to Introduce Jointly ID Cards.* ESTONIAN REVIEW, Oct. 5, 2001, *at* www.securities.com.

2. Legal Enforcement Against Terrorism

Even though direct terrorist threats to Estonia have not been identified, Estonia had already worked out a list of preliminary measures for waging the war against terrorism, focusing mostly on recovery from emergency situations.

The legislation of Estonia provides for measures aimed at the fight against crime, including terrorist activities. Details are elaborated in such documents such as the Police Service Act, Surveillance Act,[8] and State Secrets Act.[9] These laws provide for the conditions and procedures aimed at guaranteeing the security of the Republic of Estonia, Estonian citizens, and other states and persons through the detection and prevention of criminal offenses and terrorist activities. According to these acts, the constitutional rights of Estonian citizens and other persons can be restricted in order to perform functions specified by the law. The purpose of surveillance and other police activities is to collect information and conduct other activities aimed at the prevention of criminal offenses and terrorist acts. The Security Police Board, the Police Board, the Border Guard Administration, the Headquarters of the Defense Forces, the Prison Board, and the Customs Board are charged by the law to perform these duties.

Estonian legislation allows agencies fighting against terrorism to recruit persons for secret cooperation, use covert measures, use housing and property of other persons, establish cover organizations, plant undercover agents in criminal groups and organizations being monitored, use their staff employees as undercover agents working in other agencies and enterprises, and recruit qualified personnel for surveillance activities. The authorities have the right to collect and store information and to establish information systems and data banks necessary to ensure the prevention and detection of criminal and terrorist activities. The protection of information is regulated by the Data Banks Act.[10]

The State Secrets Act specifies the procedure for classifying information related to anti-terrorist activities as state secrets and provides for non-disclosure of this information. Based on content, different classifications of state secrets are introduced. Access to secret information is granted to those who pass the security check, according to the rules prescribed by the Surveillance Act. A special provision regulates access of aliens to state secrets. Citizens of foreign states or stateless persons may apply for an access permit only if the agency which possesses state secrets needs to permit access by such persons to the state secrets in connection with the performance of functions if the person has the necessary special knowledge and skills to assist in performance of such functions. However, access by aliens to state secrets is restricted and may be permitted only for participation in special programs, projects, or agreements. Aliens whose need for access arises from an international agreement need not pass a security check in Estonia.

Until recently, cyber-crime was not a problem for Estonia, and this area was excluded from the traditional field of police activities.[11] However, in November 2001, the Estonian Parliament passed the resolution on the creation of a separate police structure that will fight against crimes committed against

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[8] *Supra* note 1, 1999, No. 15.

[9] *Id.* 1998, No. 14.

[10] *Id.* 1999, No. 7.

[11] *Supra* note 2, Nov. 22, 2001.

and using computer systems. This agency, which will deal with hacking, database leaks, and the entire sphere of Internet activities, will work as a division of the national Data Protection Inspectorate.

The Criminal Code of Estonia includes provisions defining terrorism and terrorist acts as a crime and provides for legal measures of prosecution and punishing of terrorists. Under the Law, terrorism includes explosions, arson, or other actions creating the danger of people perishing, the causing of significant property damage or the ensuing of other socially dangerous consequences, if these actions were committed for the purpose of violating public security, frightening the population, or exerting influence on the adoption of decisions by agencies of power, and also the threat of the commission of the said actions for the same purposes. Depending on the severity of the crime, the Code makes terrorism-related activities punishable by imprisonment for a term of 10 to 30 years.[12]

3. Legislation Enacted After September 11, 2001

After the events of September 11, 2001, Estonia aligned itself with the previous statement by the European Union and gave full support to actions against terrorism taken by the United Nations. In their statements, Estonian leaders emphasized the vital importance of cooperation at all levels of society, as well as cooperation within the Baltic region and among the neighboring countries. The decision of the European Union to conclude Interior and Justice Chapters with Estonia[13] is a sign of recognition of Estonian legal protection bodies as responsible cooperation partners domestically and internationally. These agreements regulate international assistance to Estonia in the area of asylum policy; control of the external border; migration policy; fight against organized crime, fraud, drug, corruption, and terrorism; legal cooperation in civil and criminal cases; customs operations; data protection; cooperation in justice; and police affairs in the Schengen legal space. The EU did not apply any exceptions or transition periods in the chapter to Estonia.

Development of Regional Cooperation with the Baltic States

The Estonian Government intensified the cooperation with governments of other Baltic states and their law enforcement in order to coordinate anti-terrorist measures and enhance information exchange between allies. These measures include the introduction of identification documents mutually recognized in all three Baltic countries, joint patrolling the common border, creation of a joint database that contains information on potential migrants. Within the framework of the Baltic Anti-Criminal and Anti-Terrorist Forum conducted in Riga, Latvia in June 2002, and registered as an international organization,[14] Estonia elaborated measures aimed at the development of further cooperation with Russia and Poland in fighting organized crime. Estonia had taken concrete steps in working out a package of joint measures in response to the terrorist attacks against the United States. The package contained practical humanitarian, security, military, and legal measures.

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[12] CRIMINAL CODE OF THE REPUBLIC OF ESTONIA. Article 316.

[13] *Supra.* Note 2, Mar. 20, 2002.

[14] *See*, http://www.baaf.lv/eng/cronic.html

Financial Measures

Financial legislation in Estonia is relatively restrictive. It was elaborated and implemented under control of the EU experts and is in accordance with the EU standards. Money laundering legislation was adopted in 2001, and the Government exercises controls over the banks and financial institutions. On May 21, 2002, the Estonian Government decided to join the European Union Declaration on Fight Against Terrorism together with the EU Council statements on measures against terrorism.[15] These documents were adopted on January 17, 2002, in the name of all EU and EU-associated countries. The result of supporting these documents is that Estonia would enforce international sanctions, together with other EU countries, including freezing accounts and blocking access of terrorism-related units to financial means.

Airport Security

In order to strengthen security measurers at Tallinn airport, a special Government resolution was issued. Among other measures it provides for the complete x-ray control of all passenger luggage, letters, and postal packages. However, Estonia does not have the technical means to monitor its own airspace or prevent hostile invasion of its airspace. The Government has allocated some funds to purchase equipment for airspace monitoring, which will begin as of 2003.

Immigration Control

After the events of September 11, the emphasis on ensuring Estonia's security was shifted more than earlier to border guarding and checking individuals who enter the country. Estonian laws were adjusted with the purpose of preventing the infiltration of terrorists and their collaborators. Amendments to the Aliens Act established the immigration quota at the level of 0.05 percent of the permanent population of Estonia and abolished the right of families of non-citizens with temporary residence permits for quota-free immigration.[16] Tougher migration restrictions were included in the amended Immigration Act, which now states that the right to invite close relatives into Estonia should only be granted to non-citizens who have lived in this country for a minimum of five years and hold a permanent residence permit.[17] The shift in emphasis in ensuring national security onto tighter border guarding and checking the individuals who enter the country resulted in the absence of illegal immigrants in Estonia. During checks conducted by the European Union police authority simultaneously in the EU candidate countries, no illegal immigrants were found in Estonia. In regard to Estonian citizens, in addition to travel passports, a mandatory national ID card has been introduced. The document has electronically readable personal data which previously was included in the passports. The microchip-equipped card allows digital identification of a person and makes possible the use of a digital signature.

4. Limits on Counter-Terrorist Activity

Efforts of the Estonian Government to fight against terrorism are strongly supported by the two other branches of power. All legislative acts proposed by the executive were adopted by the legislature. The implementation of anti-terrorist legislation in Estonia is not limited by special legal provisions, except of the requirements of the Constitution and major criminal and procedural laws with regard to human

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[15] *ETA News Release*, ETA ESTONIAN NEWS AGENCY, May 21, 2002.

[16] *Id.* June 14, 2002.

[17] *Supra* note 2, May 16, 2002.

rights, individual privacy, and due process. Newly adopted security measures are not considered as restrictive or overly protective because previously adopted Estonian laws in the field of citizenship, migration, and national security are rather conservative and provide for the possibility to restrict one's constitutional rights in order to perform functions specified by the law.

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EUROPEAN UNION AND COUNCIL OF EUROPE

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

CONTENTS

EUROPEAN UNION AND COUNCIL OF EUROPE

The European Union, which views terrorism as a serious form of crime, is bound by treaty-based provisions to provide its citizens with a "high level of safety within an area of freedom, security and justice." The September 11 events in the United States gave the impetus to the EU institutions to adopt and/or expedite several significant legislative measures on a number of areas that reflect the Union's commitment and determination to eliminate terrorism. Among those, two framework decisions on combating terrorism and the European Arrest Warrant are especially important. The first provides for a common definition of terrorism, a list of offenses that must be treated as acts of terrorism by the Member States and punished as such. The second, to enter into force in 2004, will replace the traditional extradition procedure and will also expedite the procedures related to arrest, detention, and surrender of a suspect.

New challenges may arise for the European Union in preventing terrorists from entering the Community as a consequence of its future enlargement, the abolition of internal border controls, and other issues related to external border control. Inasmuch as the European Union is a supranational organization based on the rule of law, democracy and respect of human rights, in its efforts to eradicate terrorism it seeks to maintain a balance between societal interests and necessary restrictions imposed on civil liberties. The Council of Europe, to which all the EU Member States belong, has established the European Court of Human Rights as the final arbiter of violations of human rights by the Member States. The Court has held that a State in case of public emergency, including terrorism, may derogate from the provisions of the European Convention of Human Rights and Freedoms but only to the extent strictly derived from the exigencies of the situation and within the limits and under the conditions established by international law.

I. Introduction

Immediately after the events of September 11, 2001 in the United States, the European Council proclaimed in an extraordinary meeting on September 21, 2001, that the fight against terrorism is a "priority objective" for the European Union (EU). Subsequent European Council meetings in Brussels, Ghent, Laeken, and most recently in Seville, in June 22, 2002, reaffirmed the EU's commitment and determination to fight terrorism.

The attacks in the United States have shown that no country is immune to terrorism. The EU Union itself has witnessed a number of terrorist attacks within its borders. However, while the EU has joined the international community in the fight against terrorism, it also has to deal with some critical issues of its own: a Convention which is being developed on the future of the EU and the preparation for the first time of a written constitution; enlargement by potentially 13 new member countries in various stages of accession; issues related to border control and surveillance, which have acquired critical dimensions due to terrorism and future enlargement of the EU; and also the citizens' expectations and demands of the Union. Eurobarometer statistics of April 2002 indicate that people want more effective and efficient structures and mechanisms to respond to their needs. Citizens are very concerned about issues related to justice and home affairs, including terrorism and support the idea of an enhanced role of the EU in this area. "We do not want pillars, we want results" is an often-repeated phrase these days across Europe. Another issue that is currently under consideration is the integration of third country

residents who reside legally in the EU and the movement to grant them rights and obligations comparable to those reserved for European citizens.

The concept of European integration, which started 50 ago years when the first six members pooled their coal and steel resources, has greatly expanded and the Union's 15 Member States now include 370 million people.

The European Union is based on three pillars: the European Communities, the Common Foreign and Security Policy, and the Justice and Home Affairs. Preeminent among its institutions are the European Commission, the European Parliament, the Council and the Court of Justice, each having specifically assigned tasks.

- The European Commission proposes policies and legislation and is the guardian of the Treaties, since it ensures that the provisions of the Treaties and the decisions of the institutions are binding.
- The Council adopts legislation and also directs intergovernmental cooperation. It represents the national governments of the Member States. The Presidency of the Council rotates every six months and concludes with the European Council which brings together the Heads of State or the governments of the Member States.
- The European Parliament is composed of 700 members representing all the citizens in Europe. It participates in the legislative process by exercising the powers conferred on it by the Treaties.
- The Court of Justice interprets Community law and ensures that application of Community law is observed. Its decisions are binding.

Thus, as it stands today, the legal system of the EU is a complex one. The European Community and the EU have different legal status. Even though the majority of the legal systems of the 15 Member States belong to the civil law system and two have common law roots, they still have diverse legal systems. The Union's legislative decision-making process varies depending on the area it legislates. The Community has the authority to act within the limits of powers conferred on it by the Treaty. In some areas, the Union has exclusive competence to act, whereas in others it is a shared competence along with the Member States. When the Union does not have exclusive competence to take legislative action, it is bound to exercise its limited power within the boundaries imposed by two key guiding principles: subsidiarity and proportionality. The first indicates that the Union may take action only and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States. The second requires that action must be taken when it is necessary and proportionate to the aim to be achieved.

Issues on Justice and Home Affairs, such as terrorism and organized crime, are subject to a different legislative procedures and different legislative instruments. Being under Title VI of the Treaty on the EU, the right of initiative is to be shared between the Commission and the Member States until the year 2004, when the Commission will again assume the exclusive right to initiate legislation. The binding legislative instruments adopted are: 1) common positions, which define the Union's policy on a particular issue, often in external relations issues; 2) framework decisions; and 3) decisions and conventions which have to be subsequently ratified by the Member States. The Court of Justice has limited control on issues under the Justice and Home Affairs pillar.

In comparison, asylum, immigration, and visas are governed by Title IV of the Treaty on the EU, which falls under the first pillar. This is an area of shared competence between the Union and the Member States. Member States continue to have competence as long as the Community has not exercised its competence. All matters under the first pillar are governed by the "Community method." Under this

method, the Commission enjoys the exclusive right of initiative. The European Parliament's involvement depends on the procedure followed. Thus, under the co-decision procedure, it shares the legislative power with the Council; under the procedure, Parliament may exercise its right to amend a proposal and under the assent procedure, Parliament has to agree in order for a proposal to be adopted. The Council adopts proposals either with or without debate and by written procedure. The Council's adoption of some proposals on terrorism through the written procedure caused the Parliament to argue that such a procedure undermined the democratic process. Under the Community method, the following legislative instruments are produced: 1) regulations, which are directly enforceable in the Member States; 2) directives, which bind the Member States as to the results to be achieved and which allow the States to decide on the form and the methods to implement them, and decisions which are binding on those to whom they are addressed; and 3) recommendations and opinions, neither of which is binding.

The fundamental objectives of the Justice and Home Affairs pillar are freedom, security, and justice. The European Commission has often stated that these goals are interlinked and must be balanced, since freedom can be enjoyed only in a secure environment, supported by a fair and just legal system.

Terrorism presents special problems and challenges for the Union. While being cognizant of the societal interests at stake in the prevention and fight against terrorism, the Union is confronted with a number of critical issues, such as balancing of the rights of those who seek asylum based on humanitarian grounds against those who seek a safe haven within the Community, or balancing the rights of the individuals with respect to privacy and protection of their personal data with the needs of enforcement authorities for the effective control of crime.

The European Union and its Member States are founded on the principles of democracy, the rule of law, respect for human rights, and fundamental freedoms. Integrating human rights into the legal order and the policies of the European Union took place initially with the entry into force of the Treaty on the European Union in 1993 and subsequently with the Treaty of Amsterdam in 1999. Consequently, any measures taken in the fight against terrorism must be in compliance with the EU's human rights policy and free of any discrimination on the basis of race or ethnicity and free of any xenophobic elements. Member States must apply community standards guided by the above principle as well. The extraordinary European Council on September 21, 2001, requested that a guarantee of fundamental freedoms and rights run parallel to the European Arrest Warrant (EAW). In the current fight against terrorism, the European Union in compliance with its non-discrimination policy has disassociated terrorism from the Arab or Muslim world and supports the idea of a political and cultural dialogue with the countries where there is a possibility that terrorists might be residing.

Council of Europe

The EU Member States are also members of the Council of Europe, an intergovernmental organization with 44 members. Since its founding 1949, the Council has been committed to preserving European culture and safeguarding and advancing human rights, democracy, and the rule of law among its members. Under its auspices, a number of significant conventions on human rights and combating terrorism were prepared, such as the Convention on the Suppression of Terrorism. (For a complete list, see the Appendix) Among the former, the European Convention on Human Rights and Fundamental Freedoms holds a preeminent place. The Convention established the European Court of Human Rights in Strasbourg as a final arbiter to pass judgments on a Member State's obligations to uphold human rights for everyone within its jurisdiction. On the issue of terrorism, the Court has recognized that terrorism presents the Member States with special problems, nevertheless, States still have to observe human rights standards. Any anti-terrorism legislation must be provided by law and be proportionate to the aim to be

achieved.

Organization for Security and Cooperation in Europe

The EU Member States belong to a larger community as well. The Organization for Security and Cooperation in Europe (OSCE). The European Union participates through two representatives at the OSCE meetings. OSCE is a multinational organization of 55 members and espouses adherence to human rights standards and links this observance to the issue of security. The OSCE Parliamentary Assembly unanimously adopted the Berlin Declaration on July 10, 2002, on Confronting Terrorism: A Global Challenge in the 21st Century. It condemns all acts of terrorism and calls on all participating States that "any measures which restrict human rights and fundamental freedoms in response to terrorism have to fully respect international law and relevant OSCE commitments and must be reviewed as exceptional, temporary and non-arbitrary." As members of the United Nations, they are also bound by its provisions. A large number of States have ratified the most important conventions prepared under its auspices that deal with terrorism.

This report follows the legislative developments in the action plan as approved by the European Council on November 21, 2001, that focused on enhancing police and judicial cooperation, eliminating the funding of terrorism, improving air security, and coordinating the European Union's action in international fora. Thus, it reviews the major legislative instruments adopted under Title VI governing police and judicial cooperation in criminal aspects, and those adopted under Title IV that deal with asylum and immigration issues. It also deals briefly with issues related to terrorist threats and non-proliferation, air safety, and external relations. The last part deals with human rights issues and anti-terrorism legislation. The report is based not only on enacted legislative instruments but also on proposals and policy initiatives contained in communications and other documents which may or may not lead to legislative action.

II. Legislative Measures Introduced by the European Union

Domestic security issues and the maintenance of law and order in the territories of the 15 Member States fall within their own competence. At the European Union level, the legal basis for Community action in the field of terrorism comes under Title VI of the Treaty on European Union. The Union's objective is to provide citizens "with a high level of safety within an area of freedom, security and justice."

Two key articles of the Treaty on European Union authorize the European Union to prevent and combat terrorism at the Community level, article 29 and article 31(e). The first calls for common action in the following areas: between police forces and customs authorities, either directly or through the European Police Office (Europol); between judicial and other competent authorities; and approximation of criminal matters. Article 31(e) calls for establishing minimum rules relating to constituent elements and the imposition of sanctions against terrorism.

A. Police and Judicial Cooperation in Criminal Matters (Title VI)

Among the legislative instruments adopted by the Union, two framework decisions, one on Combating Terrorism and the other on the European Arrest Warrant (EAW), are of special significance. Even though both decisions were initiated prior to September 11, subsequent events in the United States expedited their adoption. It has been observed that these legislative measures have the effect of slowly introducing the concept of "internal European security," complementary to that of individual Member

States.[1] On the other hand, it has been noted that the EAW will not effectively function unless the Member States transpose it into their domestic legal systems *verbatim*. Otherwise, variations are bound to create problems of mutual recognition. Another issue associated with the Framework decisions in general is that there is no mechanism to punish a Member State either for not transposing the decision or transposing it inadequately, because the Commission lacks the power to institute proceedings before the Court of Justice against a Member State for matters that fall under the pillar of Justice and Home Affairs. Only another Member State has the right to institute such proceedings, although it has been pointed out that the Member States are not eager to take such an action against each other.[2]

1. Framework Decision on Combating Terrorism

The fundamental goal of this Decision is to harmonize the legislation on terrorism in the Member States. Currently, the legal regime on terrorism varies from State to State. Some have specific laws on terrorism, whereas others rely on criminal code provisions and punish terrorist activities as common offenses.

The Decision also reaffirms the commitment of the European Union and the Member States to human rights by stating that the language of the Decision "shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union."[3]

a. Definition of Terrorism and Terrorist Offenses

There is no universally accepted definition of terrorism. The Decision defines as a terrorist offense one that is "intentionally committed by an individual or group against one or more countries, their institutions, or people with the aim of intimidating them and seriously altering or destroying the political, economic, or social structures of a country." Terrorist group "shall mean a structured organization established over a period of time, of more than two persons, acting in concert to commit terrorist offenses." The Decision covers criminal conduct that is against a Member State but also applies to conduct that affects the European Union even though the terrorist acts were initiated in third countries.

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[1] The European Convention, the Secretariat, Justice and Home Affairs– Progress report and general problems (Brussels, May 31, 2002).

[2] *Id.*

[3] Art. 1, ¶ 2 and Recital 10, stating that the Decision respects fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and, as they arise, from the constitutional traditions common to the Member States.

Member States must punish as terrorist offenses a broad range of offenses enumerated in the Decision: murder; bodily injuries; kidnaping or hostage taking; extortion; theft or robbery; unlawful seizure of or damage to state or government facilities, means of public transport, places of public use, infrastructure facilities and property; fabrication, possession, acquisition, transport, or supply of weapons or explosives, release of contaminating substances, or causing fires, explosions or floods, endangering people, property, or other fundamental resources; attacks through interference with an information system; threats to commit any of the offenses listed above; and directing a terrorist group.

b. Penalties

Member States are bound to punish the above offenses by "effective, proportionate and dissuasive penalties." This is commonly used language often inserted in Directives or Framework Decisions that provides general guidelines without prescribing specific penalties.

Aggravating and mitigating circumstances are included in the Decision. The former apply when a terrorist act affects a large number of people, is carried out against heads of state, government ministers, or other internationally protected people. The latter include instances in which the accuser either renounces terrorist activity or provides the appropriate authorities with information that leads to the bringing to justice of others involved or that prevents further terrorist offenses.

Legal persons, under certain circumstances, may be held liable. Should these legal persons be found guilty, they may be subject to a variety of sanctions, such as no public aid or benefits or disqualification from practicing commercial activities.

c. Jurisdictional Issues

Member States are able to establish jurisdiction for investigating and prosecuting on four bases. The rule of territoriality is mandatory. Thus, a State Member must investigate and prosecute terrorist offenses committed within its territory, including airplanes and vessels, irrespective of the nationality of the offender. The other three rules deal with the active personality principle, when the offender is a national of a Member State; when the offense is committed for the benefit of a legal entity established within its territory; and when the offense is committed against its institutions or its people. Member States are free to decide whether or not any of these jurisdictional rules will apply in a particular case. When there is a conflict of jurisdiction between two or more Member States, they are obliged to coordinate their actions in order to prosecute such acts effectively.

d. Protection and Assistance to Victims

The European Commission provides for the need to protect and assist victims of terrorist attacks. The Framework Decision requires that Member States ensure that investigation and prosecution of offenders is possible *ipso jure,* regardless of whether or not the victim files an accusation or a report.

Within this context, a separate Council Framework Decision on the standing of victims in criminal proceedings[4] aims to approximate the rules and practices with regard to victims rights. It requires that Member States enact legislation to safeguard the right to be treated with respect and dignity, the right to

[4] 2001/220/JA: Council Framework Decision of Mar. 15, 2002, on the standing of victims in criminal proceedings; OF L 82/1 (3/22/2001).

be heard during proceedings and supply evidence, the right to understand and be understood, and other rights. It also calls on Member States to ensure the right of the victim to be compensated by the offender and the obligation of the offender to comply.[5]

e. Cooperation and Exchange of Information Among the Member States–Notification Requirements

Member States are urged "to afford each other the widest measure of mutual assistance in respect of proceedings related to terrorist offenses." They are required to designate contact points for the exchange of information and forward such information to the General Secretariat which in turn will notify other Member States. In case a Member State comes across information about a pending terrorist attack in another Member State, the former must notify the latter.

2. European Arrest Warrant (EAW)

As of 2004, the EAW will replace all legal instruments on extradition as well as the provisions implementing the Schengen Agreement[6] concerning extradition. In practical terms, suspects sought for terrorism in a Member State that issues the arrest warrant must be surrendered by the executing state. So far, six Member States, Belgium, France, Luxemburg, Portugal, Spain, and United Kingdom have made a commitment to adopt the EAW almost a year before the implementation deadline imposed by the Framework Decision.[7]

The EAW presupposes a high level of mutual confidence, trust, and cooperation among the Member States in regard to the legal and judicial systems. It is based on two fundamental rules:

- **European Union citizenship.** Every person who holds the nationality of a Member State is also a citizen of the Union. As such, a person may be prosecuted and sentenced at the place of commission of an offense, regardless of nationality. Thus, the exception under a rule that calls for non-extradition of a State's own citizens will no longer apply among the Member States.
- **Mutual recognition of court orders among Member States.** The two basic rules on extradition, the dual criminality and the rule on speciality, will no longer be applicable. Under the dual criminality, conduct must be criminal in both Member States, while the rule on speciality means that a person may not be prosecuted for any offense other than the one for which he/she was extradited. However, a Member State may opt out if, by executing the arrest warrant, the warrant would violate fundamental principles of its legal system.

a. Definition

The EAW has a twofold function: as a conventional arrest warrant that deals with search, arrest, and detention; and as a request for surrender to the authorities of the Member States that issues it. The search and arrest procedures are binding on the executing state. However, in order to detain an individual, a court decision is needed. Such a court order is also needed to surrender the person to the

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[5] Currently, the European Commission is drafting a Green Paper on the issue of compensation to crime victims.

[6] Convention Implementing the Schengen Agreement of June 14, 1985, OF L239 (9/22/2000).

[7] *Europe: Fast track for EU arrest warrants,* BBC NEWS, *at* http://news.bbc.co.uk/hi/english/worl/europe/newsid_1820000/1820507.

issuing judicial authority if that person does not consent to it.

The EAW applies not only to terrorism offenses but to any criminal offense for which a sentence of at least a year of imprisonment may be imposed and, in cases in which there has already been a conviction, a sentence of at least four months has been imposed.

b. Rights of a Requested Person

When a requested person is arrested on the territory of another Member State, the competent authority must inform that person of the warrant and must ascertain whether he/she consents to surrender. The arrested has the right to be assisted by legal counsel and by an interpreter, if need be.

c. Judgments in Absentia

Some Member States allow proceedings *in absentia.* This is a contentious issue in view of the right of the accused to be present at trial, recognized in the 1966 International Covenant on Civil and Political Rights which has been ratified by the 15 Member States. The United Nations Human Rights Committee concluded that such proceedings are allowed in "exceptional circumstances" and as long as the defendant was given a chance to be present and prepare his/her defense.

Pursuant to the warrant, when a court decision that serves as a basis for the EAW was given *in absentia,* the executing authority must record the person's opposition or the opportunity to appeal. The warrant does not contain the right to a re-trial. This right is specifically included in the Second Additional Protocol to the European Convention on Extradition which refers to the "right to a re-trial which safeguards the rights of the defense."[8] Absence of this right will entail application of different standards among the Member States.[9]

3. Freezing of Funds, Money Laundering, Banking Secrecy

The European Council has adopted the following legislation on the freezing of funds:[10]

- a common position that updates an earlier position on the application of specific measures to combat terrorism.[11] The Annex contains a list with the names of persons, groups or entities involved in terrorist acts. Member States are required to take measures to:
- prohibit the supply, sale, and transfer to these individuals, groups, or entities of arms and related materiel of all types from their territories or using their flag vessels or aircraft by nationals of Member States outside their territories; and freeze the funds and other financial assets or economic resources of such persons, groups, or entities.

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[8] House of Lords, Select Committee on the European Union, THE EUROPEAN ARREST WARRANT H.L. (No, 2001-2002,)(Feb. 26, 2002).

[9] *Id.*

[10] OJ L 116 (5/3/2002).

[11] Council Common Position of May 27, 2002, concerning Restrictive Measures Against Usama bin Laden, members of the al-Qaeda organization and the Taliban and other individuals, undertakings and entities associated with them and repealing Common Position 96/746/CFSP OJ L139/4 (5/29/2002).

- the common position of June 17, 2002 which updates Council Position 2001/931/CFSP on the application of specific measures to combat terrorism.[12]
- the implementing Decision which establishes the list provided for in article 2(3) of Regulation No. 2580/2002 on specific restrictive measures directed against certain persons and entities.

Another important act is the Council Framework Decision on the Execution of Orders Freezing Assets or Evidence on Money Laundering. The decision aims to make freezing orders issued in a Member State directly enforceable in other Member States without the need to issue a new freezing order. Among the offenses listed that give rise to freezing orders is money laundering. The transposition deadline is December 31, 2002.

a. Money Laundering

To combat money laundering, in 1991 the European Community adopted the Money Laundering Directive[13] which provides for controls on currency movements in amounts more than €15,000 through financial institutions.

A new Framework Decision of June 26, 2001 on identifying, tracing, seizing and confiscating the proceeds of crime contains the following:

- broadens the definition of credit and financial institutions to include investment firms, insurance companies doing business covered by the Directive;
- expands the definition of criminal activity to include not only drug trafficking but also organized crime;
- obliges accountants, auditors, real estate agents, and notaries (in many European nations, notaries are a subtype of lawyer) to report suspicious activities when they represent clients in transactions involving real property, opening a bank account, or handling a client's money;
- provides that independent legal accountants may report suspicious activities to their bar associations. The Directive is to be implemented by December 31, 2002.

A proposal was introduced in July 2002 in the form of a Regulation[14] to complement the Money Laundering Directive. The proposal introduces controls on large amounts of money that may cross the external borders of the Community. The Commission justified its action partly because some Member States lack statutory controls on cash movements through customs. In addition, the Commission reasoned that terrorists may use cash to avoid bank transactions because financial institutions have increased their security controls on money movements since September 11.

The proposal establishes an obligatory declaration on entering or leaving the Community customs territory by any natural person carrying the amount of €15, 000 or more.

Customs officials, who suspect based on material or circumstantial evidence that they have

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[12] OJ L 16/32 (6/18/2002).

[13] Council Directive 91/308/EEC of June 10, 1991, on prevention of the use of the financial system for the purpose of money laundering OJ L 166/77 (6/28/1991).

[14] Report from the Commission to the Council on Controls on Cross-border Cash Movements; Proposal for a Regulation of the European Parliament and the Council on the Prevention of Money-Laundering by Means of Customs Cooperation COM(2002) 328 final.

uncovered large cash flows that may be destined for money laundering, have the duty to inform the customs officials of the Member State where the person making the declaration resides and the authorities of the Member through which the person entered or left the customs territory.

The same reporting obligation exists in the case of a natural person who repeatedly enters or leaves the Community customs territory even though the amount of cash declared is below the fixed threshold.

The proposal also gives the power to customs officials–even absent prior evidence that an offense is being committed–to check persons and their luggage, to question them about any large sums of money found, and to keep such cash by administrative decision for up to three working days or longer if it is necessary.

b. Banking Secrecy

Under the anti-laundering provisions, when there is suspicion of money laundering activities, banking and other credit institutions have the dual obligation to lift their banking confidentiality and to report the suspicious activity to the proper authorities.

At the international level, the European Commission and the 15 Member States participate in the efforts of the Financial Action Task Force on Money Laundering (FATF). None of the Member States is on the list of those countries which lack adequate protection against money laundering. The FATF has identified a number of sources that are used by terrorists to finance their activities. Some sources are illegal, such as drug trafficking, extortion and kidnaping, robbery, fraud, and gambling or direct sponsorship by certain states. Others are legal, including contributions and donations, and funds accrued from business activities. According to a report prepared by FATF, even though the sources of funding for terrorist activities and organized crime are similar, the motives are different. In the case of legal sources, the connection between the funds and terrorist activity is hard to make. Thus, countries will face difficulties in applying the anti-laundering legislation and may not be able to provide assistance in some investigations.[15]

4. Cyber-Terrorism

Cyber-terrorism actions that aim to damage critical infrastructures, endanger humans, and/or bring about serious financial chaos are governed by the Framework Decision on Combating Terrorism and by a framework decision on attacks against information systems that was proposed in April 2002.

The proposal's objective is to approximate the criminal law of the Member States "in order to ensure the greatest possible police and judicial cooperation in the area of criminal offenses related to attacks against information systems, and to contribute to the fight against organized crime and terrorism." It specifically criminalizes the following acts:

- attacks through illegal access to information systems

  According to the Commission's explanatory memorandum this includes the notion of "hacking." Member States are required to criminalize any act that is committed against any part of an information system which is under protection measures; with the intent to cause damage to a natural or legal person; or with intent to gain economic benefits.

[15] Http://www.oecd.org/fatf/NCCT-en.htm

- illegal interference with information systems

  Member States are required to criminalize any of the following actions:

  – the serious hindering or interruption, without a right, of the functioning of an information system by inputting, transmitting, damaging, deleting, or altering computer data. This criminal activity covers the so-called "denial of service attacks."

  – the deletion, deterioration, alteration, suppression or rendering inaccessible of computer data of an information system with the intent to cause damage.

- instigation, aiding, and attempt to do the above

Member States need to transpose this decision into their national legal systems by the implementation deadline, December 31, 2003.

The Council of Europe's Cyber-crime Convention opened for signatures in November 2001.

5. Participation in Illegal Organizations– Supply of Weapons to Terrorists

a. Criminal Organizations

Since 1998, a Joint Action has required Member States to make it a criminal offense to participate in criminal organizations established in one or more Member States of the European Union.[16] In particular, Member States must prosecute certain types of conduct which take place in their territory, whenever the organization is based or pursues its criminal activities there. In case of conflict of jurisdiction, Member States are urged to consult and coordinate their actions and take into consideration the location of the organization's various components in the territory of a Member State.

b. Supply of Weapons to Terrorists

Following the events of September 11, the Council adopted a decision that authorized the signature on behalf of the European Community of the United Nations Protocol on the illicit manufacturing of and trafficking in firearms, their parts, components, and ammunition. The decision is annexed to the Convention Against Transnational Organized Crime.

The Council Directive on the control of the acquisition and possession of weapons was adopted in the early 1990s and seems to provide a sufficient legal framework to exclude those who are likely to be a danger to public order or safety from acquiring and possessing a firearm. The Directive, which has been transposed into national law by all Member States, imposes a number of obligations related to the acquisition and possession of weapons.

> Council Regulation No. 13340/2002 governing the dual-use goods. This Regulation establishes a Community-wide regime for the control of dual-use items and technology. In addition to the dual-use items included in the Annex, it requires authorization for exports of any items which are or may be intended to be used in connection with weapons of mass destruction.

Lastly, the European Union Code of Conduct on the export of military equipment, even though

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[16] 98/733/JA Joint Action of Dec. 21, 1998, adopted by the Council on the basis of Art. K.3 of the Treaty on European Union. OJ L 351/1 (12.29.1998).

it is not a legally binding document, does provide an additional tool to reduce the likelihood of European armaments being diverted to terrorist organizations.

6. Practical Measures That Will Facilitate the Fight Against Terrorism

Several measures that have been adopted to improve cooperation in criminal matters will also assist Member States and the EU in the fight against terrorism:[17]

- **Directory of Specialized Counter-Terrorism Competence, Skills and Expertise in the Member States.**[18] The United Kingdom was designated in 1996 to establish and a maintain a Directory of Specialized Counter-Terrorism Competence and Skills. The Member State that holds the Presidency every six months is responsible for updating and maintaining the Directory. Statistics on the use of the Directory are kept by the manager of the Directory who also has to report to the Council twice a year as to its effectiveness.
- **Liaison Magistrates.** This program has been in operation since 1996 and promotes the exchange of judicial authorities among Member States, thus increasing and improving their understanding of the various legal systems.
- **European Judicial Network.** The network was established in 1998 to improve contacts between the judicial authorities who are involved in international cooperation. Its members provide legal information and guidance to practitioners.[19]
- **Europol.** Europol is basically a European police force. The Europol's objective as provided by the Europol Convention[20] is

  > to improve the effectiveness and co-operation of the competent law enforcement authorities of the Member States in preventing and combating terrorism, unlawful drug trafficking and other forms of international crime where there are factual indications that an organized criminal structure is involved and two or more Member States are affected.

  It has fewer powers than those accorded to the national police forces, such as use of weapons and the authority to arrest suspects.[21]

Europol is entrusted to: facilitate the exchange of information between the Member States; obtain, collate, and analyze information and intelligence; notify immediately the authorities of the Member States about possible links between the data collected and criminal offenses; transfer all pertinent information to the national units; and maintain a computerized database. As of January 1, 2002, Europol's mandate

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[17] Justice and Home Affairs, Judicial Cooperation in criminal Matters - Approximation and Collaboration. Http://europa.eu.int/comm/justice_home/unit/penal_en.htm.

[18] Joint Action 96/610/JHA of Oct. 1996, adopted by the Council on the basis of art. K.3 of the Treaty on European Union, on the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise in the Member States of the European Union. OJ L273, (10/25/1996).

[19] Joint Action 98/428/JHA of June 29, 1998, adopted by the Council on the basis of art. K.3 of the Treaty on European Union, on the creation of a European Judicial Network, OJ L 191 (7/7/1998).

[20] Europol Convention of July 26, 1995, on the establishment of a European Police Office, OJ C316/2 (11/27/1995).

[21] Communication from the Commission to the European Parliament and the Council, Democratic Control over Europol (COM/2002/0095) final.

has been expanded to include all forms of crime listed in the Annex to the Europol Convention. All the Member States have sent police and intelligence officials with special skills on terrorism to participate in a counter-terrorism task force established soon after Sept. 11 and housed in Europol. As a result a fully operational task force was established soon after September 11, composed of 30-40 experts on anti-terrorism.

- **Eurojust**. The establishment of Eurojust has been envisioned since 1999 by the Tampere European Council to assist in the investigation and prosecution of serious cross-border crime. In December 2000, a provisional judicial unit, composed of magistrates, prosecutors, judges, and other legal experts seconded from every Member State, began its operations and has tackled 180 criminal cases so far. Pro-Eurojust (provisional-Eurojust) identified several problems in its 2001 report that impair the overall effectiveness of the unit. Some problems, which are of general nature and arise because of the diverse legal and judicial systems among the Member States, the different languages, and the lack of uniformity in the powers conferred on its members, are bound to similarly affect the formally established Eurojust in January 2002.[22] Other problems are linked to certain legal principles associated with traditional extradition law, such as dual criminality and the prohibition against extraditing one's own nationals. Those will be eliminated eventually once the EAW is enforced. Other hurdles stated in the report include a lack of knowledge of the legal systems of other Member States and poor quality of letters of request. The training programs sponsored by the EU, referred to below, will assist the prosecutors in overcoming these.[23]

- **Joint Investigation Teams** A framework decision adopted in June 2002[24] allows the competent authorities of two or more States to establish a joint investigation team for a specific purpose to carry out criminal investigations in one or more Member States establishing the team. One important aspect is that information that was obtained by a member of the team can be used not only for the purposes for which the team was created but also "for preventing an immediate and serious threat to public security."

- **Police and Judicial Contact Points** A Draft Decision[25] calling on Member States to establish police and judicial contact points to exchange information on terrorist organizations was proposed in May 2002. Thus, requests related to terrorism will be accorded high priority status. The proposal should be adopted after an opinion is submitted by the European parliament.

- **Schengen Information System (SIS)** This joint information system operating under the Schengen Convention was established to maintain national security, public policy and security in the Member States and to apply the provisions of the Convention. The SIS system contains data supplied by the Member States. Each Member has the discretion to decide, when it issues an alert about an individual,

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[22] Council Decision 2002/187JHA of Feb. 28, 2002, setting up Eurojust with the view to reinforcing the fight against serious crime OJ L 63 (3//6/2002).

[23] Europe Information Service, European Report, Justice and Home Affairs: Pro Eurojust says it was Impeded by Diverging Legal Systems, (Feb. 2, 2002).

[24] Council Framework Decision of June 13, 2002, on Joint Investigation Teams (6/20/2002).

[25] Initiative of the Kingdom of Spain with the view to adopting a Council Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with art. 4 of Common Position 2001/931/CFSP OJ C 126/15 (5/28/2002).

as to whether the case should be inserted in the system. The following groups of data are inserted: a) individuals for whom an alert has been placed and; b) on objects which are sought for the purpose of seizure or use in criminal proceedings and c) vehicles. The SIS requires that data on individuals should be inserted in the following instances:

1) on persons wanted for arrest for extradition purposes at the request of the judicial authority of the requesting Member;

2) on aliens for whom an alert has been issued in order to refuse entry. In this case, each Member State prepares its alert list based on decisions issued by the competent authorities, either administrative or judicial. Decisions are based on various grounds, such as a threat to public policy or national or public security, in case the individual has been convicted of an offense punished by at least a year imprisonment or deportation orders;

3) missing persons or persons who need to be under police protection for their own safety; and

4) witnesses, and persons called to appear before judicial authorities in connection with criminal proceedings.

Access to data and the right to search such data is reserved exclusively for authorities responsible for border checks and other police and customs officials. SIS contains a number of guarantees related to the protection of personal data and security of such data, in accordance with those provided in Directive 95/46/EC .

The SIS system as it currently operates was identified as a problem area in the August 28, 2002, report drafted by the United Nations panel which is in charge of monitoring the enforcment of an arms and financial embargoes.[26] The report states that SIS has in its database only 40 of the 219 names on the UN list of terrorist groups or individuals whose funds must be frozen. Moreover, a number of Members argued that their national laws precluded them from placing their citizen's names on national watch lists without appropriate judicial basis.

- **Common Scale to Assess Threats to VIPs Visiting the European Union**[27] This scale, adopted in July 2002, establishes a common evaluation scale to facilitate the exchange of information between the Member States' police and security services to assess the level of such threats of terrorist action to public figures.

- **Teams to Evaluate the Judicial System of a Member State** Under the leadership of Spain, a proposal was made to create independent teams to evaluate the judicial system of Member States with the view to assessing the effectiveness of their anti-terrorism legislation. Spain also introduced a proposal for a standard form to be used for exchanging information on violence at EU summits caused by radical groups with terrorism links. Both initiatives must be unanimously approved by the Council after the European Parliament gives its opinion.[28]

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[26] *War on Al Qaeda Funds Stalled*, WASHINGTON POST, Aug. 29, 2002, at A01.

[27] Council Recommendation of Dec. 6, 2001, setting a common scale for assessing threats to public figures visiting the European Union OJ C356/1 (12/14/2001).

[28] European Report: Justice and Home Affairs: Spanish Move to Boost Judiciaries' Counter terrorism Capacity (May 29, 2002).

- **Best Practices in Judicial Cooperation in Criminal Matters** This initiative includes several practical measures to assist those involved in the writing and presentation of requests for judicial assistance.

7. Financing of Programs in the Field of Police and Judicial Cooperation

From its budget, the EU finances several activities in order to enhance cooperation among law enforcement personnel and also increase their understanding of the legal systems and law enforcement practices followed in other Member States. The following programs operate in the area of police and judicial cooperation:

- Oisin II is a multi-year program that includes incentives, exchanges, training, and cooperation among law enforcement authorities. The funds cover up to 70 percent of the programs' total cost.
- Falcone is a multi-year program of exchanges, training, and cooperation for those responsible for combating organized crime.
- Hippocrates funds programs for either public or private organs involved in the field of crime prevention, either general or organized crime.
- Grotius II penal involves incentives and enhancements for those who are legal practitioners.

On July 22, 2002, the Council decided to establish a single framework program on police and judicial cooperation for the period January 2003 to December 2007.[29] The amount granted for implementation of this program is €65 million. The program will co-finance projects of a maximum duration of two years adopted by public or private institutions and must involve three Member States or two Member States and one applicant country with a view to familiarizing themselves with the body of law on police and judicial cooperation. The activities sponsored by this program include training, exchange, studies and research, dissemination of the results obtained under the program, cooperation between law enforcement personnel of the Member States, and conferences and seminars.

The program will focus on four groups: legal practitioners, law enforcement officials and officers, officials in government departments and representatives of associations, and representatives of victim assistance services.

8. Initiatives Introduced by the Danish Presidency

Denmark is currently holding the presidency of the Council of the European Union, which rotates every six months among Member States. While Spain was holding the presidency, it adopted several initiatives that have been incorporated in the report. It remains to be seen whether such initiatives will lead to legislation.

Denmark introduced an initiative to amend the Europol Convention through a Protocol[30] with the intention of providing more support and means to Europol in order to function more effectively.

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[29] Council Decision of July 22, 2002, establishing a framework program on police and judicial cooperation in criminal matters (AGIS) OJ L203/5 (8/1/2002).

[30] Initiative of the Kingdom of Denmark with the view to adopting a Council Act drawing up, on the basis of art. 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), of a Protocol amending the Convention OJ C 172/5 (7/18/2002).

Another initiative relates to the common use of liaison officers posted abroad by the law enforcement agencies of the Member States.[31] "Liaison officers" are representatives of a Member State posted to one or more third-countries or international organizations in order to develop and maintain contacts with the authorities of those states with the view to preventing or investigating criminal offenses. The initiative provides for cooperation between Europol and liaison officers and cooperation between Member States on exchange of information though liaison officers.

B. Border Control, Visas, Asylum, and Immigration (Title IV)

1. Border Control

The Laeken European Council in December 2001 expressed the importance of better management of the Union's external border control in the fight against terrorism and illegal immigration and urged the Commission and the Council to explore new ways or mechanisms to provide for better external border control.

The current *acquis communataire* on external borders is principally based on the Schengen Convention[32] and Title IV of the Treaty on European Community. The Schengen agreement –which was signed in 1985 by Germany, France, and the Benelux countries– has been incorporated into the founding Treaties. As of 2001, the participating states include: Austria, Belgium, Denmark, Finland, Germany, Greece, Spain, France, Italy, Luxemburg, the Netherlands, Portugal, and Sweden and non-EU members Iceland and Norway. Ireland and United Kingdom have opted out of certain provisions. Both exercise control on persons entering from other Member States. On the other hand, Member States are also allowed to exercise controls on persons entering their territory either from Ireland or the United Kingdom. United Kingdom and Ireland participate in all activities under Title VIe - Cooperation in Justice and Home Affairs and those under the judicial and police cooperation in the Schengen agreement.

A salient element of the Schengen agreement is the lack of internal border controls among its members. In practical terms, this principle is expected to fully apply to everyone, regardless of nationality, as of May 1, 2004. At the external borders, EU citizens are requested to show ID cards or passports, while third country nationals enter by showing a valid visa or just a passport. The 13 applicant candidates for the next enlargement are required to transpose into internal law the Schengen requirements pertaining to abolition of controls at the internal border while reinforcing the required checks and surveillance performed at their part of the external borders. While the applicant countries are expected to bear the costs of their border control from their own budget, the European Commission, through its Phare program, grants some funds to assist the candidate countries in this regard. For instance, during the period 1995-1997, €53.8 million from Phare funds was given to improve border control in the central and eastern European countries, additional €17.7 million was given for technical support of the customs authorities in these countries. [33]

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[31] OJ C176/08 (7/24/2002).

[32] Convention Implementing the Schengen Agreement of June 14, 1985, between he Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on June 9, 1990, OJ L23/19 (9/22/2000).

[33] European Commission, Living in an Area of Freedom, Security and Justice, Justice and Home Affairs in the European Union 20 (2000).

Since March 26, 1995, checks and surveillance at the external borders are governed by certain uniform rules laid down in Chapter 2 of Title II of the Schengen Convention.[34] Articles 7 and 47 of the Schengen Agreement require that the Member States cooperate closely in the area of border controls. Two kinds of cooperation pertaining to checks and surveillance are currently followed by Member States: exchange of liaison officers[35] and bilateral police cooperation agreements between the Member States[36] with the objective of fighting illegal immigration and organized crime.

Several of the basic provisions of the Schengen Convention have a bearing on controlling illegal immigration in general and the fight against terrorism and organized crime in particular:

- Member States are authorized "within the scope of national powers and national law and taking into account the interests of all Contracting Parties" to perform checks at external borders.[37]
- External borders may in principle be crossed only at border crossing points and during the fixed hours of operation.[38]
- "Checks on persons" means not only the verification of travel documents and those related to entry, residence, and work but also checks "to detect and prevent threats to the national security and public policy of the Contracting Parties."
- Member States in granting aliens permission to stay for no more than three months must ensure that, among other requirements to be met, aliens do not pose a threat to public policy, national security, or the international relations of any of the Contracting Parties; and that they are not persons for whom an alert has been issued.
- If a Member State feels that in order to apprehend terrorists it must reimpose checks at its border and thus restrict the free movement of people, it has the right to do so under the clause of public policy or national security. Subsequent notification of other States of such action is needed.[39]
- An established mechanism, the Schengen Information System (SIS)[40]– which is a joint information system designed to improve police and judicial cooperation in criminal matters, and the policy on visa, immigration and the free movement of persons–is another means for control on persons considered to be a threat to national security or public policy. The SIS consists of a national section and a technical support function. Each Member State is responsible for financially supporting its own national section, whereas the Member States are jointly responsible for the technical support section. Basically, SIS contains various data related to aliens. When a Member State issues an alert in order to refuse entry to a particular alien, based on the grounds of national security, public policy, and public security, it transmits the information to the SIS system.

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[34] *See* the Common Manual for External Borders. The Decision of the Schengen Executive Committee of April 28, 1999, which adopted the Manual is in OF L239/317 (9/22/2000).

[35] Art. 7 of the Schengen Convention.

[36] Art. 47, *id*.

[37] Art. 6 *id*.

[38] Art. 3.

[39] In accordance with art. 2(2) of the Schengen Agreement.

[40] Arts. 92-119 of the Schengen Agreement govern the SIS system.

- National authorities responsible for border control as well as consular authorities have access to all data contained in the SIS and have the right to search such data.
- The establishment of a Standing Committee on the Evaluation and Implementation of Schengen[41] created a committee entrusted with the responsibility to evaluate the manner by which Member States carry out their Schengen obligations related to checks and surveillance operations at external borders, practices related to visas, and police and judicial cooperation. It fulfills two purposes: to evaluate new Member States in order to ensure that their preparedness for a Council Decision authorizing them to apply the Schengen *acquis*, and to ensure the correct application by the Member States of the Schengen provisions.

The Commission in its latest communication, "Towards integrated management of the external borders of the Member States of the European Union,"[42] identified several factors that make border control vulnerable and may cause problems to internal security of the Member States:

- the national authorities assigned to tasks of checks and surveillance vary among the Member States, from a single unit to two or more different bodies that report to various governmental departments
- some Member States bear a disproportionate financial burden in comparison to others, especially those with extensive maritime borders. The EU funds certain joint actions on the external borders of the Union based on the INFERRED (the European acronym) Community initiative, which applies to maritime borders, police, customs, and judicial cooperation.
- lack of uniformity in the criteria applied by Member States to aliens who are a threat to public policy, national security, or the international relations of any Member State
- the police cooperation agreements referred to above do not seem to reach beyond the point of bilateral agreements and this lack is an obstacle to attaining a truly European dimension. Some of the officials seconded to another Member State lack public authority status and thus are unable to perform checks and surveillance tasks.

The Commission made a list of priority projects in its Communication, such as preparation of a practical handbook for the use of border guards, establishment of an External Borders Practitioners Common Unit that involves those responsible for border guard services, and a mechanism for burden-sharing between Member States and the Union. The Commission has also proposed establishing a European Corps of Border Guards to perform surveillance functions, starting with the maritime border which is the least developed.[43] At the European Convention on June 8, 2002, Sweden opposed the idea of creating such a body, whereas some candidate countries, like Poland and Bulgaria, supported the notion especially if some form of financial assistance is offered by the EU.[44]

a. Second Generation Schengen Information System (SIS II)

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[41] Decision of the Executive Committee of September 16, 1998, setting up a Standing Committee on the evaluation and implementation of Schengen OF L 239/138 (9/22/2000).

[42] COM(2002) 233 final (5/7/2002).

[43] Other initiatives that are being carried out are a feasibility study by Italy on the establishment of a European border police force and a study pertaining to police and border security by three Member States and funded with Community money.

[44] Europe Information Service, European Report: European Convention: Call for Bigger EU Role in Justice and Home Affairs (June 8, 2002).

Currently, 13 Member States and two non-Member States (Norway and Iceland) participate in the SIS. However, the SIS is a system that was created initially with a small number of participant countries and thus its current capabilities are not sufficient to handle more Member States after enlargement.[45] Based on the most currently available developments in information technology, the EU has introduced the concept of a second generation SIS and provided funds from the general EU budget to accomplish this task. Future EU Member States are required to use the system, so during the application process applicants have to transpose the Schengen *acquis* into their domestic legislation.

Two legislative acts were introduced in 2001 in order to implement SIS II: Council Regulation No. 2424/2001on the development of the second generation Schengen Information System (SIS II) in the area of visa, asylum, immigration, and other policies related to the movement of persons; and Council Decision No. 2001/866/JAI in the field of police and judicial cooperation.

In order to improve SIS and enhance its capabilities as a tool in the fight against terrorism, a pending initiative proposed by Spain introduces a number of key provisions.[46] Some of these provisions deal with transmission of personal data and access to such data. Under existing rules, every Member State has to ensure that on average every tenth transmission of personal data is recorded in the national section of SIS in order to check whether the search is admissible or not, and the record has to be deleted after six months. The new language in the initiative introduces the following:

- the obligation of the Member States to record every transmission of personal data calls for retention of personal data for a maximum of a year
- authorities responsible for issuing visas, central authorities responsible for examining visa applications, and authorities responsible for national permits to access and search data not only on aliens for whom an alert has been issued but also on blank official documents and identity papers which have been stolen, lost, or misappropriated
- the requirement to delete personal data collected as a result of exchanging information necessary in connection with alerts at the latest one year after the alert has been deleted from the SIS
- extension of the list of objects sought for the purpose of seizure or use as evidence in criminal proceedings to include, registered ships and aircraft which have been stolen, misappropriated, or lost; and credit documents such as checks, credit cards, bonds, stocks, and shares which have been stolen, misappropriated, or lost
- the right of the European Police Office (Europol) to have access to and search data entered in the Schengen information system pursuant to article 95, 99, and 100.[47]

2. Asylum

Based on the Treaty of Amsterdam adopted in 1999, issues related to asylum, visas, and immigration were added to the first pillar, which is governed by the Treaty Establishing the European

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[45] The Schengen Acquis and its Integration into the Union, *at* http://europa.eu/int/scadplus/print/version/en/lvb/133020.htm.

[46] Initiative of the Kingdom of Spain with a view to adopting the Council Regulation (EC) N0/2002 concerning the introduction of some new functions for the SIS, in particular in the fight against terrorism, OJ C 160, (7/4/2002).

[47] Art. 95 is concerned with data on persons wanted for arrest for extradition purposes; art. 99 deals with conditions on entry of data and vehicles for the purpose of discreet surveillance and checks; and art. 100 deals with conditions on entry of data on objects sought for the purpose of seizure or use as evidence in criminal proceedings.

Community. Consequently, the decision-making involving these issues occurs under the so-called "Community method," that is, the three principal EU bodies, the Commission, the Parliament, and the Council are involved. The Court of Justice also exercises the right to review. This is an area of shared competence between the Commission and the Member States until the year of 2004. Until then, both have the right of initiative to introduce legislation in this field. Afterwards, the Commission will have the privilege to exercise this right exclusively. The legal instruments adopted are: regulations, which are directly applicable in the legal systems of the Member States, and directives, which bind the Member States to the results to be achieved. These instruments result in closer harmonization of the legal systems of the Member States. The EU aims to establish a Common European Asylum System having as its basis the 1951 Geneva Convention on the protection of refugees.

Member States are bound by a number of international and EU legal instruments related to asylum:

- The Geneva Convention of July 28, 1951, as amended by the New York protocol of January 31, 1967, relating to the Status of Refugees
- The Dublin Convention, signed in 1990, entered into force in 1997. The basic aim of the Convention is to regulate which Member State is responsible for processing a particular claim for asylum and to prevent "asylum shopping" by precluding a person from applying for asylum in another State as well. The Dublin Convention faces a number of implementation obstacles.[48]
- An implementing Regulation (No. 2725) of the Dublin Convention adopted in December 2000 provides for the establishment of a computerized central database called Eurodac which will contain the fingerprints of all those who seek asylum in a Member State and those aliens of the age of 14 years or over who are apprehended when attempting to cross illegally the external borders of a Member State. The fingerprints must be maintained for a period of 10 years and be erased if the aliens obtain citizenship status in a Member State. The Commission asserts that the measure of fingerprinting of aliens seeking asylum and those who cross borders illegally will assist the Member States in knowing who enters their territory and will also improve their national security.
- An implementing Regulation (No. 407) adopted in February 2002 of Regulation No. 2725 concerning the establishment of Eurodac.[49] The Member States are required to transmit the fingerprints electronically. Comparisons of fingerprints must be done within a 24-hour period in the order received. The database will facilitate the ability of authorities to make a distinction between those who seek asylum and those referred to in article 8 and article 11 of the Eurodac Regulation. At the request of a Member State, urgent cases must be handled within an hour.
- The Council Directive on Minimum Standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.[50]

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[48] European Commission, Living in an area of freedom, security and justice, Justice and Home Affairs in the European Union, Dec. 2000.

[49] Council Regulation (EC) No 407/2002 of Feb. 28, 2002, laying down certain requirements to implement Regulation (EC) No 2752/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, OF L 062/1 (03/05/2002).

[50] 55/EC (7/20/2001).

a. Exclusion of Certain Third Country Nationals from Asylum [51]

Member States may exclude any third country national who may be or is deemed a threat to national or public security, based on the Geneva Convention. Article 1F of the Convention on the Status of Refugees of July 28, 1951, exempts from its ambit of protection anyone who:

- has committed a crime against peace, a crime against humanity, or a war crime, as defined in the international instruments drawn up to make provision in respect of such crimes
- has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee
- has been guilty of acts contrary to the purposes and the principles of the United Nations

The Directive on minimum standards for giving temporary protection once it is transposed into domestic legislation will allow Member States to exclude a person from temporary protection if there are reasonable grounds to consider him a threat to the security of the host Member State, or if he poses a threat to the community of the host state because of a conviction by a final judgment of a particularly serious crime.

The proposal for a Council Directive on procedures in Member States for granting and withdrawing refugee status [52] contains a number of important aspects namely, it permits the Member States:

- to withdraw refugee status based on new facts and circumstances that have surfaced and which indicate that this person should not have been recognized;
- to derogate from the rule of suspending appeals because of national security or public order grounds
- to reduce or withdraw reception facilities if an applicant has committed a war crime or a crime against humanity or if there are serious reasons surfaced during the examination procedure to assert that the grounds for exclusion as provided by the Geneva Convention apply

Requests for asylum by individuals and demands for extradition by another state pose particular problems for countries. Member States are barred from forcefully returning (*refoulement*) an applicant either to his/her country of origin or to a third country, where he/she either faces the death penalty, torture, or inhuman or degrading treatment. During the course of the legislative process of the above Directive on minimum standards, the Commission intends to examine the possibility of including rules to allow for a suspension of the asylum procedure in cases where an extradition request was placed by a State, other than the country of origin, for an asylum seeker because of a serious crime. It also intends to examine whether such a case would qualify for a dismissal of an asylum claim as inadmissable and also to allow for dismissal of asylum claims as manifestly unsubstantiated when it can be established *prima faciae* that the exclusion clauses of the Refugee Convention apply.

3. Visas

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[51] The European Commission has produced a working document which provides an in-depth analysis of the conflicting issue of protecting internal security and complying with international protection obligations and instruments, COM/2001/743 final.

[52] Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, COM/2001/510 final OJ C51/325 (2/26/2002).

The Treaty Establishing the European Community links the issue of common visa policy to the issue of the free movement of persons with respect to external border controls. The Council has a treaty-based mandate to adopt: measures to ensure that the crossing of internal borders is not subjected to any control (abolition of checks at common borders results in easier crossing for European citizens and nationals of third countries but it also facilitates illegal transit); measures related to external borders such as rules on visas issued by Member States, a uniform format for visas; and a list of third countries whose nationals must be in possession of visas when crossing the borders.[53]

The Seville European Council of June 22, 2002, drew the attention of the Council and the Commission to speed up their work on the following top priority projects: review by the end of 2002 of the list of countries whose nationals require visas or are exempt from that requirement; introduce a common identification system for visa data; formally adopt the Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit, and residence; and adopt the Directive which defines the facilitation or irregular entry, transit, and residence.[54]

Regulation No. 334/2002[55] provides for the establishment of common standards pertaining to the implementation of the uniform format of visas. In an effort to avoid fraudulent use of visas, it provides for the inclusion of a photograph of the visa holder.

Building upon earlier recommendations adopted by the Tampere European Council urging further development of "a common active policy on visas and false documents" and within the framework of preventing future terrorist threats, the European Commission has come up recently with a number of proposals:[56]

- development of a European Visa Identification System
- introduction of a central register of aliens residents in Europe
- inclusion of biometric data in visas
- creation of a database to exchange information on issued visas and data concerning visas applied for and refused. The database could also include electronic photo and biometric data and the scanning of travel documents.

The proposal for a Directive relating to the conditions under which third country nationals may travel freely in the Member States for periods not exceeding three months provides that a third country national who holds a uniform visa may travel in the territory of all Member States during the time his/her visa is valid provided that he/she fulfills a number of requirements, including the requirement that he/she is not a threat to public security and that he/she has not been issued an alert in order to refuse entry.

The same Directive requires that third country nationals who plan to move in the territory of two or more States for a period or not more than six months must obtain a specific travel authorization in order

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[53] Art. 62 of the EC Treaty.

[54] Www.europa.eu.int/rapid

[55] Council Regulation (EC) No 334/2002 of Feb. 18, 2002 amending Regulation (EC) No 1683/95 laying down a uniform format for visa OJ L 53/7 (2/23/2002).

[56] See Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking in Human Beings in the European Union OJ C 142/2002.

to enter the territory. It also amends the Schengen Agreement in respect to visas. Thus, visas for stays longer than six months are national visas that are issued by a Member State pursuant to its own law. The holder of such a visa will be able to transit through other Member States in order to reach the State that issued the visa, under the conditions that he/she is not on the national list of alerts.

4. Legal Immigration

Several Directives proposed in 2000 by the European Commission contain a "public order" clause that can be used by Member States to prevent any suspects from entering or staying within the European Union. The proposed Directive on the right to family reunification allows Member States to "refuse the entry and residence of family members on grounds of public policy, domestic security or public health." The State must base the grounds of public policy or domestic security exclusively on the personal conduct of the family member concerned.

Under the pending Directive concerning the status of third country nationals who are long term residents,[57] Member States may give long term status to third country nationals who have legally and continuously resided in them for five years. However, there is a security clause under which the States have the right to refuse to grant long term status in cases in which the personal conduct of the person constitutes an "actual" threat to public order or domestic security.

Under the same Directive, Member States may take a decision to expel a long term resident solely if his personal conduct constitutes an "actual and sufficiently serious threat to public order or [to] domestic security that affects a fundamental interest of society."

The Commission is considering the following significant amendments to the above Directive, which are justified on account of terrorism:

- eliminate the word "actual" from the language of the two provisions stated above
- eliminate the phrase "criminal convictions shall not in themselves automatically warrant the refusal to grant long term resident status"
- delete the phrase "emergency expulsion procedures are prohibited against long term residents"[58]

The Directive on the conditions of entry and residence of third country nationals for the purpose of paid employment and self-employed economic activities allows Member States to deny entry and residence permits to those who pose a threat to domestic security.

5. Illegal Immigration, Illegal Residence, and Repatriation of Illegal Residents

Combating illegal immigration is an essential component of the common asylum and immigration policy envisioned by the European Union and as such falls under Title IV of the Treaty Establishing the European Union. The policy includes measures to counter illegal immigration and illegal residence,

[57] 2001/C 240 E/13, COM (2001) 127 final submitted by the Commission on Mar. 13, 2001.

[58] See Commission working document COM/2001/743 final.

including the repatriation of illegal residents. Illegal immigration also falls within the ambit of police and judicial cooperation since a nexus exists between illegal immigration and organized crime.[59]

The Member States have been particularly affected by illegal immigration. In 1998, the Executive Committee of the Schengen Acquis decided that the Schengen States must take several measures in order to control illegal immigration, including implementation of intensive controls at border crossings, fingerprinting of every alien illegal immigrant whose identity cannot be established clearly in compliance with domestic law, and retention of fingerprints for the purpose of notifying other Schengen countries, provided that the EU rules on personal data are respected.[60]

The most recently adopted measure is a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union,[61] which was proposed in June 2002. In order to ensure its effective implementation, the European Commission is entrusted to prepare an annual report for submission and discussion before the Council. The Plan to Combat Illegal Immigration proposes the following measures and corresponding short term actions (actions and measures to be implemented within one year) and medium term actions (actions and measures to be implemented as soon as possible and, in principle, within three years) to be taken:

I. **Information Exchange and Analysis** to strengthen the existing center CIREFI, under which experts from Member States share information on illegal migratory flows

II. **Early Warning System** to improve the efficiency of the system which has been operating since 1999 to transmit data on illegal immigration. The Early Warning System is still in an embryonic stage since it faces problems such as sporadic use and poor technical infrastructure.

III. **Pre-Frontier Measures** to develop the concept of liaison officers in countries of origin and transit; to provide financial and technical support for measures in third countries; and to initiate campaigns in the countries of origin and transit

IV. **Measures Relating to Border Management** to develop high standard external border controls; to conduct a feasibility study on how to improve sea border controls and to adopt legislative and/or operational initiatives to improve the controls; to establish a harmonized curriculum and training for border guards; to create a network of national training organizations; and to increase cooperation among the operational services in the Member States

V. **Readmission and Return Policy** to identify third countries with which the EU must negotiate readmission agreements and establish standards applicable within the EU and third countries for the transit of returnees

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[59] *See* Recital 2 of the Proposal. *Id.*

[60] The Schengen Acquis - Decision of the Executive Committee of 27 Oct. 1998 on the adoption of measures to fight illegal immigration. OJ L239/203 (9/22/2000).

[61] OJ C 142/23 (6-14-2002)

VI. Europol to authorize Europol to facilitate and support ongoing investigations by the competent authorities of the Member States related to illegal immigration and to contribute to the collation by law enforcement personnel of reports on suspicious financial transactions

6. Illegal Residents and Expulsion

Under Directive No. 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals adopted in May 2001,[62] an expulsion decision issued in one Member State has to be enforced in other Member States without the latter having to issue a new expulsion order. Expulsion is defined as an administrative or judicial act issued by a Member State which ends the legality of a previous lawful residence, in case of criminal offenses.

Based on the Directive, a third country national is the subject of an expulsion in case of a serious and actual threat to public order or to national security on two grounds: the conviction for an offense punishable by deprivation of liberty of at least one year and the failure to comply with the requirements on the entry and residence of aliens in a Member State.

A proposal for a Directive drafted in July 2001 relating to conditions under which third country nationals may travel in the Member States for periods not exceeding three months[63] provides for expulsion of a third country national for reasons of national security or public policy pursuant to the procedures on expulsion of the Member State concerned. If the Member State does not authorize expulsion under its legal system, the Directive gives the option to that Member to allow the third country national to remain within its territory.

The Commission, in its Green Paper on a Community Return of Illegal Residents,[64] is considering other options to develop grounds for mandatory expulsion for reasons of "extraordinary danger" in cases, such as: when a third country national has been sentenced to imprisonment for committing intentional criminal acts, such as terrorism, crimes against national security, sale of drugs, or trafficking of human beings; and if a third country national has been sentenced by a court to imprisonment for a period to be specified in the future.

C. Terrorist Threat and Non-proliferation, Disarmament, and Arms Controls Policy

On April 15, 2002, the General Affairs and External Relations Council adopted a series of concrete measures pertaining to the implications of terrorist threats on the non-proliferation, disarmament, and arms control policy of the EU that the General Affairs Council had adopted.[65] This action implements the initiative proposed by the foreign ministers of the European Union in December 2001 which focuses on multilateral instruments, export controls, international cooperation, and political dialogue. The Council

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[62] OJ L149/34 (June 2, 2001).

[63] Proposal for a Council Directive relation to the conditions in which third country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a specific travel authorization and determining the conditions of entry and movement for periods not exceeding six months, COM(2001) 388 final OJ C 270 E/29 (7/10/2001).

[64] COM /2002/175 final. In this communication, the Commission deals with issues related to third country nationals who have either entered one of the Member State illegally or have overstayed their visa time limit or are not eligible for asylum. The Commission as a first step advocates the voluntary return, and if unsuccessful then Member States use forced return, as a last resort.

[65] Http://europa.eu.int/comm/external_relations/cfsp/intro.gac.htm.

will decide in the future whether to adopt common positions or joint actions in order to ensure compliance with these initiatives.

As far as multilateral instruments are concerned, the Council called on the EU and the Member States to:

- support all activities related to the universal adherence to instruments pertaining to weapons of mass destruction, safeguards agreements, and additional protocols of existing multilateral instruments;
- promote the adoption and strict application of national implementation legislation as required by international legal instruments;
- promote effective implementation of international instruments as well as political commitment worldwide;
- financially support the work of international organizations in order to ensure they perform their tasks effectively, especially those undertaken after September 11;
- participate actively in identifying legal gaps in existing international legal instruments in the area of disarmament, arms control, and non-proliferation.

In the area of export controls, it urged the European Union and the Member States to:

- review ways to improve the current export control mechanisms "as a contribution in the fight against terrorism, in order to prevent the diversion by terrorists of any weapons or "dual use" items or technologies
- promote the inclusion of "prevention of terrorism" in the objectives of all existing export control regimes and arrangements
- establish or further develop coordinating mechanisms at the EU level in order to improve information exchange practices in different export control regimes
- examine ways together with the Commission to improve the enforcement of the common control system established by Regulation 1334/2000 on dual use items and technology

With regard to international cooperation, the Council adopted the following measures:

- financially support and enhance the already existing initiatives in the Russian Federation cooperation programs for disarmament and non-proliferation with the view to assist in the destruction of weapons of mass destruction
- assist in disposing of radioactive materials
- maintain and upgrade where possible a high level of physical protection of nuclear materials and facilities

Lastly, with regard to political dialogue, it called on the EU and the Member States to intensify the political dialogue on disarmament, arms control, and non-proliferation– in particular with countries in Asia and Middle East– expand cooperation with candidate countries in regard to export control, and promote the implementation of the relevant UN security resolutions as well as promote strict implementation of embargoes imposed by the EU, the UN, or the OSCE.

D. Air Safety

Since September 11, in an effort to improve air travel security the EU has taken legal and other actions in the field of civil aviation. The Brussels European Council, which was convened on September 2001, established an *ad hoc* group to assess the issue of aircraft security. The group reviewed a number of measures that could be adopted, such as having the cockpit door closed, restricting access to the cockpit, installation of a video camera so that pilots are able to view the cabin situation, technical training of crew, and the deployment of sky marshals, among other safety-related issues. The question that has currently caught U.S. Congressional interest as to whether airline pilots are or should be allowed to carry guns in the cockpit as a tool to neutralize highjackers has not been proposed at the EU level.[66]

In a subsequent meeting of the Transport Council, which met in Brussels on October 10, 2001, to review the air safety issue, the President of the Transport Council expressed her approval of the decision of the International Civil Aviation Organization (ICAO) to "reject the idea of equipping the cockpit with guns."[67] At the same time the Commission initiated a proposal for a regulation to improve air safety. The proposal, which was adopted recently, establishes minimum standards for aviation security measures to which the Member States must comply. Thus, it is up to the discretion of the Member States to impose more stringent ones, if they so wish. The Regulation aims to provide citizens with a high level of security and to prevent unlawful interference in civil aviation.

Reinforced cockpit doors and the use of sky marshals were further discussed, along with a ban on metal cutlery, in a June 2002 symposium on air travel security that was convened in Brussels under the auspices of the Vice-President of the European Commission.

At the international level, the EU is cooperating with the International Civil Aviation Organization (ICAO). The EU submitted a proposal urging that the ICAO adopt mandatory rules on security, which will apply not only on international flights but on domestic flights as well.

III. External Relations

As with other European leaders, combating terrorism is high on the agenda of the Danish Presidency. In Denmark the focus has been primarily on two aspects: to continue the adoption of internal measures against terrorism and to emphasize the international role of the EU in the fight against terrorism by linking the issue of terrorism in its relations with third countries.

Since September 11, the EU has been participating in efforts to conclude a comprehensive convention against terrorism and is working towards universal implementation of the existing international conventions on combating terrorist acts. In addition, the EU has made a number of international commitments with other countries in order to fight terrorism, including the 13 accession candidates, western Balkan countries, Iceland, Liechtenstein, Moldova, Norway, Russia, Switzerland, and Ukraine.

On January 10, 2002, the European Commission concluded negotiations on an Association Agreement with Lebanon. This agreement which covers a broad range of issues besides trade and economics, calls for cooperation on the fight against crime and money laundering, the observance of

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[66] Http://europa.eu.in/news/110901/airtrans.htm.

[67] LE MONDE, *Bruxelles veut renforcer la securite dans le transport aerien; La Commission propose la definition de normes europeennes communes*, Oct. 10, 2001.

human rights, and the rule of law. Its annexes contain additional commitments on the exchange of information on terrorist groups and networks that are supportive of terrorism.

Moreover, two association agreements, the EU-Algeria and the EU-Chile agreements signed in April 2002, include a clause that the parties have to commit themselves to fight terrorism through the exchange of information and joint training.

United States

The EU is working closely with the United States on several initiatives. On December 6, 2001, Europol and the United States authorities signed a cooperation agreement that also focuses on the fight against terrorism and other forms of crime. Another general information exchange agreement is currently under negotiation dealing with the exchange of personal data and Eurojust with the relevant U.S. authorities. The EU and United States have also intensified their cooperation to ensure the security of passports and visas and have pledged close cooperation with regard to non-proliferation and export controls over arms and chemical, bacteriological, and nuclear substances. EU and U.S. authorities are also discussing the establishment of cooperation agreements on extradition and judicial assistance.

IV. Human Rights Challenges

The Union's commitment to human rights is enshrined in two key provisions explicitly stated in the Treaty on EU:

- the Union is founded "on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles that are common to the Member States;" and
- the Union "shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and as they result from the constitutional traditions common to the Member States, as general principles of Community law."

Another document at the EU level contains detailed human rights provisions. This is the Charter of Fundamental Rights of the EU, which was proclaimed in December 2000 in Nice by the European Parliament, the Council, and the Commission. The current discussion at the Convention on the future of the EU focuses on incorporating the Charter within a single constitutional treaty.

Moreover, the Member States of the EU, as members of the United Nations, the Council of Europe, and the OSCE are subject to additional human rights obligations.

A. Infringement Proceedings at the Community Level

The EU has a mechanism to enforce observance of its primary and secondary legislation through the infringement proceedings. The European Court of Justice is the sole and the highest authority in matters of Community law. It is entrusted to ensure that the Community law is observed by the Community institutions and the Member States. Under article 226 of the EEC Treaty, the Commission has the right to bring a Member State before the Court of Justice for infringing upon provisions of Community law. Since the incorporation into the Treaty of article 6 on the respect of human rights, this mechanism also extends to respect for fundamental rights by the Member States. Under Article 230 of the Treaty, the Court of Justice has the power to review the legality of certain legislative acts that may infringe on human rights and which are brought either by a Member State, the Council, or the

Commission. An individual may also bring a case against a Member State before the European Court of Justice for alleging violation of a fundamental human right. However, the best venue is the recourse to the European Court of Justice, referred to below, which deals exclusively with human rights violations. Moreover, under article 7 of the Treaty on European Union, in the event of a serious and persistent breach by a Member State of article 6(1), either the Commission or one-third of the Member States may bring the issue to the attention of the Council meeting in the presence of the Heads of State or Government. The Council has the authority to suspend certain rights to the Member in question.

B. Infringement Proceedings at the European Court of Human Rights

The European system for the protection of human rights was established by the Council of Europe. It provides in its statute that every Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. The European Convention on Human Rights and Fundamental Freedoms is considered one of the pillars of human rights in Europe. It contains a number of civil and political rights afforded to everyone. The Convention has established a mechanism to supervise observance of human rights in Europe by its Member States, which is binding under international law. Upon ratification of the Convention, Member States are bound to protect the fundamental rights of everyone within their jurisdiction. Based on the universality of human rights, the phrase "everyone within their jurisdiction" has been interpreted by the Court as applied to every individual, irrespective of nationality.

An individual whose rights have been violated has recourse before the Court, after meeting certain requirements. He/she must first exhaust all domestic venues available in the Member State and must be able to claim that he/she is the "victim of a violation."

1. Derogation Clause

Member States are allowed to take measures to derogate from certain of the provisions of the European Convention of Human Rights and Fundamental Freedoms, under article 15(1) only in time of war or in the event of a public emergency threatening the life of a nation; and when the measures are strictly required by the exigencies of the situation and consistent with other obligations of that State under international law.

The Convention does not allow derogation dealing with the right to life and imposition of the death penalty (article 2), prohibiting the use of torture (article 3), prohibiting slavery (article 4(1)) and establishing that no one shall be held guilty of a criminal offense without a law providing for such an offense at the time of commission (article 7). Member States are required to inform the Secretary General of the Council of Europe of any derogations and the measures taken in conjunction with them.

C. Anti-Terrorism Legislation and Human Rights Issues

The Convention has been interpreted as imposing a positive obligation on Member States to protect everyone within their jurisdiction against terrorist acts. However, the Court has often stated that even though terrorism presents special problems to Member States, the latter still have to adhere to human rights standards. The recently adopted guidelines of the Council of Europe,[68] which have been drafted

[68] The Committee of Ministers of the Council of Europe adopted "Guidelines on Human Rights and the Fight Against Terrorism" *at* http://www.coe.int

based on the language of the European Convention and on legal principles arising from the judgments of the Court in applying the Convention, provide further clarification and guidance to Member States in adopting and enforcing anti-terrorism legislation.

A general legal principle that has to be adhered to by Member States is that legislation adopted by the Member States in order to fight terrorism has to be lawful. When a State adopts a measure that restricts human rights, the restrictions must be defined as precisely as possible and be necessary and proportioned to the aim pursued.[69] Competent national authorities during the exercise of their powers to investigate, arrest, and detain suspects may also give rise to human rights violations. As a first step, individuals may challenge the legislation in question in domestic courts-and-upon exhausting their domestic remedies available up to the last resort, they may bring their cases on the grounds of human rights violations before the European Court of Human Rights in Strasbourg.

The European Court of Human Rights has dealt with a significant number of cases throughout the years, and through its judgments it has developed extensive case law. For the purposes of this report, the powers of police authorities to arrest and detain are examined only within the framework of article 5 of the Convention. The issues of torture and death penalty are briefly touched upon because of their potential implications in extradition requests with countries which engage in these actions.

Greater emphasis is placed on the issue of protection of personal data and the right to privacy because of its significance and potential impact on the manner in which investigation authorities use personal data. Any infringement upon this right by a Member State entails violation not only of specific Community law– therefore rendering a Member State liable– but also it may give rise to violation of article 8 of the European Court of Human Rights dealing with the right to privacy.

1. Power of National Authorities to Arrest and Detain

The conditions under which detainees may be kept for questioning may be a controversial issue and may raise questions as to whether international human rights standards are being met. Currently, detention limits vary from State to State in the EU. The European Commission is proposing to lay down minimum standards for detention orders which will define the competence of responsible authorities and the preconditions for detention, identify people who should not be detained, and establish minimum statutory limits for detaining people.

In the case of suspects apprehended by national authorities for allegedly committing terrorist acts, the rights that are often violated are those involving the right to liberty and security of a person and the conditions for arresting and detaining a person (art. 5) and the right to a fair trial (art. 6). The European Court of Human Rights has affirmed that the question as to whether arrest and detention can be considered as "lawful" has to be examined not only in relation to domestic law but also within the text of the Convention, the general principles embodied in it and the restrictions permitted (art. 5, para. 1).

Thus, a person may be arrested only if there are reasonable suspicions concerning his/her actions, and he/she must be informed of the reasons of the arrest. What may be regarded as "reasonable" will depend on all circumstances. In the case of terrorism, the Court has stated: "In this respect, terrorist crime falls into a special category. Because of the attendant risk of loss of life and human suffering, the police are obliged to act with utmost urgency in following up all information, including information from

[69] *See* guidelines, art. 3.

secret sources." Furthermore, the police may frequently have to arrest a suspected terrorist on the basis of information which is reliable but which cannot be revealed to the suspect in order not to put the source of information in jeopardy. The exigencies of dealing with terrorist crime cannot justify stretching the notion of "reasonableness" to the point where the essence of the safeguard secured by article 5, paragraph 1 is impaired.

In the case of *Dikme v. Turkey*, the applicant was stopped and questioned by police officers. Being in possession of false identity papers, he was arrested and taken to the anti-terrorist branch. His complaint focused on the fact that while he was in police custody, he was detained for an excessive amount of time and that he had been subjected to ill treatment (arts. 3 and 5, para. 3). He also alleged that he had not been fully informed at the time of his arrest as to the offenses he was suspected of (art. 5, para. 2) and that the offense of which he was accused carried a death sentence.

In the case of *Filiz and Kalkan v. Turkey*[70] involving the arrest of several individuals on suspicion of membership in an illegal organization, the suspects were detained in police custody for eight days without being brought before a judge. As stated above, the Court has often held that terrorism presents special problems for the investigating authorities of the States. This does not mean, however, "that the investigating authorities have *carte blanche* under article 5 to arrest suspects for questioning, free from effective control by the domestic courts, and ultimately, by the Convention supervisory institutions whenever they choose to assert that terrorism is involved." Consequently, the Court held that even though the investigation of terrorist offenses presents the authorities with special problems, it could not accept that it was necessary to detain the applicant for eight days without judicial intervention.

2. Torture

Methods that amount to torture or inhuman and degrading treatment used by investigating authorities to extract information from detainees apprehended on terrorist grounds are prohibited, based on a number of international legal instruments prohibiting the use of torture.

The EU has crystallized its position in condemning the use of torture in EU Guidelines on Torture, which were adopted by the Council on April 9, 2001. Moreover, the EU funds some projects that aim to improve conditions at detention centers.[71] Currently, all EU Member States have ratified the European Convention for the Prevention or Torture and Inhuman or Degrading Treatment or Punishment. Additionally, article 3 of the European Convention of Human Rights and Fundamental Freedoms provides an absolute prohibition on the use of torture and inhuman and degrading treatment. The European Court of Human Rights has affirmed that Member States may not make exceptions nor derogations from article 3 of the European Convention, even in case of terrorism.

In the language of the Court:

> Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organized crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols, Nos 1 and 4, Article 3 makes no provision for exceptions and no derogation

[70] Http://hudoc.echr.coe.int/hudoc.

[71] *See* the EU's Human Rights and Democratization Policy, Prevention of Torture and Rehabilitation of Victims. Http://europa.eu.int/comm/external_relations/human_rights/torture/index.htm.

> from it is permissible under Article a15 and 2 even in the event of a public emergency threatening the life of a nation.
>
> The nature of the offense allegedly committed by the applicant was therefore irrelevant for the purpose of Article 3.
>
> The requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, cannot result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals.

In the case of *Dirke v. Turkey*, the Court held that "in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3."

In line with the case law of the Court, the guidelines reiterate the absolute prohibition of torture or inhuman or degrading treatment, and "in particular during the arrest, questioning and detention of a person suspected of or convicted of terrorist activities, irrespective of the nature of the acts that the person is suspected of or for which he/she was convicted.

3. Death Penalty

Both the EU and the Council of Europe oppose the death penalty under all circumstances.[72] The Member States have either legally abolished the death penalty altogether, or have *de facto* abolished it. A few have made reservations to Protocol No. 6 of the European Convention on human rights on the abolition of the death penalty[73] and have retained the death penalty only for certain crimes such as espionage.

On numerous occasions, the EU has expressed its strong opposition to the United States authorities for still carrying out the death penalty, especially in cases of juveniles and mentally retarded individuals and has made a number of appeals based on humanitarian grounds against executing several specific individuals.[74]

In 1989, the Court of Justice in Strasbourg found in the well known case of *Soering v. the United Kingdom* of July 7, 1989, that the conditions on death row in the United States are such that exceed the threshold of ill treatment established by article 3 of the Convention. Consequently, the Court held that the United Kingdom was not obliged to extradite the applicant to Virginia, unless sufficient assurances were given by the U.S. authorities that he would not be subjected to the death penalty. In the end, Soering was extradited to Virginia only after the State authorities promised not to impose capital punishment.

The June 20, 2002, decision of the U.S. Supreme Court that prohibits the imposition of the death penalty on people with mental retardation may be perceived as a positive development by the EU and may facilitate extradition procedures in similar cases among the countries (Atkins v. Virginia, 122 S. Ct. 2242

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[72] *See* the Declaration on the abolition of the death penalty reaffirming the commitment of the EU and its Member States to the abolition of death penalty which is incorporated in the Treaty of Amsterdam.

[73] Within the United Nations framework, a second optional Protocol to the International Covenant on Civil and Political Rights calling on the abolition of death penalty was adopted in 1989.

[74] Alexander Williams vs. Georgia: Letter to Georgia Governor Barnes, Feb. 14, 2002.

(2002)).

C. Legal Issues Related to Protection of Personal Data and the Right to Privacy

Most European legal systems consider the issue of protection of personal data and the right to privacy as a fundamental human right. As such, it is enshrined in a number of international legal instruments, such as article 8 of the European Convention of Human Rights and Fundamental Freedoms, the International Civil and Political Covenant, the Charter of Fundamental Rights, and the Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data adopted by the Council of Europe in 1981.

Moreover, EU Member States are bound by Community rules governing the protection of personal data and the right to privacy.[75] The basic rules are derived from Directive No. 95/46/EC, whose scope extends to the automatic and manual processing of personal data. Member States must ensure that personal data are processed fairly and lawfully and collected for a specific, explicit, and legitimate purpose. Personal data must not be kept longer than necessary and only for purposes for which the data were collected. Processing is possible in certain cases, such as when the data subject has been consented to unambiguously, for the performance of a contract, or in order to protect important interests of the data subject. Any transfer of personal data to a third country which does not meet the "adequacy" criterion as established by the Directive is illegal.

The strict rules on the protection of personal data may be circumvented on specific grounds, which are exhaustively enumerated in article 13 of the Directive:

- national security, defense and public security
- prevention, investigation, detection, and prosecution of criminal offenses
- monetary, budgetary, or taxation matters

The first two grounds for lawful intervention on the use of personal data, that is, national security and prevention of crimes, are also stated in the European Convention on Mutual Assistance in Criminal Matters. The latter also includes the additional ground "for preventing an immediate and serious threat to public security."

Specific rules on the processing of personal data and data protection are also included in the Europol Convention. The Convention also stipulates that each Member must designate a national supervisory body which will monitor the input and retrieval of data as well as any communication of information to Europol pertaining to personal data. A joint supervisory body (JSB), which is composed of representatives of the national supervisory bodies, has also been established. The main task of this JSB is to ensure that Europol respects the Convention's provisions on data protection and to ensure that the rights of the data subject are not violated.

In February 2002, new rules governing the transmission of personal data by Europol to third States

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[75] The EU basic rules on the protection of personal data emanate from two Directives: Directive No. 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281/31/, and Directive No. 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector, OJ L.

and third bodies were adopted.[76] Europol may transmit personal data in two instances:

- on the basis of an agreement with third State or third bodies
- exceptionally, in order to safeguard the essential interests of a Member State or to prevent imminent danger

Furthermore, the guidelines of the Council of Europe provide further clarification of the issue of collection and processing of personal data by the competent authorities of the Member States. Thus, collection of personal data must adhere to the following standards: it must assume the existence of domestic legislation; be proportionate to the aim for which the collection and processing were foreseen; and be supervised by an external independent authority.

1. Interception of Telecommunications– Retention of Traffic Data

Some concerns were expressed by law enforcement authorities in Europe over the trend followed by telecommunication operators and Internet service providers not to retain traffic data for long periods since the introduction of flat fee charge made the retention unnecessary. Law enforcement authorities who use traffic data as a tool to investigate and prosecute crimes suggested that traffic data be kept for a minimum period of time before they are destroyed.

A 1999 Recommendation issued by the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data on the Preservation of Traffic Data by Internet Providers for Law Enforcement Purposes suggested that

> The most effective means to reduce unacceptable risks to privacy while recognizing the needs for effective law enforcement purposes is that traffic data should in principle not be kept only for law enforcement purposes and that national laws should not oblige telecommunications operators, telecommunications service and Internet service providers to keep traffic data for a period longer than necessary for billing purposes.

The language used in the Europol Convention is rather broad: data should be kept only "for as long it is necessary for the performance of their tasks."[77]

Against this background, the recently adopted Directive No. 58/EC/2002 on privacy and electronic communications[78] gave law enforcement authorities in Europe additional powers to monitor telephone and Internet users, despite strong opposition from civil liberties groups. The United Kingdom played an influential role in the adoption of this Directive.

The Directive requires the Member States to transpose into their domestic legislation the principle of confidentiality of communications and traffic data by means of a public communications network and publicly available electronic communications services and to prohibit in particular: listening, wiretapping,

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[76] Council Act of Feb. 28, 2002, amending the Council Act of Mar. 12, 1999, adopting the rules governing the transmission of personal data by Europol to third States and third bodies, OJ C 58 (3/5/2002).

[77] *See* also the non-binding Recommendation No 15 (87) of the Committee of Ministers of the Council of Europe on the use of personal data in the police sector.

[78] Concerning the processing of personal data and the protection of privacy in the electronic communications sector OJ L: 201/37 (7/31/2002).

storing, or using other kinds of interceptions or surveillance of communications and traffic data by persons other than the users without the consent of the users. The same principle was also in the previous Directive No. 97/66/EC which has been repealed by the current Directive No. 58/EC/2002.

In order to safeguard national security and defense and for the prevention, investigation, detection and prosecution of criminal offenses, the 2002 Directive allows the Member States to adopt legislation to restrict the scope of rights and obligations as long as such legislation conforms to the three standards required by Community law and based on the case law of the European Court of Human Rights: the restrictions must be a appropriate, proportionate, and necessary in a democratic society.

Member States may also adopt legislation to place restrictions on the principle of confidentiality and impose retention of traffic data for a limited period.[79]

2. Case Law

Within the jurisdiction of the European Court of Human Rights, measures undertaken by law enforcement authorities in order to fight terrorism, such as house searching, telephone tapping, and violation of correspondence may raise privacy issues under article 8 of the ECHR. This article provides that "there shall be no interference by a public authority with the exercise of this right except in accordance with the law and [as] necessary in a democratic society."

In the case of *Klass and Others v. Germany,*[80] the Court has held that telephone tapping was an "interference" into private life. However, it did accept the principle that domestic legislation that grants authorities the right of secret surveillance over the mail, post and telecommunications is under exceptional circumstances necessary in a democratic society "in the interests of national security and/or for the prevention of disorder of crime." This position has been reaffirmed by the Court in subsequent cases.

In another case, the Court also has held that telephone tapping and other forms of interception of telephone conversations constitute a serious interference with private life and correspondence. Telephone tapping must take place based on a law "that is particularly precise. It is essential to have clear, detailed rules on the subject, especially as the technology available [for] use is continually becoming more sophisticated."[81]

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August 2002

[79] Art. 6 requires that traffic data relating to subscribers and users processed and stored by the provide of a public communications network or electronic communications service must be erased or made anonymous.

[80] Series A, No. 28 (Sept. 6, 1978).

[81] Kopp v. Switzerland, Mar. 25 1998.

APPENDIX

COUNCIL OF EUROPE CONVENTIONS[82]

- The European Convention on the Suppression of Terrorism
- The European Convention on Extradition
- The Additional Protocol to the Council of Europe Convention on Extradition
- The Second Additional Protocol to the Council of Europe Convention on Extradition
- The Convention on Mutual Assistance in Criminal Matters
- The Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
- The European Convention on the Transfer of Proceedings in Criminal Matters
- The European Convention on Compensation of Victims of Violent Crimes
- The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
- The Convention on Cyber-crime

[82] Http://www.coe.int

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FRANCE

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

France has been the victim of international terrorism for decades and at the time of the terrorist attacks of September 11, 2001, already had in place a comprehensive body of law dealing specifically with acts of terrorism and the operational mechanisms needed to allow for a strong response. Prosecution, investigation, and judgment of terrorist acts are combined under a sole jurisdiction (the Paris criminal courts) presided over by specialized judges whose jurisdiction extends to the entire country. Rules of procedure are less stringent. France has a standing security plan, which can be triggered at any time. This plan was put into full effect the day after the September 11 attacks in the United States and is still in effect. An additional plan deals with biological, nuclear, and/or chemical threats.

Following September 11, France reaffirmed its solidarity with the United States and its determination to combat terrorism, adopted tougher temporary anti-terrorist measures, and stepped up its fight against the financing of terrorism. At the same time, France's asylum procedures lead to long delays in processing applications, resulting in the government losing track of many illegal immigrants while an increase in applications has destabilized the system. France's large Muslim population has been difficult to integrate. Grave social and political issues have resulted from this lack of integration, particularly among the youth. Conflict in the Middle East has exacerbated these issues in France and the government has been concerned that international cooperation against terrorism might be viewed as a war on Islam. The issue of the death penalty has somewhat hindered France's legal cooperation with the United States in the case of Zacarias Moussaoui, a French citizen of Moroccan origin, and alleged 20th hijacker in the planning for the September 11 attacks.

Introduction

France has had its share of terrorist attacks in recent years as the French Government has tried to deal with regional separatist groups or ideological and religious extremist groups. Most of these groups have used violence to express their demands at one time or another. Islamic fundamentalist groups committed 23 attacks on French soil between 1986 and 1996.[1] They are regarded as "the most dangerous threat" among all the religious and nationalist extremist groups.[2] Terrorist profiles and networks are changing. Terrorists are more often highly educated and well-to-do. France's draft law on military programs for the years 2003-

[1] Assemblée Nationale, Rapport d' information par la Commission de la Défense Nationale et des Forces Armées sur les conséquences pour la France des attentats du 11 septembre 2001, No. 3460, Dec. 12, 2001, at http://www.assemblee-nationale.fr at 32, 33. This report is comprehensive and has been utilized throughout this study.

[2] *Id.* at 33. The terrorist attacks which took place in 1986 and 1987 were from Iranian Shiite groups, which opposed France's position in the conflict between Iran and Iraq. The latter attacks, notably in 1995 and 1996, were committed by the Armed Islamic Group which opposes the Algerian government supported by the French authorities. The Armed Islamic Group also was seeking revenge after the French enforcement authorities had dismantled several of their networks.

2008 stresses that "the terrorist networks have evolved, they are less centralized, they sometimes defend nihilist ideologies, rely upon trans-border networks and are on some occasions linked to criminalized economies. Terrorism threatens the interests of France on many grounds."[3]

It is in this context that a comprehensive body of French laws dealing specifically with terrorist crimes has been built up since the 1980s. It was further strengthened by temporary emergency measures passed after September 11. France also activated its standing security plan, *Vigipirate*. French law enforcement officers have continuously been active in pursuing, arresting, and prosecuting individuals suspected of belonging to extremist groups, and French intelligence services have maintained a steady surveillance on radical groups. Today many government departments, as France does not have a department solely responsible for combating terrorism, are involved in the fight against terrorism, and a number of units such as the Anti-Terrorist Coordination Unit (UCLAT)[4] have been created to provide the necessary coordination.

In addition to applying its domestic law, France has fully welcomed the activities of the United Nations in matters of terrorism. It has signed most international and European conventions on the deterrence of international terrorism, and concluded many bilateral cooperation agreements against terrorism. It participates actively in setting up new measures within the European Union. It has the legal tools to carry out many cooperative activities, covering all aspects of counter-terrorism whether at the bilateral level, within the European Union, or through international organizations. Therefore, any limit on counter-terrorist cooperation with the United States would mainly be the result of policy disagreements and/or domestic issues, such as the fact that France must take into consideration its large Muslim population.

1. Legislation Prior to September 11, 2001

Asylum – Grant of Refugee Status

The law on refugees arises from the application of the Geneva Convention and the New York Protocol. France grants refugee status to persons who meet the requirements set forth in the Convention. The procedures for admitting a refugee are regulated by Law 52-893 of July 25, 1952[5] as amended by Law 98-349 of May 11, 1998.[6] In addition, the Ordinance of November 2, 1945, as amended, which regulates conditions of entry and stay of foreigners in France, contains provisions regarding asylum seekers.[7]

The procedures described below have resulted in long delays, and it sometimes takes up to two years to process an application. As a result, it is difficult to return asylum seekers to their countries of origin once their requests have been denied as the government has often lost track of them. The new government is planning to simplify the procedures, hoping to reduce the processing time to one month. The Minister of the

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[3] *Id.*

[4] The Anti-Terrorist Coordination Unit, which reports directly to the General Directorate of the National Police, is responsible for coordinating and leading the counter-terrorism combat by providing a link between the intelligence services, the services responsible for preventive measures, the services responsible for criminal policing, and RAID, a specialized intervention unit of the National Police.

[5] JOURNAL OFFICIEL [Official Gazette of France] J.O., July 27, 1952, at 7642.

[6] J.O., May 12, 1998 at 7087.

[7] Ordonnance 45-2658 of Nov. 2, 1945, as amended, CODE ADMINSTRATIF, arts. 31, 32 at 801,802, (ed., Dalloz 2000).

Interior stated that the modification of the law on asylum was "a necessity as requests have tripled in the last three years, destabilizing the present system."[8] In 2001, 47,291 requests for refugee status were filed, while about 30,000 persons, mainly Algerian citizens, have asked for territorial asylum. This has led to dramatic situations such as the one at the Sangatte shelter near Calais where hundreds of illegal immigrants are housed. Several of them died in desperate attempts to reach the United Kingdom through the Channel tunnel as the British government is perceived as having a more liberal interpretation of the Geneva Convention than the French authorities, and as most of the refugees in the camp are Kurds who already have relatives in the United Kingdom.

In addition to simplifying the procedures, the Minister of the Interior also stated that the government will hire additional personnel and plans to organize charter flights for returning illegal immigrants to their countries of origin. France grants refugee status in about 17 percent of the cases, and territorial asylum (described below) in approximately 4 percent.

Requests for asylum are handled by the Office Français de la Protection des Réfugiés et Apatrides (OFPRA). It is an independent administrative agency, technically attached to the Ministry of Foreign Affairs. An asylum seeker with a valid passport arriving in France has three months to begin the process of applying to the OFPRA for refugee status. Asylum seekers with no travel documents are placed in waiting zones created in airports, ports, and train stations during the time necessary to determine whether their requests are reasonable.

They may stay up to four days in a waiting zone without a court decision. This delay can be extended up to 20 days by the judicial courts. The Asylum Division at the border, composed of agents from OFPRA, hears their requests and makes recommendations to the Foreign Affairs Ministry. The recommendations are then forwarded to the Ministry of Interior which makes the final decisions. When requests are ruled unreasonable, individuals will be either deported to their country of origin, if they do not face inhuman or degrading treatments there, or to a third country.

A pass valid from 48 hours to a week will be delivered when the request is deemed reasonable. It allows the asylum seeker to go to the *préfecture*[9] of the *département* where he/she intends to reside to record a request for temporary stay.[10] When all the background checks are negative, the prefecture will grant the applicant a one-month residence permit to prepare an application for the OFPRA.[11]

Once the application is received at the OFPRA, a certificate of receipt is issued. This document authorizes the applicant to reside in France for up to three months. It is renewed until the OFPRA rules on the request and throughout the appeal process, if any.[12]

The applicant who is denied refugee status may, within a month of the notification of the decision,

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[8] Réforme du droit d'asile: vers une simplification des procédures, July 30, 2002 *at* http://fr.news.yahoo.com.

[9] The authority representing the central government at the local level.

[10] *Supra* note 7, art. 32, at 802.

[11] Decree N° 46-1574 dated June 30, 1946, art 15, J.O., July 21, 1946.

[12] *Id.* art 16.

appeal before an appellate commission.[13] Appeals from the appellate commission can be made to the *Conseil d'Etat*,(the highest administrative court) but only for procedural errors or illegalities and not on the merits of the case.

When the decision denying refugee status is final, the applicant must either leave voluntarily within a month or the *préfecture* will issue an order for the individual to be escorted to the border. The applicant who is granted refugee status will receive a residence permit valid for 10 years, unless the Ministry of Interior finds that the person poses a threat to public order. The residence permit is automatically renewable.[14] It means that while it can be denied the first time, once granted, it cannot be withdrawn at the time of renewal, even if the refugee presents a threat to public order, in which case the only possibility is deportation.[15] The refugee can appeal the deportation order before the Deportation Commission. However, appeal is not possible when the Minister of Interior invokes compelling reasons of national security.[16] Appeal before the deportation commission does not suspend the deportation order. Such a deportation order may be executed, subject only to the principle of prohibition of return to a country where the refugee would face persecution.

Territorial Asylum

A foreigner may be granted asylum by the Ministry of Interior, when such request is not incompatible with the interests of France, if he/she shows that his/her life or liberty is at risk in his/her country or that he/she may be subjected to treatment contrary to article 3 of the European Convention on Human Rights.[17] The condition of compatibility with the interests of France gives the Ministry of Interior great leeway.

In addition, Decree 98-503 of June 23, 1998,[18] on the right of asylum sets forth an emergency procedure in the event the presence of an asylum seeker on French territory poses a threat to public order. He/she will be heard without delay, and the emergency procedure may result in the applicant being denied temporary residence and being deported.

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[13] Decree 53-377 of May 2, 1953, J.O. , art. 23, at 4030.

[14] *Supra* note 7, art. 15-10, at 744.

[15] *Id*. art. 23 at 771.

[16] *Id*. art. 26, at 782.

[17] Article 3 provides that "No one shall be subjected to torture or to inhumane or degrading treatment or punishment."

[18] J.O. June 24, 1998, at 9558.

Visitors – Entry Documents

In addition to a passport and in some cases a visa, an alien visitor, remaining in France for a stay not exceeding three months, is required to be able to supply documents showing the object and conditions of his/her stay and, if necessary, his/her financial means of existence and guarantees of his/her repatriation[19]. The documents to be provided are as follow:[20]

- tourist stay: any documents establishing the object, conditions, and notably, the duration of the stay
- business stay: any documents showing the profession of the visitor and the establishments or organizations he/she is visiting
- private or family stay: a certificate signed by the individual who will provide for his/her lodging. The identity and the address of the certificate's signatory must be certified by either the competent mayor or police commissary. This provision is rarely implemented.
- hospitalization: documents showing that the alien meets all the conditions for being admitted to a public hospital

Furthermore, innkeepers, landlords of furnished lodgings, and campground managers are required to ask each alien visitor to fill out an individual police form "*fiche individuelle de police*"containing the following information: name, date and place of birth, nationality, and domicile. They must submit these forms to the police every day.[21]

Visitors – Border Controls

The Schengen Agreements, which implemented the right of free movement of persons within the European Union, eliminated internal cross border controls and strengthened controls on the external borders of the Schengen area. The French authorities took the following steps to compensate for the abolition of controls at internal borders:

- The Police, gendarmerie, and customs may stop and search vehicles (with the exception of private cars) with the consent of the driver, or in the absence of consent, on the Prosecutors' instructions in an area within 20 kilometers of the land borders with states that are parties to the Schengen Agreements. The vehicle can be immobilized for a maximum of four hours to await the prosecutor's instructions.[22]
- France signed cross border cooperation agreements with Belgium, Germany, Italy, and Spain. These agreements created several police and customs cooperation centers (*centre commun de coopération policière et douanière*). Their role is to strengthen bilateral cooperation, in particular with regard

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[19] *Id.*, art. 5 at 716.

[20] Decree 94-770 of Sept. 2, 1994 and Decree 98-502 of June 23, 1998, CODE ADMINSTRATIF at 833, (ed., Dalloz, 2000).

[21] Decree 75-412 of May 20, 1975, CODE ADMINISTRATIF at 816, (ed., Dalloz, 2000).

[22] *Supra* note 7, art. 8-1 at 724.

to security, illegal immigration, and trafficking. Their legal basis is article 39.4 of the Schengen Convention which states that "in border regions, cooperation may be covered by agreements between the responsible Ministries of the contracting parties."[23]

Tracking of Immigrants/Visitors

French Law does not require that resident aliens check with the French authorities on a regular basis. However, it requires that every resident alien notify the competent police station or the city hall when there is no police station of his/her change of address, within eight days of arrival at his/her new residence. When giving notification of his/her new address, the resident alien must mention his/her former address and his/her profession.[24]

Acquisition of French Citizenship

The Civil Code, which contains the nationality law, provides that a person cannot acquire French citizenship if: he/she has been convicted of a crime or offense constituting an infringement to the fundamental interests of the French nation or an act of terrorism, or he/she has been sentenced to more than six months imprisonment not coupled with a suspended sentence, irrespective of the offense concerned. This also applies to individuals who are staying in France illegally, have been the subject of a deportation order, or have been banned from the French territory.[25]

Muslim Population in France

France has an estimated 4.5 to 5 million Muslims including illegal immigrants. Approximately half of them are French citizens by birth or naturalization. It has been reported that by the mid-1990s there were approximately 1.2 million Muslim voters. Most of them come from North Africa, the largest subgroup being of Algerian origin. The integration process is far from being smooth, particularly among some youths who feel excluded, with slim education and employment opportunities. About two-thirds of the Muslim population is concentrated in immigrant-populated suburbs in Paris, Marseilles, and Lille where they live in low-income housing projects. They have often been blamed for the grave internal security problems France is facing (the percentage of Muslims in the prison population is over 50 percent). The wave of antisemitic attacks, which has rocked France since the second Palestinian Intifada has been mostly attributed to youths originally from the Maghreb (Algeria, Morocco, and Tunisia).[26]

French authorities have been trying for the last 10 years to encourage the creation of a High Authority of Islam in France, which would be a strictly religious body. They believe that such a body would help the integration of the Muslim community, and therefore, lessen the risk of creation of terrorist groups. They also want to encourage the autonomy of French Muslims in the exercise of their religion. Traditionally

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[23] http://www.interieur.gouv.

[24] Decree 69-29 of Jan. 6, 1969, CODE ADMINSTRATIF at 826, (ed., Dalloz, 2000).

[25] CODE CIVIL, art. 21-27, (ed., Dalloz, 2002).

[26] Jonathan Laurence, Center for European Studies, Harvard, *Islam in France*, *at* http://www.brookings.edu/dybdocroot/fp/cusf/analysis/islam.ht.

Algeria and Saudi Arabia have exercised a certain moral authority in France and have financed many mosques there as well.

The Law of December 9, 1905, on the Separation of Church and State requires that the state accept all manifestation of thought, reject no ideology, and make no positive choice of one's form of belief. It also requires that the state guarantee freedom of religion. This has been interpreted as implying an obligation on the state to deliver the necessary tools to ensure that the religious norms which each individual citizen believes should be observed, can be observed. To do so, the state needs to have an interlocutor to discuss the religious needs of the religious community (this include prayer spaces, public cemeteries, etc.). Three other major religions in France, Catholicism, Protestantism, and Judaism, have established such high authorities.

The creation of a similar religious representative body for the Muslims has not been an easy endeavor, as the Muslim communities in France are very diverse. Some are moderate, while others are judged extremist. Foreign powers such as Algeria, Morocco, Turkey, and Saudi Arabia have been viewed as interfering with the process. The new Minister of Interior will continue the consultations; however, he has made clear that he will not invite some of the groups identified as extremist which participated in the discussion under the previous socialist government.[27]

Specific Preventive Measures

Security Plans

To discourage or hinder terrorist actions, the Government can trigger its standing anti-terrorist security plan, *Vigipirate*. The *Vigipirate* plan was originally conceived in 1978. It was activated in 1991 during the Gulf War. It has been reactivated on several occasions, in particular in 1995 after the terrorist attacks that took place in the Paris Metro. The plan allows the deployment of paratroopers, soldiers, and gendarmes at airports, train, and Metro stations as well as any sensitive public areas to check identity papers and investigate any suspicious activity. It also provides for the reinforcement of air defense. The plan may be enforced throughout France.[28] Several hours after the terrorist attacks on the United States on September 11, 2001, the French Government implemented the full scale of the *Vigipirate* plan.[29]

In addition, on October 5, 2001, the Health Minister unveiled the main elements of a three-pronged plan aimed at tackling any threat of a biological, nuclear, or chemical attack. Up to that date, the plan, called Biotox, was classified. The plan has three themes:

- prevention: French laboratories where viruses and germs are stored or used for pharmaceutical research will come under the *Vigipirate* plan. Furthermore, there will be tighter controls on the storage and transport of germs and viruses. Drinking water supplies will be also placed under *Vigipirate* patrols, and there will be additional checks to ensure water purity.

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[27] *Supra* note 1 at 79, 80. *See also* note 26 and Astrid de Larminat, Religion, *le ministre reprend le chantier de ses prédécesseurs*, Le Figaro, June 21, 2002, LEXIS/NEWS, Le Figaro (FR).

[28] http://www.premier-ministre.gouv.fr.

[29] *Id.*

- health monitoring: Anthrax was added in October 2001 to the list of diseases that doctors, hospitals, and laboratories must report.[30] They must also report any other unusual phenomena.

- measures in the event of crisis: the Biotox plan provides for a geographic division of France with designated hospitals for each zone of defense, where decontamination teams will be deployed in the event of any chemical attack. Health professionals are given additional training and information on how to cope with biological and chemical agents.[31]

The authorities have also updated the inventory of vaccines and medicines in storage and set up, with the help of pharmaceutical manufacturers, a procedure to ensure and, if need be, to draw upon the stocks of the main antibiotics. France is also seeking an intensification of European cooperation in the area of prevention as well as the coordination of alert and response.

Airport Security

Several regulations on airport security were passed in November and December 2000.[32] These regulations address the procedures to be followed to check passengers, hand luggage, and checked luggage. They make official the previous practices which until then had been instituted contractually or by mutual consent. Checking passengers and hand luggage is currently done in all airports by either police officers or approved security personnel hired by airport management. One of the regulations deals in great detail with the mandatory qualifications and training of such security personnel.[33]

Identity Cards

The document most often presented to establish one's identity is the national identity card created by Decree No. 55-1397 of October, 22, 1955, subsequently amended by Decree No. 99-973 of November 25, 1999. It is delivered without any condition of age to any French citizen who requests it and is renewable every 10 years. The *préfecture* of the *Département* where the person resides processes the card. The card also establishes that the holder is a French citizen as it is issued or renewed only upon the presentation of a certified certificate of civil status, such as a birth certificate. It is not mandatory but has almost become indispensable in everyday life; its sole purpose is to certify the identity of its holder.

The card states the family name, first and middle names, date and place of birth, sex, height, nationality and domicile of the person, the name of the authority that delivered it, its date of expiration, and its number. In addition, there is a picture of the holder and his/ her signature.

It is used by the holder to give proof of his/her identity and to facilitate identity controls by the national police or *gendarmerie*. Decree No. 99-973 authorizes the delivery of the national identity card over a secure computer program, thereby limiting the possibility of falsification or counterfeiting. The program

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[30] Decree 2001-910 of Oct. 5, 2001, J.O, Oct 6, 2001, at 15743.

[31] LE MONDE, *Le gouvernement français rend public le plan de lutte contre le bioterrorisme*, Oct. 6, 2001, NEXIS/LEXIS: Presse, Le Monde.

[32] J.O. Nov. 16, 2000, at 18175 and 18177.

[33] J.O., Dec. 29, 2000 ,at 20846.

is designed in such a way that it can record only the information listed above in paragraph two, the nature of the certified certificate presented, the name and legal relationship of the person applying for a minor and the information regarding the dates of request and delivery. The data cannot be linked to any other computer files or transferred to third parties.

In addition, on November 17, 2000, the European Union Council adopted a resolution ensuring the security of passports and other travel documents. The French identity cards and passports meet the new security standards.[34]

Wiretapping

Law No. 91-646 of July 10, 1991, relating to the secrecy of telecommunications traffic, guarantees the confidentiality of telecommunications but allows for the interception of transmissions for security reasons or for the detection and investigation of crimes.[35] The conditions differ depending on whether they are authorized for security reasons or in the course of a criminal investigation.

In the matter of security, the law provides that telephone tapping is allowed in exceptional circumstances, when such tapping has for its purpose the gathering of information concerning the national security, the protection of France's essential scientific and economic information, or the prevention of terrorism. The interception is authorized by a written decision of the Prime Minister or his/her representatives at the request of either the Defense Minister, the Interior Minister, or the Minister in charge of Customs or their representatives. The decision must specify the grounds upon which the Prime Minister bases his/her authorization. It is given for a maximum duration of four months. It can be renewed under the same conditions and procedure. Only the information in relation to the security objectives can be transcribed. The recording is destroyed within 10 days, while the transcripts must be destroyed as soon as they are dispensable. An independent national commission, the National Commission for the Monitoring of Security Interceptions, watches over the application of these rules.

Wiretapping may be allowed during a criminal investigation when the penalties to be incurred are equal to or higher than two years of imprisonment. The investigation judge in charge of the case may authorize such wiretapping. His/her decision must be written and cannot be appealed. It is given for a maximum duration of four months. It can be renewed for an additional four months under the same procedure. Wiretapping of an attorney's office or domicile cannot take place without informing the local bar president.[36] It can only be done if there exists an indication that the attorney is participating in the commission of a criminal offense.

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[34] Report submitted by France to the U.N. Counter-Terrorism Committee pursuant to paragraph 6 of the Security Council resolution 1373 (2001) of Sept. 28, 2001, S/2001/ 1274 at http://www.un.org/docs/sc/committees/1373/.

[35] J.O., July 13, 1991, at 9167.

[36] CODE DE PROCÉDURE PÉNALE, arts. 100 to 100-7, (ed., Dalloz, 2001).

Physical Surveillance

Video surveillance must be in conformity with Law No. 95-73 of January 21, 1995,[37] as implemented by Decree No. 96-926 of October 17, 1996.[38] It can be used to ensure the protection of public buildings, national defense installations, public locations, and other buildings that may be at risk of attacks or thefts. However, video surveillance is done under strict conditions, aimed at guaranteeing privacy and freedoms. The public must be informed of the existence of the video surveillance and of the responsible person or authority. Video surveillance of public streets or areas must be done in such a way that it will not show the inside of inhabited buildings or their entrances. Proper governmental authorization, except in matters concerning national defense, is required. Any person who has been under video surveillance has a right to review the tapes and to verify that they were destroyed within the specified period. However, the authorities may refuse access to the tapes on the grounds that such access would affect the security of the state, national defense, public security, or pending judicial proceedings. Undertaking video surveillance without authorization, preserving tapes beyond the period specified, and giving access to unauthorized persons is punishable by three year imprisonment and by a fine of 45,000 Euros.

Financial Monitoring and Reporting

Decree No. 92–456 of May 22, 1992,[39] requires bank officials to verify both the domicile and the identity of any customer before he/she opens any type of account. To establish his/her identity the customer must present an official document with a photograph. All the characteristics and references of the document must be recorded. In addition to requesting documents to verify the domicile of the customer, the bank must send the applicant a letter. This letter should be sent by registered mail if the bank official has some doubts as to the address given.

Furthermore, Law 90-614 of July 12, 1990, aimed at increasing the role of financial institutions in the prevention of money laundering,[40] provides that financial institutions are required to verify the identity of their customers when entering into business relations, conducting an occasional transaction involving sums in excess of 7,600 Euros, or opening a safe.[41]

In addition, financial institutions must also inquire as to the identity of the true beneficiary of the account where there is doubt that the person opening the account or making the transaction is not acting on his/her own behalf.[42] The financial institution's officer is entitled to request any type of document he/she feels necessary to identify such beneficiary or beneficiaries.[43]

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[37] J.O. Jan. 24, 1995, at 1249.

[38] J.O. Oct. 20, 1996, at 15432.

[39] CODE DE COMMERCE, Decree No. 92-456 of May 1992, art. 33 at 581, (ed., Dalloz, 2001).

[40] Law No. 90-614 of July 12, 1990, J.O. July 14, 1990, at 8329.

[41] *Id*. art. 12. *See also* implementing Decree No. 91-160 of Feb. 13, 1991, J.O., Feb. 14, 1991, at 2242.

[42] *Id*.

[43] Decree No. 91-160 of Feb. 13, 1991, J.O., Feb. 14, 1991, art. 3.

Customers are asked to produce an original document with a photograph. The financial institution also has the duty to check the address given. In the case of legal entities, original documents or certified excerpts from official registers must be produced. They must contain the name and address of the entity, its legal form, and the powers of the members acting on behalf of the entity. In both cases, the financial institution must record the references of the documents provided or keep copies.[44]

Under the 1990 law, financial institutions are also required to notify a central authority of sums recorded in their books which they suspect may be linked to drug trafficking, money laundering, or the activities of criminal organizations. In this context , the concept of organized crime is applied to terrorist organizations. This central authority (TRACFIN) is placed under the control of the Ministry of Economy and Finance, and it gathers all the information necessary to identify the origins of these sums.[45] TRACFIN will analyze the information provided by the financial institutions, adding it to information provided by other sources. It will inform the judicial authorities when the financial operations fit money laundering profiles or other criminal activities.

No criminal action for violation of the duty of confidentiality or civil action for damages can be brought against the financial institution, which, in good faith, contacted the central authority. This rule applies even if the notification does not result in the prosecution of the financial institution's customer. However, in that case, the customer who suffered damages may sue the State which bears the liability as stated in the law.[46]

The obligation of financial institutions to report suspicious transactions was recently extended to persons who carry out, monitor, or provide advice relating to the acquisition, sale, transfer, or rental of real estate, to legal representatives and heads of casinos and to persons who habitually engage in trade or organize the sale of precious stones, materials, antiques, and works of arts.[47]

Finally, individuals who, in the exercise of their professions, carry out, monitor, or provide advice concerning operations involving movement of capital are require to report to the Public Prosecutor's Office operations involving funds that they know to be the proceeds of drug trafficking or activities of criminal organizations.[48]

Prohibited Organizations

The Law of July 1, 1901,[49] on Freedom of Association provides for the dissolution of organizations with unlawful causes or objectives, or whose purpose is to threaten public order. The dissolution must be pronounced by judicial decision. The courts will look into the real purpose of the association. The law does not require that unlawful acts be committed.

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[44] *Id.*

[45] *Supra* note 40, art. 5.

[46] *Id*. art. 8.

[47] Law 2001-420 of May 15, 2001, art. 34, J.O. May 16, 2001, at 7776.

[48] *Id*. art. 33

[49] CODE ADMINISTRATIF, Association, at 109, art. 3, (ed., Dalloz, 2000).

In addition, a Law of January 10, 1936, as amended, provides for the dissolution, by a Council of Ministers Decree signed by the President of the Republic, of combat groups or private militias which call for armed demonstrations in the streets or advocate discrimination, racial hatred, or violence. Law 86-1020 of September 9, 1986, extended this provision to groups which within or from French territory, conspire to bring about acts of terrorism in France and abroad.[50]

France is implementing the European Council Regulations on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

Terrorist Funding: Recovery of Assets

France ratified the Convention on the Suppression of the Financing of Terrorism in November 2001 and created a special unit to combat the financing of terrorism within the Central Directorate of the Judicial Police. This unit will serve as liaison with other financial authorities involved in preventing the financing of terrorism. As seen above, financial institutions are required to notify TRACFIN about sums recorded in their books that they suspect may be linked to money laundering. TRACFIN will contribute its techniques and experience in combating money laundering to the campaign against the financing of terrorism. It has signed 21 agreements on bilateral cooperation with various foreign partners. Other agreements are being negotiated.[51]

In 2001, the French Parliament introduced a new offense, the financing of terrorist activities, and the expanded definition of acts of terrorism to include money laundering and insider trading when they are intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror. The legislature imposed an additional penalty of confiscation of the total assets of the terrorist offender, and the proceeds may be paid into the compensation fund for victims of terrorist acts.[52] In addition, at the request of the Public Prosecutor's Office, the judge who is responsible for release or detention during a criminal investigation, may order provisional measures to freeze the assets of the person under investigation.[53]

At the national level, the government can freeze accounts by ministerial decree on the basis of a report of the Minister of Economy.[54] Another tool in combating terrorist financing is the requirement that any person who transfers funds, securities, or financial instruments worth 7,600 euros into or out of the country, without the intermediary of a financial or service institution, must file a declaration with the customs administration.[55] Failure to comply will result in the confiscation of the funds or instruments or, if such seizure is impossible, in the imposition of a substantial fine. In addition to these national provisions, France

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[50] *Id*. at 188.

[51] Report submitted by France to the UN Counter-Terrorism Committee pursuant to ¶6 of Security Council resolution 1373 (2001) of Sept. 28, 2001, S/2001/1274, at 27, *at* http://www.un.org/Docs/sc/committees/1373/.

[52] CODE PENAL, arts. 422-6 and 422-7, *at* http://www.legifrance.gouv.fr.

[53] CODE OF CRIMINAL PROCEDURE, art. 706-24-2.

[54] CODE MONÉTAIRE ET FINANCIER, arts. L151-1 and L151-2, *at* http://www.legifrance.gouv.fr.

[55] Id. art. L152-1.

has frozen several million euros' worth of funds of suspected terrorist organizations pursuant to its obligations under European Union regulations and United Nations resolutions.[56]

Computerized Data on Terrorism

In principle, French law prohibits processing data directly or indirectly showing an individual's racial origin and political, religious, and philosophic opinions, except with the agreement of such individual. However, Decrees No. 91-1052 and 91-1051 of October 14, 1991, relating to computerized files on terrorism prepared by the general intelligence services of the Ministry of the Interior[57] authorize the Ministry to gather any type of information regarding any person presenting a threat to the security of the State or the public. The information contained in the Ministry of Interior computers is made available under strict conditions to the police when they investigate acts of terrorism.

Use of Internet

As described above in the "Wiretapping" section, Law 91-646 of July 10, 1991, concerning the secrecy of correspondence transmitted via telecommunication technology, authorizes interception for the purpose of preventing terrorism. In addition, significant measures have been taken to ensure the security of computerized systems and information. An inter-ministries office, the *Office central de lutte contre la criminalité liée aux technologies de l'information et de la communication* (Central Office to Combat Criminality Linked to Information Technologies) was created in May 2000[58] to coordinate, at the national level, the fight against specific computer offenses[59] and traditional offenses whose commission is facilitated by or linked to the use of information technologies. Furthermore, a *Centre d'alerte et de secours sur l'internet* (Computer Emergency Response Team/Administration) has been operational since the end of 1999. One of its missions is to detect attacks against the State computer systems and to prevent them.

In addition, to block material that undermines public order and security, national defense, racial and religious harmony, and morals, the government applies existing laws such as the Law on Freedom of the Press or general provisions of the Penal Code. These laws or provisions have been either originally drafted broadly or amended at a later date so as to include any new means of publication or communication.

Among other offenses, the Law on Freedom of the Press makes it possible to punish any direct public incitement to commit voluntary manslaughter, violence against the person, sexual offenses, terrorist acts, discrimination, and hatred or violence against persons based on racial, religious, ethnic, or national origin. Two provisions specifically mention terrorism. Public incitement to the commission of a terrorist act where such incitement is not acted upon and advocacy of a terrorist act by depicting either an act of terrorism that

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[56] *Supra* note 51 at 7, 8, and 9.

[57] J.O. Oct. 15, 1991, at 13499.

[58] J.O. May 16, 2000, at 7338.

[59] The Criminal code contains several provisions covering data protection and computer misuse. Articles 226-16 through 226-24 deal with infringements on personal rights resulting from data processing while articles 323-1 through 323-7 provide for computer misuse including unauthorized access and unauthorized modification of computer material.

has been perpetrated or those responsible in a favorable light are both punishable by five years' imprisonment and a fine of 45,000 Euros.[60]

Terrorist Incidents and Infiltration

The Paris anti-terrorist police have made multiple arrests of suspected Islamic fundamentalists within the last six months. A formal investigation has been opened against Djamel Beghal and Kamel Daoudi, who allegedly were targeting U.S. interests in France, in particular the American Embassy. Djamel Beghal, who was extradited from the United Arab Emirates, and Kamel Daoudi were placed in provisional detention.[61] France does not have a bail system similar to the one of the United States. Individuals charged with offenses carrying at least three years' imprisonment may be placed in provisional detention by a specialized judge for a reasonable length of time based on the gravity and the complexity of the case.[62]

During April 2001, the Paris Court (described below) held a nearly month long trial. Two dozen individuals were charged with belonging to a support network for Islamic militants linked to al-Qaeda. The leader, Fateh Kamel, was sentenced to eight years' imprisonment for running the underground terrorist logistic network . His accomplice, Ahmed Ressam, was sentenced in *absentia* to five years. Ressam also allegedly plotted to attack the Los Angeles Airport in December 1999. Both men were banned permanently from French territory by the court. Seventeen other members of the network were handed sentences of between 16 months and 6 years.[63]

The Minister of the Interior is planning to return to their countries of origin the Islamic fundamentalists involved or suspected to be involved in terrorist activities after stripping them of their French citizenship if applicable. On May 27, 2002, Kamel Daoudi lost his French citizenship which he had acquired in June 2001. Other individuals are being considered, among them, nine members of the "Chalabi network" who were sentenced in 1998 during a trial which involved 138 persons accused of participating in a network linked to the Armed Islamic Group.[64]

On May 8, 2002, 11 French naval engineers were killed in a suicide attack on their bus in Karachi, Pakistan. According to the French authorities, the attack was masterminded by al-Qaeda as a reprisal for French military cooperation with the regime of General Musharraf in Pakistan.[65]

International Conventions on Terrorism; Mutual Legal Assistance Treaties

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[60] Law on Freedom of the Press as amended, CODE PÉNAL, Appendix: Presse and Communications, art. 24 at 1881, (ed., Dalloz, 2001).

[61] Le Figaro, May 9, 2002, Alexandrine Bouilhet, Pakistan Quatorze personnes, don't au moins onze Français ont été tués. LEXIS: Le Figaro (FR).

[62] Code of Criminal Procedure, art. 144.1 (ed., Dalloz 2001)

[63] The Associated Press State & Local Wire, Apr. 6, 2001, Verena Von Derschau, *French court hands down sentences in Islamic network trial*, LEXIS: News Group file.

[64] LE FIGARO, Aug. 2, 2002, Alice Sedar, Islamistes Kamel Daoudi déchu de sa nationalité; L'expulsion menace les étrangers présumés terroristes; Lexis: Le Figaro (FR).

[65] *Supra*, note 61.

France has signed and ratified the following international conventions pertaining to international terrorism:

- Convention on Offences and Certain Other Acts Committed Onboard Aircraft, signed at Tokyo on September 14, 1963[66]
- Convention on the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970[67]
- Convention on the Suppression of Unlawful Acts Against the Safety of Civil Aviation signed at Montreal on September 23, 1971[68]
- The European Convention on the Suppression of Terrorism, concluded at Strasbourg on January 27, 1977[69]
- International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979[70]
- Convention on the Physical Protection of Nuclear Material, signed at Vienna on March 3, 1980[71]
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on February 24, 1988[72]
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988[73]
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988[74]

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[66] J.O., Feb. 27, 1971, at 1957.

[67] J.O., Feb. 23, 1973, at 2028.

[68] J.O., Oct. 13, 1976, at 6006.

[69] J.O., Dec. 22, 1987, at 14954.

[70] J.O., Aug. 02, 2000, at 11954.

[71] J.O., Feb. 05, 1992, at 1860.

[72] J.O., Nov. 9, 1989, at 13944.

[73] J.O., Feb. 27, 1992, at 2979.

[74] J.O., Mar. 26, 1992, at 4172.

- Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on March 1, 1991[75]

- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997[76]

- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999[77]

The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, is the only counter-terrorist convention to which France is not yet a party. However, France has started the ratification process.

France has signed many bilateral mutual legal assistance treaties in criminal matters and police cooperation agreements.

2. Legal Enforcement Against Terrorism

Criminal Laws

France has a body of laws dealing specifically with acts of terrorism which has been progressively developed since the 1980s. The definition of acts of terrorism and the penalties applicable are contained in the new French Penal Code, while special rules of procedure concerning jurisdiction, preliminary detention, and searches and seizures can be found in the Code of Penal Procedure.

Definition of Acts of Terrorism

The following offenses[78] are acts of terrorism when they are intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror:

- willful infringements on life, willful infringements on the integrity of the person, kidnaping and imprisonment as well as hijacking of aircraft, ships, or any other means of transport

- larcenies, extortions, property destruction, and vandalism as well as offenses with respect to computerized data

[75] J.O., June 05, 1999, at 8296.

[76] J.O., May 2, 2002, at 7961.

[77] J.O., June 16, 2002, at 10636.

[78] NOUVEAU CODE PÉNAL, art. 421-1, (ed., Dalloz, 2001).

- offenses with respect to paramilitary groups and dissolved movements defined in articles 431-13 to 431-17, and the offenses defined in articles 434-6 and 441-2 to 441-5[79]

- the manufacture, possession, and storage of deadly weapons or dangerous explosives; the production, sale, importation, and exportation of explosive substances; the acquisition, possession, and illegal transport of explosive substances and of devices fabricated with the assistance of such substances; the possession, carrying, and transport of prohibited weapons and munitions; the fabrication and storage of biological and toxic weapons; and the development, manufacture, stocking, and use of chemical weapons

In addition, the Code defines "ecological terrorism:"[80] introducing into the atmosphere, onto the ground, in the subsoil or into water (including the territorial sea) a substance likely to endanger the health of humans or animals or the natural environment is an act of terrorism when it is intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing the public order by intimidation or terror.

It is also an act of terrorism to participate in a group formed, or an understanding reached, for the preparation, evidenced by overt acts, of one of the acts of terrorism specified in the preceding articles.[81] Finally, on October 30, 2001, the French legislature introduced a new offense, the financing of terrorist activities, and expanded the definition of acts of terrorism to include money laundering and insider trading when they are intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror. [82]

Special Procedural Regime

Jurisdiction

The Code of Criminal Procedure provides that for the prosecution, investigation, and judgment of acts of terrorism, the prosecutor, the investigating judge, the *tribunal correctionel*, and the *Cour d'assises* of Paris exercise jurisdiction concurrent with that of the competent court of general jurisdiction. The grant of objective jurisdiction has led to the Paris Court being recognized as the Special Terrorism Court in France. These unusual rules regarding competence stem from the complexity of the fight against terrorism. This fight requires a centralized system of prosecution and judgments, and the prosecutor, investigation judge, and the court originally competent may be asked to waive their jurisdiction. When they have jurisdiction, the Prosecutor and investigating judge of the Paris Court exercise their powers throughout the national territory.[83]

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[79] Articles 431-13 to 431-17 cover the organization, participation, maintenance, and reconstitution of unlawful paramilitary groups. Article 434-6 deals with supplying a perpetrator or accessory to a felony or to an act of terrorism punishable by at least 10 years imprisonment with a lodging, hiding place, subsidy, means of support, or any other means of avoiding investigation and arrest. Article 441-2 to 441-5 cover forgery.

[80] *Id.* art. 421-2.

[81] *Id.* art. 421-2-1.

[82] Law 2001-1062 of Nov. 15, 2001, J.O., Nov. 16, 2001, at 18215.

[83] CODE DE PROCEDURE PÉNALE, art. 706-17, (ed., Dalloz, 2001).

In addition, the composition of the *Cours d'assises* adjudicating terrorist crimes[84] is different from ordinary *Cours d'assises*. Instead of the three judges and nine jurors found in ordinary *Cours d'assises*, there are seven professional judges.[85]

Preliminary Detention, Searches, and Seizures

In order to prosecute acts of terrorism more efficiently, provisions regarding preliminary detention and search and seizure are less stringent than those applicable to common criminals. The preliminary detention by the police of an adult may be extended up to a total of four days.[86] This extension must be requested by the Prosecutor and authorized by either the president of the court in whose jurisdiction the preliminary detention takes place, or by the investigating judge. The individual detained must be presented to the authority who decides on the extension, prior to its decision. In the case where an extension is ordered, a medical examination is mandatory. In addition, under of the Code of Criminal Procedure, access to an attorney may be delayed by 72 hours while the suspect is in police custody.[87]

In derogation of the general regime, preliminary searches, domiciliary visits, and seizures of evidence may be made without the consent of the person on whose property they take place[88] and may be conducted at night.[89] In both cases they must be authorized in writing by either the President of the competent court or by the investigating judge in charge of the case.

Punishment

Both individuals and legal entities may be found criminally liable of a terrorist act.[90]

Individuals – Main Penalties

The maximum penalties for terrorist acts are more severe than the ones usually given to the same felonies without the required elements of terrorism. The maximum imprisonment incurred for the offenses specified in article 421-1 of the Penal Code is raised as follows when these offenses constitute acts of terrorism:

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[84] In broad terms French law distinguishes three categories of offenses: (1) *crimes* are a small category of very serious offenses (murder, rape, etc.); *délits* are less serious (theft, assault, fraud, etc.); and *contraventions* include a large range of regulatory offenses often of strict liability. The *Cours d'assises* are competent to adjudicate crimes, *the tribunaux correctionnels* are competent over *délits,* while the police courts hear *contraventions.*

[85] *Supra* note 83, art. 706-25.

[86] *Id.* art. 706-23. As a general rule, police can hold a person at their disposal for 24 hours for the necessities of the preliminary investigation. The Prosecutor may grant written authorization to extend the investigatory detention for a new period of 24 hours. In case of terrorism, it can be extended for an additional period of 48 hours.

[87] *Id.* art. 63-4.

[88] *Id.* art. 706.24.

[89] *Id.* art. 706-24-1.

[90] CODE PENAL, art. 422.5 (ed. Dalloz 2001).

- to life sentence, when the offense is punishable by 30 years of imprisonment
- to 30 years, when the offense is punishable by 20 years
- to 20 years, when the offense is punishable by 15 years
- to 15 years, when the offense is punishable by 10 years
- to 10 years, when the offense is punishable by 7 years
- to seven years, when the offense is punishable to five years
- it is doubled when the offense is punishable by three years

The penalty for an act of terrorism described in article 421-2 (ecological terrorism) is 15 years of imprisonment and a fine of 225,000 euros. If the felony involved the killing of one or more persons, the penalty is imprisonment for life and a fine of 750,000 euros.

The penalty for an act of terrorism described in article 421-2-1 (conspiracy to commit an act of terrorism) is 15 years' imprisonment and a fine of 225,000 euros.

Individuals – Additional Penalties

Additional penalties may be incurred by the individual found guilty of an act of terrorism.[91] Their application will depend on whether the convicted terrorist is a French national or a foreigner. They are: (1) the deprivation of civic, civil and family rights; (2) prohibition for a maximum period of 10 years of holding a governmental office or exercising the professional or social activity in the course of which the offense was committed; (3) prohibition of residence in certain areas or locations, accompanied with other measures such as surveillance; and (4) banishment from French territory either permanently or for a period of no more than 10 years depending on the gravity of the offense committed. The application of this penalty is governed by the conditions set forth in article 131-30, which indicates that the application of this penalty leads to immediate deportation of the offender at the expiration of his/her term of imprisonment.

Finally, the Civil Code which contains France's nationality law provides that conviction for a terrorist act may result in loss of French citizenship when such citizenship was acquired through naturalization.[92]

Legal Entities

A legal entity may also be found criminally responsible for the acts of terrorism described above. The penalties incurred are a fine and other special penalties. Organizations and groups can be punished by a maximum fine of five times more than the amount of a fine applied to an individual. Other penalties may be applied for legal entities including dissolution of the organization or interdiction of direct or indirect professional or social activities, either permanently or for a duration of no more than five years. Such

[91] CODE PÉNAL, arts. 422-3 to 422-5, (ed., Dalloz, 2001).

[92] CODE CIVIL, art. 25, (ed., Dalloz, 2002).

organizations may also be placed under judicial surveillance for a period of no more than five years.[93]

Cooperation by Terrorists

The reporting of terrorist activities is encouraged by giving immunities to any person who intended to commit a felony but changed his/her mind and decided to notify the authorities in order to prevent the realization of the crime or to identify other offenders. In addition, the penalty of imprisonment incurred by a perpetrator or accessory to an act of terrorism is reduced by one-half if, by notifying the authorities, such perpetrator or accessory was able to bring to an end the incriminated activities or to prevent the offense's resulting in death or permanent infirmity and, if the case arises, to identify the other guilty parties.[94]

Compensation of Terrorism Victims

Provisions concerning compensation of victims of terrorism are contained in the Insurance Code.[95] France has a fund that provides compensation to victims of terrorist acts and other offenses. The persons receiving compensation are "the victims of acts of terrorism committed on the national territory and French nationals that are victim of terrorist acts abroad." The fund is used to pay for medical care and treatment as well as for rehabilitation and other related expenses. The compensation must cover all the consequences of the bodily injuries received by the victims. Contributions to the fund are made through a deduction on the premiums of insurance contracts on assets. The rate of the deduction is determined annually by a decree issued by the Ministry of Economy and Finance. In addition, the new security bill passed on October 31, 2001, provides that the proceeds of financial penalties pronounced against individuals found guilty of terrorist acts will be appropriated to the fund.

3. Legislation Enacted After September 11, 2001

Temporary Anti-Terrorist Measures

On October 31, 2001, the National Assembly approved several temporary anti-terrorist measures which are part of a wider ranging bill on security.[96] The Senate adopted similar legislation on October 16. These measures will be in force until December 31, 2003, when they will be open for review. The main provisions are as follows:

- On the instructions of a public prosecutor, the police will be allowed to search cars driving, standing, or parked on public roads or in areas accessible to the public in preliminary inquiries relating to terrorist acts, drugs, and/or infringement of firearm and explosives regulations.

- The authority of judges to authorize preliminary searches, residential visits, and seizures of evidence without the consent of the person on whose property they take place has been extended to preliminary inquiries relating to drug offenses and violations of firearms and explosives regulations.

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[93] CODE PENAL, art. 422.5, (ed., Dalloz, 2001).

[94] *Id.* arts. 422-1 and 422-2.

[95] CODE DES ASSURANCES, arts. L.126-1, L126-2, and L 422.1 to L422.3.

[96] *Supra* note 82.

As described above, they were already authorized in preliminary inquiries relating to terrorist acts. The police will also be able to carry out nighttime searches in spaces other than living spaces, such as storage spaces, garages, etc.

- To ensure the security of international and national flights, police officers and customs agents are allowed to search bags, parcels, airplanes, and any other vehicles found in areas of the airport not accessible to the public and to conduct body searches. They have also been given the same powers to protect ships and ports.

- Private security agents, approved by the competent administrative authority or the prosecutor, are authorized to search bags and conduct body searches in airports, ports, and other public areas when there are grave threats to public security.

- Telecommunications companies may be required to keep records of connections identifying users for a year at the request of the judicial authorities.

- The definition of acts of terrorism has been expanded to include money laundering and insider dealing when they are intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror. In addition, a new article was inserted in the title covering terrorism in the Criminal Code. Article 421-2-2 provides that "financing a terrorist enterprise by providing, collecting, or managing funds, stocks or any other types of goods or giving advice to that end, with the intent to see these funds, stocks or goods used or knowing that they will be used to commit one of the terrorism acts [as defined in the Criminal Code], independently of an actual commission of such act, is an act of terrorism."

- Under certain conditions the law authorizes access to police files to ensure that persons in charge of security or having access to sensitive areas such as nuclear plants, airports, etc. meet all the necessary security requirements.

- Video recordings may be made during interviews and videoconferencing technology may be used for witness confrontation in the context of offenses relating to terrorism, drugs, and violation of firearms and explosives regulations.

- Judicial authorities may ask any competent individual or legal entity to decipher any coded messages obtained during an investigation. Code-making companies will be obliged to supply to such authorities the means necessary to decode encrypted data. When the sentence incurred is more than two years' imprisonment, judicial authorities may request the use of state classified means to decipher coded messages.

French civil rights groups oppose the measures but the Interior Minister strongly defended them before the National Assembly. He stated that "the security of our citizens surpass any other consideration...collective security is not the enemy of individual liberty, it is one of the conditions for exercising it."[97]

Draft Bill on Internal Security

[97] http://www..assemblee-nationale.fr/dossiers/sécurité_quotidienne.asp

On July 16, 2002, the Interior Minister unveiled a draft bill on internal security that would allocate 5.6 billion euros for the period 2003-2007 to the police services and the gendarmerie. Seven thousand gendarmes and 6,500 policemen would be hired. Of these new hires, 600 of them (300 of each corps) will be specifically assigned to the fight against terrorism, while 700 policemen will be added to protect borders and fight illegal immigration. This amount is in addition to the 3.65 billion euros allocated to internal security in the Ministry of Justice's budget.[98]

The bill would create a police reserve force to fulfill two objectives: (1) to be recalled in case of grave crisis, and (2) to perform mediation and social tasks to support the efforts of colleagues on active duty.

International Agreements

France ratified the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999. It negotiated an agreement to allow U.S. customs inspectors to be stationed at the port of Le Havre. It ratified both a new extradition treaty (effective February 2002) and a new mutual legal assistance treaty in criminal matters (effective December 2001) with the United States. The position of France on the death penalty has somewhat complicated this assistance, in the case of Zacarias Moussaoui, a French citizen of Moroccan origin and the alleged 20th hijacker. France abolished the death penalty in 1981 and is a signatory to Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms. This protocol provided for the abolition of the death penalty in times of peace, with neither derogations in emergency situations nor reservations permitted. In addition, France recently signed Protocol No. 13 to the Convention that prohibits capital punishment, whatever the circumstances. Although, France said it would continue judicial cooperation with the United States, the new Foreign Affairs Minister recently re-emphasized France's wishes that the death penalty will not be sought in the Moussaoui case.[99]

4. Limits on Counter-Terrorist Activity

Having been confronted with terrorism for decades, France has a wide array of legal tools to be an effective participant in the international fight against terrorism and has been recognized as making significant contributions to that struggle.[100] As seen above, France has carved many exceptions to stringent laws to accommodate its fight against terrorism. This is the case, for example, in matters of privacy laws and civil liberties.

The way laws are implemented, however, depends upon many factors. The Ministry of Justice, for example, issues on a regular basis general guidelines on the implementation of criminal laws to the prosecutors throughout France. These guidelines necessarily reflect the policies of the government in place and greatly impact on the implementation of specific laws. Therefore, any perceived limits on France's

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[98] Intervention de Nicolas Sarkozy, July 16, 2002, Assemblée Nationale-Séance publique *at* http://www.interieur.gouv and LE MONDE, Pascal Ceaux *,Le projet de loi sur la sécurite réorganise police et gendarmerie*, July 11, 2002, LEXIS, Le Monde (FR).

[99] Le Monde, Les autorités Française sont intervenues, July 27, 2002, LEXIS: Le Monde (FR).

[100] Jeremy Shapiro, *The role of France in the war on terrorism* , (May 2002) *at* http://www.brook.edu/fp/cusf/analysis/shapiro_20020514.htm. See also *Fortune International*, Letter to Fortune, Mar. 4, 2002, LEXIS Service, News Group File.

counter-terrorist activity might not be the result of legislation or lack of it, rather the result of other factors including internal issues, national interests, public opinion or electoral concerns.[101]

Finally, France's fight against international terrorism is also guided by its belief that such fight must take place in a context of respect for human rights and fundamental freedoms as defined in international instruments, and the need to take into account the grave human, political and social problems upon which terrorism feeds. These basic principles will also have an impact on the way laws are implemented and may lead to limits on France counter-terrorist activity.[102]

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[101] *Supra* note 1, at 69,70, 73.

[102] Report submitted by France to the UN Counter-terrorism Committee pursuant to¶ 6 of the Security Council resolution 1373 (2001) of Sept.28, 2001, S/2001?1274, at 3, at http://www.un.org/Docs/sc/committees/1373/.

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GERMANY

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

German anti-terrorist legislation was created in the 1970s and 1980s, when Germany successfully fought the terrorism of the Baader-Meinhof group, a domestic group of left-wing ideology. During the 1990s German law enforcement efforts focused on organized crime, drug trafficking, and money laundering, and for these purposes police powers of investigation and surveillance were increased. These reform laws, however, were drafted so as to preserve constitutional guarantees of liberty and due process, as they were perceived in Germany. A major component of this constitutional framework has been the right of privacy which may have imposed significant restraints on crime prevention and detection.

The events of September 11, 2001, led Germany to realize that terrorism now posed a new level of threat, in that its perpetrators were anonymous and replaceable components of a vast international terror network. German legislative reaction was swift and massive and resulted in the changing of some 20 laws and several regulations. Much emphasis was placed on improving the traceability of aliens, and many privacy restraints were eliminated, thus allowing German police and security agencies to communicate better with each other. In addition, the security agencies gained the right to review banking records.

The anti-terrorist legislation of 2001/2002 purports to remain within the constitutional framework, although the understanding has changed as to what the German Constitution permits. In fact, the intelligence and law enforcement communities had long requested many of the changes that were enacted as a response to September 11, and there had been a gradual increase of some investigative powers, even before September 11. It appears that the effectiveness of the new framework of laws in the prevention and detection of terrorist activity will depend on the further implementation of the new statutory authorizations and on their interpretation by the administrative authorities and the courts.

1. Legislation Prior to September 11, 2001

Immigration

As in effect before September 11, German immigration law purported to ensure that aliens did not enter Germany or remain there unless they had been given permission to do so. Entry visas and residence permits for aliens were granted for various purposes and for various lengths of time. Generally, aliens who worked in Germany had to reapply for temporary permits for eight years before they obtained permanent residency. Exceptions to these principles applied to the spouses of citizens or permanent residents.[1] Despite these restrictive polices, Germany has a large immigrant population that has been

[1] These principles are given statutory expression in the Ausländergesetz (AuslG) [Act on Aliens] July 9, 1990, BUNDESGESETZBLATT [BGBl., official law gazette of the Federal Republic of Germany] I at 1354, as amended, and its implementing regulations, in particular, Verordnung zur Durchführung des Auslündergesetzes (DVAuslG), Dec. 18, 1990, BGBl. I at 2983, as amended.

attracted by economic opportunities.[2]

Until recently, German naturalization legislation also was fairly restrictive. Until 1999, waiting periods of 10 years' residence were quite common, and children of aliens remained aliens unless they applied for naturalization under strict requirements. Moreover, until 1999 many aliens refrained from acquiring German citizenship because they would have had to give up their former citizenship. However, shorter waiting periods for naturalization (two to five year's residence) have always been available to the spouses of German citizens.[3] In 1999, German naturalization law was reformed by allowing dual citizenship and by granting citizenship to children born to alien parents in Germany,[4] and these reforms led to an increase of naturalizations.

German immigration legislation aimed at ensuring that an alien would not enter Germany or reside there if the alien posed a serious threat to German internal security.[5] However, sympathizers or perpetrators of international terrorism were not specified as persons who should be kept out of Germany in the statutory provisions. Moreover, it is possible that the level of surveillance of the overall alien population may have decreased in Germany in recent years after more aliens became permanent residents or citizens after shorter waiting periods. For instance, naturalized aliens no longer would have been subject to the tracking of aliens through the central register of aliens. However, until the enactment of the Immigration Act in the summer of 2002, German immigration and naturalization law was much more restrictive than its Western neighbors and provided much longer waiting periods for permanent resident status and naturalization.

Asylum

Until 1993, the German Constitution offered an unconditional guarantee of asylum to any persecuted person who reached Germany.[6] As a result, Germany was flooded with asylum petitioners, many of them economic refugees. In 1993, Germany restricted its guarantee of asylum[7] in keeping with EU policies that aimed at coordinating and restricting refugee access, among them the principles of the Dublin Agreement[8] which aimed at ensuring that only one European Union country rule on each asylum petition. In addition, the 1993 reform of German asylum law aimed at refusing entry to asylum claimants who had already passed through another country where they could have found a safe haven. As a result of these measures, the number of asylum petitioners entering Germany has dwindled from a high of

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[2] In 1998, 8.9 percent of the German population were aliens. R. Kraus, *Der Vierte Bericth der Ausländerbeauftragten der Bundesregierung,* 20 ZEITSCHRIFT FÜR AUSLÄNDERRECHT UND AUSLÄNDERPOLITIK (ZAR) at 248 (2000).

[3] Reichs-und Staatsangehörigkeitsgesetz, July 22, 1913, REICHSGESETZBLATT as amended and as in effect until July 1999, §§4, 8, and 9; Einbürgerungsrichtlinien, July 1, 1977, GEMEINSAMES MINISTERIALBLATT at 16, (1977), no. 6.1.

[4] Gesetz zur Reform des Staatsangehörigkeitsrechts, Sept. 8, 1999, BGBl. I at 1618.

[5] AuslG, §§ 8 and 46.

[6] Grundgesetz für die Bundesrepublik Deutschland [GG], May 23, 1949, BGBl. at 1, art. 16 as in effect until 1993.

[7] GG, art. 16a, as enacted by Grundgesetzänderung, June 28, 1993, BGBl. I, at 1002.

[8] Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities, signed June 15, 1990, at Dublin, BGBl. II 1994, at 791. English text reprinted at 2 INTERNATIONAL JOURNAL OF REFUGEE LAW at 469 (1990).

193,063 in 1990 to 78,564 in 2000.[9]

In addition to asylum petitioners and individuals to whom asylum has been granted, Germany also is home for many *de facto* refugees. These are individuals who were allowed to remain in Germany for various reasons, mostly humanitarian, even though they did not qualify for asylum.

According to the statutory provisions,[10] asylum petitioners and those to whom asylum has been granted, have been subject to the statutory provisions on deportation for German security reasons, in the same manner as other aliens. However, for all types of refugees, humanitarian reasons often may have outweighed the statutory deportation criteria, thus allowing such individuals to remain in Germany,[11] even in some instances when security reasons might have suggested otherwise.

Visitors

The general rule on visitors has always been that they must acquire an entry visa, which is granted in different manners, depending on the visitor's country of origin and the purpose of the visit.[12] A notable exception to this principle, however, has been applied to visitors from a list of approximately 60 countries; these do not require an entry visa for a visit of no more than three months. The list had not included any Middle Eastern or North African countries. In fact, the only African country on the list appears to have been Malawi.[13]

Visitors from other countries and visitors intending to stay longer than three months were required to have an entry visa which, as a rule had to be obtained from the German consulates abroad, but in many instances had required consent of the authorities of the German state where the individual intended to stay. Various exceptions have applied.[14]

Tracking of Immigrants/Visitors

Germany has had a longstanding administrative practice of keeping a register of aliens. This practice was put on a formal basis in 1994, with the enactment of the Alien's Central Registration Act.[15] The register was intended to assist the authorities in the enforcement of immigration and asylum laws, but privacy restrictions forestalled the use of the register for many other governmental purposes. However, the effectiveness of the register was enhanced by the German practice of keeping registers of the residence or other abode of all inhabitants of Germany. These reporting duties have been mandated by federal law[16]

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[9] STATISTISCHES JAHRBUCH 2001 FÜR DIE BUNDESREPUBLIK DEUTSCHLAND, at 66 (Wiesbaden, 2001).

[10] AuslG, §46 *et seq*.

[11] G. Renner, AUSLÄNDERRECHT at 815 (München, 1999).

[12] AuslG, §3.

[13] DVAuslG, §1 and Anlage 1.

[14] DVAuslG, §9 *et seq*.

[15] Ausländerzentralregistergesetz, Sept. 2, 1994, BGBl. I at 2265, as amended.

[16] Melderechtsrahmengesetz, repromulgated June 24, 1994, BGBl. I at 1430, as amended.

which has been further implemented by state law.

Identity Cards

Since 1986, every inhabitant of Germany over the age of 16 has been required to obtain a machine-readable identity card[17] or a passport, and one of these documents has to be produced to the police upon request. At the time of enactment, the identity card legislation aimed at helping in the fight against domestic terrorism. Until September 11, biometric entries (other than a passport picture) were strictly prohibited.

Wiretapping

German wiretapping laws have always been tightly worded because they constitute an exception from the otherwise prevailing constitutional guarantee of the secrecy of the mail and of telecommunications.[18] On the basis of legislation, wiretapping has been permissible:

- in criminal investigations, on the basis of a judicial warrant,[19] to be conducted by the police, acting on behalf of the public prosecutor
- to monitor compliance with export and arms control laws, by the Federal Border Protection Service[20]
- for the gathering of domestic and foreign intelligence, by the intelligence services, under parliamentary control, but without requiring a warrant[21]

Various procedural safeguards have always applied.

Physical Surveillance

Audio and visual surveillance has been permissible:

- in criminal investigations, by the police on behalf of the public prosecutor and after issuance of a warrant[22]
- for the gathering of domestic and foreign intelligence[23]

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[17] Gesetz über Personalausweise, repromulgated Apr. 21, 1986, BGBl I at 548, as amended.

[18] GG, art. 10,; J. Carr, Wiretapping in West Germany, 19 AMERICAN JOURNAL OF COMPARATIVE LAW at 607 (1981).

[19] Strafprozessordnung [StPO], repromulgated Apr. 7, 1987, BGBl. I at 1074, as amended, §100 a.

[20] Bundesgrenzschutzgesetz [BGSG], repromulgated Oct. 19, 1994, BGBl. I at 2978, as amended, §28.

[21] Artikel 10-Gesetz [Art. 10-G] , June 26, 2001, BGBl I at 254.

[22] StPO, §100 c.

[23] Art. 10 G.

- for preventive police protection, on the basis of the police laws of the states[24]

Despite various constitutional restrictions,[25] the authorizations for these activities have been expanded over the years, first during the 1970s and 1980s to combat domestic terrorism, and then in the 1990s to fight against organized crime.[26]

Financial Reporting

Until September 11, the German concept of bank secrecy prohibited the random surveillance of banking records; such intrusions into bank secrecy were restricted to criminal investigations and to a few other purposes for which there was specific statutory authorization.[27]

In 1993, Germany enacted money laundering legislation that complied with international obligations and required German financial institutions to know their customers and report suspicious transactions.[28] Until September 11, the main focus of the German money laundering provisions had been organized crime and it remains doubtful whether these provisions were adequate to address the flow of money relating to international terrorism, unless these monies were to be investigated under their drug-trafficking aspects.

Prohibited Organizations

The German Criminal Code prohibits participation in criminal organizations[29] and in terrorist organizations. In addition, the German Act on Associations authorizes the administrative authorities to prohibit associations that serve criminal or subversive purposes.[30] Until September 11, religious organizations were exempt from such administrative prohibitions, even if they adhered to extremist philosophies.[31]

Terrorist Funding; Recovery of Assets

In 1992, a criminal provision on money laundering was enacted that also allowed for the forfeiture of the involved assets.[32] The criminal provision on money laundering applied to the proceeds of certain

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[24] For instance, in Baden-Württemberg, Polizeigesetz, repromulgated Jan. 13, 1992, GESETZBLATT FÜR BADEN-WÜRTTEMBERG at 1, as amended, §22.

[25] The right of privacy was strengthened significantly by the Federal Constitutional Court in the Bundesverfassungsgericht [Census decision] Dec. 15, 1983, docket no. 1 BvR 209/83.

[26] Verbrechensbekämpfungsgesetz, Oct. 28, 1994, BGBl. I at 3186.

[27] P. Glauben, Das Bankgeheimnis, 80 DEUTSCHE RICHTERZEITUNG at 104 (2002).

[28] Geldwäschegesetz, Oct. 25, 1993, BGBl. I at 1770, as amended.

[29] S Strafgesetzbuch [StGB], repromulgated Nov. 13, 1998, BGBl. I at 3322, as amended, §129.

[30] Vereinsgesetz [VereinsG], Aug. 5, 1964, BGBl. I at 593, as amended, §3.

[31] VereinsG., §2, ¶2 no. 3.

[32] StGB, §261, as enacted by Gesetz, July 15, 1992, BGBl I at 1302.

enumerated offenses which include all felonies and, in addition, misdemeanors relating to drug trafficking and organized crime. Although Germany had expanded the forfeiture of assets in the 1990s, this measure was aimed at money laundering, drug trafficking, and organized crime. The law was silent on the applicability of these measures to international terrorist activities, which could be construed only by considering the drug-trafficking links and origins of terrorist funds.

Use of Internet

German statutory law has not as yet specifically addressed the permissibility of the collection of Internet data for intelligence and investigative purposes or for crime prevention. In the absence of statutory solutions, the legal literature makes distinctions between the accessing of secured and unsecured communications. Generally, the opinion prevails that unsecured data may be searched. With regard to secured data, constitutional issues may be raised.[33] However, it appears that the Federal Criminal Office may be authorized to search secured communications.[34] In any event, some search techniques for Internet data appear to have been used by that office.[35]

International Conventions on Terrorism

Germany is a member of the European Convention on the Suppression of Terrorism.[36] In addition, Germany is a member of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons,[37] of the International Convention Against the Taking of Hostages,[38] and of several conventions regarding aviation.[39] It appears that German statutory provisions on criminal jurisdiction[40] have lived up to the international obligations incurred by these Conventions.

Terrorist Incidence and Infiltration

Germany has experienced a considerable amount of domestic terrorism during the 1970s and 1980s, when the *Baader-Meinhof* group, a domestic group of left-wing ideological origins, committed numerous terrorist attacks. German law enforcement efforts were able to overcome this terrorist threat, and this was made possible through a series of anti-terrorist laws that enhanced police powers; some of these reforms were temporary whereas others have remained in force.

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[33] B. Meseke, *Ermittlungen im Internet,* KRIMINALISTIK at 245 (2002).

[34] Bundeskriminalamtgesetz [BKAG], July 7, 1997, §7 ¶1; M. Zöller, *Verdachtlose Recherchen und Ermittlungen im Internet*, 147 GOLTDAMMER'S ARCHIV FÜR STRAFRECHT at 563 (2000).

[35] S. Lorch, *Ermittlungen im Internet,* KRIMINALISTIK at 328 (2001).

[36] Signed at Strasbourg, Jan. 27, 1977, BGBl. 1978 II at 321.

[37] Signed at New York, Dec. 14, 1973, 28 UST 28 1975; TIAS 8532.

[38] Signed at New York, Dec. 17, 1979, TIAS 11081.

[39] Among them, Convention for the Suppression of the Unlawful Seizure of Aircraft, signed at The Hague, Sept. 16, 1970, 22 UST 1641; TIAS 7192.

[40] StGB, §6.

During the 1990s, the focus of German law enforcement and criminal law reform shifted to organized crime, which was then perceived as a larger threat than terrorism. Before the September 11, 2001, attacks, the German authorities were not aware that Germany harbored several of the perpetrators, even though the German domestic intelligence agencies knew of the existence of Islamic radical groups,[41] one of which was engaged in an attempted terrorist attack in Strasbourg, France; the perpetrators of this attack are now being tried in Germany.[42] According to domestic intelligence reports, there are some 31,000 persons in Germany who belong to extremist fundamentalist groups.[43]

2. Legal Enforcement Against Terrorism

Criminal Laws

In Germany, the perpetrators of terrorist crimes are adjudicated according to the generally applicable provisions of criminal law. German law does not contain a definition of terrorism. The only terrorist offense in the German Criminal Code deals with terrorist organizations.

Specific Terrorism Laws

Until September 11, the only substantive criminal provision specifically relating to terrorism was section 129a of the Criminal Code, which prohibits various conduct with regard to a terrorist organization. The latter is defined as having the purpose of committing certain enumerated criminal offenses. By German standards, the provision is quite expansive in its criminalization of conduct, in that it penalizes support and promotion of terrorist groups, which could include sympathizers, and it appears to allow for the surveillance of anyone having had any contact with suspected terrorists.[44]

The events of September 11, however, have shown a major flaw in section 129a of the Criminal Code in that the provision applies only to terrorist groups that commit or plan activities in Germany. Until September 11, there was no criminal provision that could have been applied to terrorists ensconced in Germany and planning an attack in other countries.

Much of the German anti-terrorist legislation was procedural and it increased the investigative powers of law enforcement by allowing search methods that formerly were banned. Some of these provisions have remained in force since the 1970s and 1980s. Among these is the permissibility of computerized data-matching searches that involve profiling.[45]

Conspiracy

The above described section 129a of the Criminal Code is in fact a conspiracy provision, and such a provision was necessary to deal with terrorist groups, because of the otherwise prevailing German

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[41] O. Hinz, *Auch Miili Goerus?* TAZ, DIE TAGESZEITUNG at 7 (Berlin, Dec. 15, 2001).

[42] AP WORLDSTREAM- GERMAN, Dec. 7, 2001 (LEXIS/NEWS).

[43] Hinz, *supra* note 41.

[44] R. Gössner, DAS ANTI-TERROR SYSTEM at 43 (Hamburg, 1991).

[45] E. Palmer, *Germany* in TERRORISM: FOREIGN INTERNATIONAL LEGAL RESPONSES IN SELECTED FOREIGN COUNTRIES at 43 (Law Library of Congress, 1995) .

reluctance to penalize conspiracies. German criminal law does not contain a general conspiracy provision, and the provisions on parties to crimes often have led to judicial decisions that consider oral agreements to commit a crime as preparatory acts that have not as yet reached criminal dimensions,[46] particularly if the conspiratorial conversations were not followed by criminal acts.

Legal Restraints

Until September 11, the German concept of privacy was interpreted in a manner that may have severely restricted law enforcement efforts. The German understanding of privacy is based on the 1983 Census decision[47] of the Federal Constitutional Court which held that individuals are the owners of their personal data and that any non-consensual data collection, storage, or use is permissible only on the basis of specific, strictly-drafted statutory authorizations that describe the purpose for which data could be collected. In addition, the sharing of data between agencies was to be severely restricted. As a consequence of the Census decision, specific laws were enacted for each of the intelligence and law enforcement agencies that contained very restrictive provisions on their activities concerning personal data.

The Census decision may have had far-reaching effects on the work of the intelligence and law enforcement agencies, that may have been further exacerbated by the large number of national security agencies and by the strict separation of the intelligence services from the law enforcement services,[48] which dates back to 1950, when West Germany was under Allied Occupation. The reason for separating law enforcement from intelligence was to avoid the abuses of the Nazi era.[49]

In Germany, the police power is generally vested in the states, where it is exercised by police forces of the states, and the Federal Criminal Office is restricted to coordinating functions, electronic support, and the investigation of crimes of national or international dimensions.[50] The functions of the Federal Border Service are also carefully described in ways that may have restricted this agency in its functions relating to the monitoring of the entry of aliens.[51]

Most of the intelligence services are federal agencies. The Federation operates three services: the Federal Office for the Protection of the Constitution,[52] for domestic intelligence; the Military Intelligence Service,[53] for military intelligence; and the Federal Intelligence Service,[54] for foreign intelligence. For

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[46] StGB, §§30 and 31; H. Tröndle *and* T. Fischer, STRAFGESETZBUCH at 211 (München, 1999); Bundesgerichtshof decision, Apr. 18, 1990, docket no. 2 StR 84/90.

[47] *Supra* note 25.

[48] Expressed, for instance, for the federal domestic intelligence agency in Bundesverfassungsschutzgesetz (BVerfSchG), Dec. 20, 1990, BGBl. I at 2954, as amended, §8, ¶3.

[49] E. Litchfield, GOVERNING POSTWAR GERMANY (Port Washington, 1972).

[50] *Bundeskriminalamt,* governed by BKAG, *supra* note 34.

[51] *Bundesgrenzschutz,* governed by BGSG, *supra* note 20.

[52] *Bundesamt für Verfassungsschutz,* governed by BVerfSchG.

[53] *Militärischer Abschirmdienst,* governed by MAD-Gesetz, Dec. 20, 1990, BGBl. I at 2977, as amended.

[54] *Bundesnachrichtendienst,* governed by Bundesnachrichtendienstgesetz, Dec. 20, 1990, BGBl. I at 2979, as amended.

domestic intelligence, however, the investigative power of the federal agency is shared with the states, each of which has a domestic intelligence service.

Prior to September 11, the law enforcement and intelligence communities often had complained about the numerous privacy restrictions that the Constitution allegedly required, among them, the restrictions on inter-agency communication, yet the police and security agencies had not succeeded in bringing about any legislative change.

3. Legislation Enacted After September 11, 2001

Overview

The German response to the events of September 11 was massive and prompt, and it included two major legislative security packages that proposed reform legislation pertaining to national security. The new measures were justified by their drafters because of the new quality of the terrorist threat which now was arising not from individual identifiable perpetrators but from an anonymous and global network.[55] A great portion of these legislative security packages has since been enacted into law, and most of these changes were contained in the Anti-Terrorist Act of 2002[56] that aims at preventing international terrorism. Some of the reform projects, however, were modified or delayed, and among these is the enactment of a criminal provision for international terrorist organizations.

On the whole, it would seem that these measures should make it easier for police and intelligence agencies to prevent and investigate terrorist threats. Much of the legislation that was enacted, however, had already been on a wish list of the intelligence and security communities, which had felt restrained by the numerous and stringent privacy protections.[57]

Immigration, Asylum, Visitors, and the Tracking of Alien Movements

The Anti-Terrorist Act of 2002 focuses to a large extent on aliens. Provisions were enacted in the laws dealing with immigration and asylum that allow for the deportation of, or denial of entry to, aliens who belong to organizations that support international terrorism. In addition, it was provided that visa documents be made machine-readable and that they include biometric data. In addition, the Act on the Registration of Aliens was amended to allow for the inclusion of more data and to allow for the sharing of these data with the federal police and intelligence agencies and with other agencies as required.

It appears possible, however, that the law enforcement gains that were made in the provisions on aliens in the Anti-Terrorist Act of January 2002, may be in jeopardy through the enactment of a totally new Immigration Act in June 2002.[58] This latter Act constitutes a major change in German immigration philosophy, acknowledging for the first time in German history that Germany is a country of immigration.

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[55] BUNDESTAG DRUCKSACHE 14/386, at 35.

[56] The most extensive reform legislation was the Terrorismusbekämpfungsgesetz, Jan. 9, 2002, [Anti-Terrorist Act of 2002] BGBl. I at 361. Unless otherwise indicated, reforms described in this chapter have been enacted through this law, by amending the acts specifically mentioned in the previous chapters.

[57] H. Paeffgen, *"Vernachrichtendienstlichung" von Strafprozess- (und Polizeirecht) im Jahr 2001,* 22 STRAFVERTEIDIGER at 336 (2002).

[58] Zuwanderungsgesetz, June 20, 2002, BGBl. I at 1946.

On the whole, the new Immigration Act makes it easier for alien workers to come to Germany and to become permanent residents. Among other measures, the waiting period for permanent resident status was reduced from eight years to five.

Although the new Immigration Act adopted some of the language of the Anti-Terrorism Act of 2002 that relates to the deportation or denial of entry to suspected terrorists, there is a difference of opinion in Germany as to whether the new Act is as effective as the former legislation in the fight against terrorism.[59] The new Act, however, has been challenged before the Federal Constitutional Court because of an irregularity in the parliamentary voting process[60] that possibly could result in its revocation. Moreover, even if the Act were to pass this hurdle, its continued existence might depend on the outcome of the September 2002 national parliamentary elections in Germany.

Identity Cards

The Anti-Terrorist Act of 2002 brought a major philosophical change in German laws relating to personal identification by granting statutory authorization for the inclusion of biometric data in these documents. It appears, however, that most of the implementing regulations have not as yet been enacted and that the technical aspects of recording and using biometric information are still being studied.

Wiretapping

Wiretapping authorization has been increased through an expansion of the function of the Federal Office for the Protection of the Constitution to include surveillance of domestic efforts that are directed against international relations and peaceful coexistence. This wording implies surveillance of international terrorist activities that occur in Germany. A similar increase in functions has been enacted for the Military Intelligence Agency. In addition, surveillance of cellular telephone communications has been increased.

If, as expected, the new criminal provision for international terrorist organizations will be enacted in the near future,[61] then the police will be authorized to investigate international terrorist organizations and use wiretaps as foreseen by the Code of Criminal Procedure.[62]

Physical Surveillance

The above-described increases in wiretapping authorizations also apply to physical surveillance. In addition, the physical surveillance of individuals in the border area has been increased by authorizing the Federal Border Police to investigate in the coastal areas up to a depth of 50 kilometers inland from the coast. This is granted in addition to the already previously existing authorization to exercise border control for up to 30 kilometers inside the borders.[63]

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[59] *Saarland will gegen Zuwanderungsgesetz stimmen,* AP WORLDSTREAM-GERMAN, Feb. 26, 2002.

[60] R. Gröschner, *Das Zuwanderungsgesetz im Bundesrat,* 57 JURISTENZEITUNG at 621 (2002).

[61] Apparently, all the parliamentary steps toward such an enactment have been completed, therefore, the promulgation of the provision should occur shortly (*see infra* note 68).

[62] StPO, §100a.

[63] BGSG, §2.

Financial Reporting

Major changes in the monitoring of bank accounts were enacted. The Anti-Terrorist Act of 2002 authorizes the Federal Office for the Protection of the Constitution and the Federal Intelligence Service to obtain information from financial institutions on any banking records or accounts, within the scope of their missions; this includes the surveillance of international terrorist funds.[64]

In addition, the Fourth Finance Market Promotion Act enacted changes in the Banking Act[65] that require financial institutions to maintain electronic records of their customers' accounts that can be accessed electronically by the Supervisory Banking Agency for various law enforcement purposes, and that allows for the sharing of such information with law enforcement authorities, including the granting of mutual assistance in criminal matters to foreign countries. This provision has been widely hailed as the end of German bank secrecy.[66]

[64] Whereas the Federal Intelligence Service appears to always have had the authority to gather intelligence on international terrorism because its mission is directed at the gathering of foreign intelligence, the Federal Office for the Protection of the Constitution was enabled by the Anti-Terrorist Act of 2002 to gather intelligence on activities within Germany that relate to international terrorism.

[65] Kreditwesengesetz, §24c, as enacted by Viertes Finanzmarktförderungsgesetz, June 21, 2002, BGBl. I at 2010, art. 6, no. 23.

[66] W. Berlin, *Paket gegen die Geldwäsche geschnürt*, BÖRSEN-ZEITUNG at 6 (Oct. 6, 2001).

Prohibited Organizations

The Act on Associations was amended through the removal of the formerly existing exemption for religious organizations from the scope of its governance.[67] This change makes it possible for the German authorities to ban religious organizations that pursue unlawful or subversive activities or purposes.

In addition, the legislative work for the enactment of a criminal provision against foreign terrorist organizations that attack targets abroad appears to have been completed in July 2002,[68] after lengthy debates, so that the promulgation of this new section, 129b, of the Criminal Code should be expected soon. It appears that the new section 129b of the Criminal Code will extend the already existing prohibitions of domestic terrorist organizations to international terrorist organizations.

It is hoped that this provision will make a major difference in the investigation of terrorist activities and contacts in Germany that have international dimensions by allowing for the pretrial investigations and possibly detention of suspects, which until now has not been possible. The enactment of section 129b of the Criminal Code was proposed immediately after September 11, but this bill has generated much controversy and debate that slowed down the parliamentary process.

Terrorist Funding; Recovery of Assets

Upon enactment, the above described criminal provision on international terrorist organizations could prove helpful for the recovery of terrorist assets. Aside from the possible effects of this provision, there appear to have been no statutory changes on the provisions on forfeiture.

Use of Internet

The recently enacted anti-terrorist laws do not appear to include specific provisions on investigations on the Internet.

Other Measures

The most significant achievement of the recent German anti-terrorist legislation appears to be the increased investigative powers of the federal law enforcement and intelligence agencies and the facilitation of the exchange of information between these and other agencies. In addition, many measures were enacted to enhance the safety of air travel and to safeguard dangerous installations on German soil against terrorist attacks. Among these measures was the increased use of security clearances for non-governmental workers.

4. Limits on Counter-Terrorist Activity

It appears that some of the difficulties encountered by Germany in its efforts to search for traces of the perpetrators of the September 11 events may stem from the division of powers between the German federation and the German states. It is possible that cooperation between federal and state agencies in

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[67] VereinsG, §2, as amended by Gesetz, Apr. 12, 2001, BGBl. I at 3319.

[68] D. Cziesche *et al.*, *'Ich bin ein Märtyrer,* DER SPIEGEL at 36 (July 8, 2002).

matters of national security may be hampered by different legal standards, different judicial interpretations, and organizational problems.

An example of the different standards and approaches toward the investigation of terrorism is the role that the State of Hesse has played in the nation-wide computerized search for terrorists. After September 11, all the German states participated in a computerized search of certain stored data that were matched according to certain profiles (*Rasterfahndung*). This type of search is permitted in the states on the basis of the police laws.[69] In the State of Hesse, the effort was stopped by a court order,[70] on the grounds that according to the police laws of Hesse,[71] such a far-reaching invasion of the privacy of a large number of individuals was justifiable only in a national emergency, but that the September 11 events did not constitute a national emergency in Germany.

Subsequent efforts to change Hesse law in order to allow for the search appear to be still stalled in the Hesse legislature.[72] In the meantime, the Hesse police had to abandon already-started efforts and had to erase data pertaining to some 1,830 individuals that, according to the search results, would have been of further interest for an investigation.[73] In addition, the demise of the computer search in Hesse may have jeopardized the effectiveness of the computerized search in all the other states.

The post-September 11 computerized search had also been challenged in several other German states, but eventually the courts upheld the searches in all the states except for Hesse.[74] Among these upholding court decisions were two that related to the laws of North-Rhine Westphalia. One of these found that there was enough of a threat to German safety to warrant the search.[75] The other decision restricted the search to aliens and held that the German constitutional principle of proportionality did not permit that a German citizen be included in a search that should look for aliens from certain countries.[76] This decision may be interesting from a comparative point of view, in that it suggests that the German Constitution mandates racial profiling, so as not to unduly invade the rights of persons belonging to less relevant groups.

Another issue that invites further analysis is the detention of individuals with strong ties to the terrorist scene. There appear to be recurring instances in which the German authorities release individuals from detention, for various due process reasons, among them, the absence of sufficient evidence to charge the individual with an offense. One of these cases occurred at the beginning of August 2002, when the Federal Court of Justice ordered the release of a detainee who was suspected of assisting a group of

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[69] H. Lisken, *Zur polizeilichen Rasterfahndung,* 21 NEUE ZEITSCHRIFT FÜR VERWALTUNGSRECHT, at 513 (2002).

[70] Oberlandesgericht [OLG] Frankfurt, decision, Feb. 21, 2002, docket no. 20 W55/o2.

[71] Hessisches Gesetz über die öffentliche Sicherheit und Ordnung, repromulgated Mar. 31, 1994, GESETZ- UND VERORDNUNGSBLATT FÜR DAS LAND HESSEN, at 174, as amended, §26.

[72] *Hessen ohne Rasterfahndung,* FRANKFURTER ALLGEMEINE ZEITUNG at 6 (June 13, 2002).

[73] *Neustart der Rasterfahundung in Hessen verzögert sich,* ASSOCIATED PRESS WORLDSTREAM- GERMAN June 12, 2002 (LEXIS/NEWS).

[74] Y. Musharbash and W. Gast, *Trend zurück zum Rastern,* TAZ, DIE TAGESZEITUNG at 8 (Berlin, Apr. 24, 2002).

[75] OLG Düsseldorf, decision, Feb. 8, 2002, docket no. 3 Wx 351/01.

[76] OLG Düsseldorf, decision, Feb. 8, 2002, docket no. 3 Wx 357/01.

terrorists. The court justified the lifting of the arrest by the lack of compelling evidence that the would commit a crime if released.[77]

German law on pretrial detention is very protective of the rights of the individual and this is necessary, to some extent, to live up to the requirements of the European Convention for Human Rights.[78] For those suspected of belonging to a (until now only domestic) terrorist organization or of having committed certain enumerated violent crimes, an arrest can be obtained if there is probable cause that the accused has committed the offense. For those accused of other offenses, additional justifications for the arrest have to exist, such as a danger that the suspect will flee, tamper with the evidence, or commit further crimes.[79] The police has only limited powers to arrest and detain individuals without a warrant. Nevertheless, if a police arrest is made under certain emergency circumstances, a warrant must be obtained within a very short period or the individual must be released.[80]

The examples given above on the fate of some law enforcement efforts indicate that the German law enforcement and intelligence authorities are still experiencing some legal restraints in their investigative efforts of the terrorist networks that were responsible for the events of September 11, even though Germany has enacted numerous law reforms to facilitate the work of the investigative agencies, which, on the whole, appear to be pursued with a great deal of effort.

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[77] *Freigelassen,* TAZ, DIE TAGESZEITUNG at 2, (Berlin, Aug. 10, 2002).

[78] Convention for the Protection of Human Rights and fundamental Freedoms, signed Nov. 4, 1950, ETS, No. 5.

[79] StPO, §112 *et seq*.

[80] StPO, §127 *et seq*.

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GREECE

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

The Greek government viewed the attacks of September 11 on the United States as an attack against all NATO allies and recognized the right of the United States to defend itself. Greece has also committed itself in the fight against terrorism due to its obligations arising from its membership in the European Union, the United Nations, and Council of Europe. Among other measures taken, Greece is in the process of implementing the two most important Framework Decisions: Combating Terrorism and the European Arrest Warrant.

On the domestic front, Greek authorities have arrested many members of the notorious November 17 Revolutionary Organization and are pursuing its possible links with other terrorist organizations in Greece.

Introduction

Greece has recently had a major breakthrough in its fight to eliminate domestic terrorism. Greek authorities, with the assistance of U.S. and British counterparts, have been able to apprehend so far about 16 members of the notorious terrorist group known as the Revolutionary Organization of November 17[1] and have placed another member on its alert list. The event that brought a break in the nearly three-decade long drive by Greek police to apprehend the terrorist gang was a failed bombing attempt in the port of Piraeus that injured one member of the November 17 group on June 29, 2002. For Greece, this development comes at a particularly critical period when Greece is focusing on preparing itself for the European Presidency in January 2003, and on providing a safe locale for the Olympic Games in 2004.

1. Legislation Prior to September 11, 2001

Immigration – Asylum

Historically a country of emigration mainly to former West Germany, U.S., and Australia, Greece has now become an immigration country.[2] Illegal immigration has become a problem. According to statistics, Greece receives about 250,000 immigrants annually, including Albanians, Kurds, Afghans, and others. Greek authorities have recently voiced concerns over a large number of third-world immigrants waiting on the Turkish side of the border of Evros for an opportunity to enter Greece. Approximately 2,500 illegal immigrants are already being housed in the prefecture of Evros that borders Turkey, while another 1,200 are staying in the prefecture of Rodhopi. Additional patrols by border guards and military

[1] The name derives from the student uprising against the military junta in 1973.

[2] A study commissioned by the European Commission, *The Legal Status of Third Country Nationals who are Long-Term Residents in a Member State of the European Union–Greece*, states that Greece is in a transition period from a country of emigration to immigration. This study was carried out by the Center for Migration Law, at the University of Nijmegen, on behalf of the European Commission, European Community, 2000.

units have been sent to the area to prevent any illegal transit.[3] The Greek Government announced the creation of an inter-ministerial body to monitor illegal immigration issues and recommend proper action.

On June 31, 2002, the European Commission announced that it would grant €123 million to Greece and Italy within the framework of cross-border cooperation between the two countries and Albania.[4]

Law No. 2910/5/2/2001 on the Entry and Stay of Foreigners in the Greek Territory determines the criteria for the entry of foreigners to work (including seasonal work), study, or enter for family reunification. Refugees are excluded from the scope of this Law. The entry and exit of foreigners is allowed only from specifically designated airports, ports, and border points.

The Law grants Greek authorities several grounds to either refuse entry for any suspect of terrorist activities or to deport someone who is considered a threat to public safety.

Refusal of Entry

Greek authorities have the right to refuse to allow any foreigner to enter the country who:

- is placed on the alert list of the Minister of Public Order
- poses a threat to public safety and public security
- is not allowed to return to his country of origin
- lacks permission to stay

Revocation of Permit to Stay

In general, the permit may be revoked for violating any provisions of the above Law. There are also additional grounds, based on national security, public order, protection of public health, or use of fraudulent documents.

Entry and Stay for Studies

Among a number of requirements that a foreigner must fulfill in order to be accepted in an institution of higher learning or technical school is a copy of his/her criminal record. The foreign student who wants to extend his/her student visa must submit an application to the appropriate authorities of the place of residence two months before his/her student visa expires. He/she must also bring a certificate of registration to prove that he/she is actually registered at the educational institution and has participated in exams. This measure is meant to ensure that those who enter Greece as students are *bona fide* students and to screen out those aliens who may abuse the system.

Prohibition of Renting to Foreigners Without Documentation

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[3] Athens News Agency Bulletin, Press Office of the Embassy of Greece in Washington, D.C., *at* http://www.greekembassy.org/press (June 22, 2002).

[4] *Id.* July 31, 2002.

This Law prohibits the leasing or renting of property to foreigners who do not have a passport, other travel documents, a visa, or a permit to stay.

Deportation

Deportation of a foreigner can be ordered if he/she has:

- a record of a one-year imprisonment or imprisonment for crimes such as those committed against the government, or involving high treason, drug trafficking, money laundering, high-technology crime, smuggling, weapons and explosives violations, and others
- been in violation of any of the provisions of the above Law
- been deemed a risk to national security, public safety, or public order

If a foreigner is deemed to be dangerous to the public order or likely to escape, until recently he/she could be detained for up to three months, without an obligation by the state to declare when the deportation order must be issued. The detention period apparently was reconsidered in 2002 in an effort to meet the standards imposed by the European Court of Human Rights in Strasbourg. Thus, the new amendment provides that within three days of being detained, the deportation order must be issued. Detention of the foreigner takes place until he/she is deported. However, it may not exceed 30 days. The foreigner must be informed in his/her language as to the reasons for being detained, and he/she has the right to appeal the decision before a judge.

A 2002 amendment to the Law cancels the validity of a permit to stay of a foreigner who is later placed on the alert list either because of a deportation order or because of other reasons, such as illegal entry or overstaying his/her permit.[5]

Asylum

A study on asylum conditions in Greece[6] indicates that only a small number of aliens who reside in Greece actually apply for asylum. For example, in 1999, among the estimated one-half million aliens who resided illegally in Greece only 1,528 were asylum seekers. Thus, Greece is mostly a transit country. Implementation of the EU rules on asylum will most likely change this situation inasmuch as all Member States have to share the burden equally. The same study addresses some security aspects of asylum. It states that since Greece shares borders with Turkey, among those who seek asylum are Kurds from Turkey or Iraq and who are considered as terrorists by Turkey. Greece also shares borders with some Balkan countries whose political situation is unstable. The report makes no further comments or recommendations.

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[5]No. 3013 /5/1/2002 Upgrading of Civil Protection Part A. No. 102.

[6]Asylum in Member States – Country Profile: Greece, a study commissioned by the European Commission (Directorate General for Justice and Home Affairs), 2001, at 34.

The Law on Asylum is based on the Geneva Convention[7] of July 28, 1951, as amended by the New York Protocol of January 31, 1967, relating to the Status of Refugees, the EU Dublin Convention,[8] which entered into force in 1997, as well as some other domestic laws and implementing decrees.

Two types of asylum status can be granted under Greek law: Convention status and temporary protection for humanitarian reasons. The majority of the cases are granted temporary protection for humanitarian reasons.

Based on the Geneva Convention, Greece may exclude from asylum any national who may be deemed a threat to national and public security. Article 1F of the Convention on the Status of Refugees of July 28, 1951, exempts from its ambit of protection anyone who has:

- committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up with respect to such crimes
- committed a serious non-political crime outside of the crime of refuge prior to his admission to that country as a refugee
- been guilty of acts contrary to the purposes and the principles of the UN

Presidential Decree No. 61/1999 deals with procedural aspects of asylum, revocation of asylum, and deportation issues.[9] Some highlights of the Decree include:

- fingerprinting and picture taking are required not only of the applicant but also of those family members above the age of 14
- revocation of the refugee status is possible based on the grounds provided in the Geneva Convention
- family reunification is allowed provided that the family members meet certain criteria including the requirement that their presence in Greece does not pose a threat to public security or public safety
- revocation of a permit to stay granted to a family member is possible if it is proven that it was obtained through fraudulent means

On March 3, 2002, an implementing presidential decree was adopted.[10] It establishes all the necessary agencies and units dealing with the status of aliens, immigration and integration issues.

Naturalization

The recent Law on Foreigners and Immigration, which amended the rules on naturalization contained in the Law on Acquisition and Loss of Greek Citizenship, makes it more difficult for foreigners to become naturalized Greek citizens. It is now required that a foreigner have a sufficient knowledge of the Greek language, history, and culture in addition to other requirements, such as legal residence totaling

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[7]Law 3989/1959 ratified the Geneva Convention of 1951 on Refugees.

[8]Law 1996/1991 ratifies the Dublin Convention.

[9]Part A, 63 (4/1/1999).

[10]Part A. No 53 (3/19/2002).

10 years out of the last 12 years, if the foreigner is of non-Greek origin. The 10-year requirement is reduced to half for refugees and stateless persons. There is no minimum requirement of stay for a foreigner who was born and lived in Greece as well as for those whose spouses are Greek and have children living in Greece.

The changes in the naturalization procedure have increased the layers of supervision and screening of those who are not deemed to meet the legal criteria. Initially, the applicant submits his/her application addressed to the Minister of Internal Affairs and Public Administration along with required papers to the authorities of his/her place of residence. Among the required documentation is a birth or baptismal certificate and fingerprinting. The file is forwarded to the regional authorities who are responsible for determining whether the applicant meets the necessary criteria and whether there are public security or public order grounds to reject the application. At this stage, the application is either rejected or accepted. In the latter case, the applicant has to submit additional documentation: criminal records, proof that the applicant is not subject to deportation, and other documentation to prove that his/her knowledge of the Greek language, moral status, and personality in general are adequate. The file along with the opinion of the police authorities on public security aspects is then forwarded to the Minister of Internal Affairs and Public Administration. At this point, the Committee on Naturalization will call the applicant for an interview and express its opinion on the application. If the applicant fails to appear for unjustified reasons, the application is rejected. The final stage in the process is the decision of the Minister, who has the discretion to accept or reject the application. The decision does not need to include the reasons for rejection. This last stage is similar to that under the old law.

Identity Cards[11]

All Greek citizens who live or reside temporarily in Greece must carry a valid identity card. This rule has been in existence for a long time. Since 1991, the law requires that those over 14 years old carry such a card. Prior to 1991, the minimum age requirement was 12 years old. Identity cards are usually valid for a period of 10 years or more and are currently issued by the police authorities where the applicant resides.[12]

The basic statute that governs identity cards is Law No. 1599/1986 on the Relationship between the State and Citizens and Issuing of a New Form of Identity Cards,[13] as amended by Law No. 1988/1991.[14]

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[11]Identity cards, as such, have not generated any controversy in Greece, which is a homogenous country where 97 percent of the population is Greek Orthodox. Until 1991, the listing of one's religion was optional. However, Law No. 1988/1991 made this listing mandatory. As a result, religious minorities in Greece, such as Jews, Catholics, Muslims, and Jehovah's Witnesses, were outraged and called for withdrawal of the requirement. The main argument was such a reference to one's religious affiliation was discriminatory, potentially dangerous, and impinged on the right to privacy.

In early May 2000, the Authority on the Protection of Personal Data, which was established by law in 1997 and whose decisions are binding, issued a decision that the new identity cards no longer need to carry an indication of one's religion or profession.

[12]Decision No. 8200/0-44210 of the Minister of Public Order (7/17/2000). EPHEMERES TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS, EKHD, [Gazette of the Hellenic Republic] Part. B, 879 (2000).

[13] *Id.* Part A. No. 75 (1986).

[14]*Id.* No. 189 (1991).

The following data regarding the holder are required on all identity cards, pursuant to Law No. 1988/1991: a photograph, last name, first name, father's first and last name, mother's first and last name, sex, spouse's first and last name, date and place of birth, citizenship, registration number, voting registration, place of domicile, signature, and blood type and organ donor preference.

The same Law made the listing of all the above data mandatory with the exception of the data related to one's blood type and organ donor preference. These are added only if the applicant specifically requests them.

The role of the identity card, as the Law dictates, is to prove one's identity as a Greek citizen.[15] For identification of foreigners, a valid passport and residence permit are used. EU citizens and family members have the right to move and reside for a period up to six months with a valid identity card, or a passport in case the Member State does not issue identity cards.

Prohibited Organizations

Prohibited organizations are covered under Law No. 2928/2001, adopted on June 27, 2001 and analyzed below.

Terrorist Incidents

During the past 27 years, the Revolutionary Organization of November 17 has committed a number of crimes against civilians, politicians, and diplomats, both foreign and Greek, including: an American CIA officer in 1975 and the British military attache in June 2000.[16] Greece's record on anti-terrorism has been criticized. Earlier efforts had not been effective, leading some terrorism experts to suspect the ruling socialist party was involved, or at least had some links with the Revolutionary Organization of November 17. The killing of the British military attache pushed the Greek authorities to improve the counter-terrorism police unit, and the government and the public condemned the killing. Recently, Greece's efforts have been applauded by the international community.

Greek authorities are currently investigating the bank accounts of those involved in the November 17 Organization and have taken steps to freeze their funds. Police are also investigating the group's links with other domestic terrorist groups.

The Authority on the Protection of Personal Data in a press release stated that publication of personal data pertaining to the family and private life of the alleged terrorists, on the other hand, has violated their rights and urged respect for the dignity and private life of citizens.[17]

Another terrorist group operating in Greece, the so-called Revolutionary People's Struggle, known by its Greek acronym ELA, appeared during the time the military junta was in power in Greece from 1976-1974. It is thought possible that this group may have had ties to the November 17 group.

Money Laundering

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[15] Art. 6 of Law 1988/1986. *Supra* note 2.

[16] U.S. State Department, Patterns of Global Terrorism, Greece (2000).

[17] EKHD, Aug. 9, 2002.

Law No.2331/1995 on the Prevention and Suppression of the Proceeds of Crime[18] was enacted in order to prevent the abuse of the financial system. As it stands now, however, Law No. 2331 is inadequate to deal with the prevalent types of money laundering, and it also does not reflect recent developments in the EU money laundering law.

International Conventions - Bilateral Agreements

Greece is a state party to the following Conventions against terrorism adopted by the United Nations:[19]

- Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on September 1971 and signed at Montreal on February 24, 1988
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, New York, December 14, 1973
- International Convention Against the Taking of Hostages, New York, December 17, 1979
- Convention on the Physical Protection of Nuclear Material, Vienna, March 3, 1980
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome, March 10, 1988
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, March 10, 1988
- Convention on the Marking of Plastic Explosives for the Purpose of Detection, Montreal, March 1, 1991

Ratification of two more conventions before the Greek Parliament is pending: the Convention for the Suppression of Terrorist Bombings of December 15, 1997, and the Convention for the Suppression of the Financing of Terrorism of December 9, 1999. Greece is also participating in the revision of the European Convention on the Suppression of Terrorism (1977) which was drafted under the auspices of the Council of Europe.

Greece and the United States signed a Memorandum on Police Cooperation between the police authorities in Greece and the FBI on September 8, 2000. A wide range of criminal activities are covered, including terrorist acts, organized crime, money laundering, computer crime, and others.

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[18]Part A. No. 173.

[19]As listed by the Greek Government in its report to the Security Council Committee, pursuant to Resolution No. 1373 (2001) concerning counter terrorism, addressed to the President of the Security Council.

2. Legal Enforcement Against Terrorism

Law No. 2928/2001 on Criminal Organizations

Greece has no discrete anti-terrorist statutes. On June 27, 2001, Greece adopted Law No. 2928 on organized crime, titled "Amendment of Provisions of the Criminal Code and the Code of Criminal Procedure and Other Provisions for the Protection of the Citizen from Criminal Offenses by Criminal Organizations." During the parliamentary debates, the Law elicited mixed reactions. While the Minister of Public Order called the Law a "necessary tool" to prevent and suppress organized crime, others voiced concerns about the potential abuses and infringements of civil liberties that it might spawn. The Vice-President of the Supreme Court supported the Law as a necessary measure to tackle organized crime. He noted, however, that the new investigative powers "presuppose the existence of a high-quality police force in terms of training, ethics, attitudes, as they could otherwise lead to abuses by incompetent or unethical officers."[20]

The members of the Revolutionary Group of November 17 are being prosecuted on the basis of this Law.

Criminal Code Provision

Article 187 of the Criminal Code provides:

> Anyone who founds or joins a group composed of three or more persons that is continuously active and intends to commit the felonies mentioned below shall be punished by imprisonment [for] up to 10 years.

The language used in article 187 raises two questions. First, the article does not explicitly contain the word "terrorism" or the constituent elements of terrorism as defined in the Framework Decision on Combating Terrorism adopted by the European Union. Secondly, the Law punishes anyone who founds or joins a group of "continuous" or uninterrupted criminal activity. Thus, it appears that single acts of terrorism would not come within the scope of this Law.

The felonies referred to above include: counterfeiting; circulation of counterfeit currency; forgery; false certification; arson; setting forest fires; intentionally causing a flood; causing an explosion; other infringements related to explosives; causing a shipwreck; poisoning water resources; endangering the safety of railroads, ships, and aircraft; homicide; serious bodily injury; seizure; slave trade; kidnaping; kidnaping of minors; rape; molestation; seduction of minors; grand theft; embezzlement; robbery; blackmail; fraud; computer fraud; and usury. It also includes violations of the laws on narcotics, weapons, explosive substances, and protection from radioactive materials.

Under the same article, anyone who threatens or uses force against members of the judiciary, witnesses, expert witnesses, or interpreters or who bribes these persons in order to obstruct the prosecution and punishment of the above felonies shall be punished by imprisonment up to a year.

Anyone who joins another to commit a felony distinct from those specified is punishable by imprisonment of at least six months.

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[20] Targeting Terrorism, *at* http://www.gr/POLITICS/InternalAffairs/targeting terrorism.stm.

Clemency – Mitigating Circumstances

An acquittal is granted to anyone who is a member of an organization that intends to commit the above-mentioned felonies and who through notification of the authorities, prevents such acts from occurring. Acquittal is also granted to those who lead to the arrest of the members of such organizations. If the act has been committed in the meanwhile, the person may receive a reduced sentence, that is, from 10 to three years imprisonment.

The deportation of an alien who is illegally residing in Greece but who reports criminal activities perpetrated by an organization may be suspended until the issuing of a final and irrevocable decision on this issue.

DNA Testing

DNA testing may be ordered by the competent judicial authority in order to confirm the identity of an offender when there are serious indications that the person has perpetrated a felony with the use of violence or has founded or joined an organization with the intent to commit any of the felonies listed in article 187 of the Criminal Code. The law is silent as to whether or not the consent of the person subjected to DNA testing is needed and as to the kind of samples that can be used. Testing may be done upon the request of the defendant in order to prove his/her innocence. The analysis must be done in a State-owned or university laboratory.

If the testing is positive, the result is made known only to the subject of the test, who has the right to request a second test. The investigating judge and the prosecutor have also the right to request a second test. If the test comes back negative, the genetic material and the data are destroyed immediately. If it is again positive, the genetic material is destroyed while the data is kept in a file for the purposes of the case at hand. The competent judicial council that ordered the DNA analysis must order that it be destroyed.

Investigation on Criminal Organizations

The Law broadens the investigative powers to include a number of activities. The application of the Law to the following activities has been criticized by politicians, the press, and the general public as infringing upon civil liberties:

- investigative infiltration, in accordance with guarantees provided below
- surveillance of those suspected of being involved in criminal organizations. The surveillance is limited to actions which are absolutely essentially to ascertain the felonies listed above.
- lifting of confidentiality of communications as provided for in article 4 and 5 of Law No. 2225/1994 on the Protection of Freedom of Correspondence and Communications and Other Provisions
- the recording by audio-visual means or other special technical means of activities or other events outside the home in accordance with guarantees and procedures as provided for in Law No. 2713, 1999

- use of personal data in accordance with guarantees and procedures as provided in Law No. 2742/1997 on Protection of the Individual from the Processing of Data of a Personal Nature[21]

The above investigative procedures are utilized when there are serious indications that felonies listed in article 187 will be committed by criminal organizations and when the arrest of the members of the organization would otherwise be impossible, or extremely hard to achieve.

The competent judicial council, based on the recommendation of a public prosecutor, must issue a substantiated decision granting the above powers to investigating authorities. In especially urgent cases, the investigation may be ordered by the prosecutor or the investigating judge. In this case, the prosecutor or the judge must bring this issue to the attention of the competent judicial council within three days.

Competent Court to Adjudicate Terrorist Offenses

The Law prescribes that all criminal activities included in article 187 of the Criminal Code will be tried by the Court of Appeals, rather than by the mixed court (a mixed court is one in which the verdict is reached by both jurors and judges acting together). Under Greek Criminal Procedure, some other very serious offenses, such as piracy and offenses against the security of railways, air, and sea transportation, may also be dealt with by the Court of Appeals. One of the reasons for choosing the Court of Appeals for such cases, in addition to their gravity and their potential impact on a greater number of lives, is to lessen the potential for the possible intimidation of jurors.

Liability of Legal Entities and Businesses

The Law imposes a number of sanctions on legal entities found guilty of money laundering activities: an administrative fine ranging from three to 10 times the value of the benefit; suspension of the business's license to operate permanently or for a period of one month to two years; permanent or temporary suspension for the same period from public benefits or grants or from participating in public tenders; in the event the amount cannot be measured, a fine from 10 million to 10 billion *drachmas* (now converted into Euros). The sanctions are reduced in cases of negligence.

Protection of Witnesses

The Law makes a special provision for measures to be taken in order to effectively protect essential witnesses or those who assist in uncovering the accused organization from intimidation and revenge. The measures can be taken with the consent of the witness and should not infringe upon his/her personal freedom. Such measures include safeguarding by specially trained police forces; testimony through the use of electronic means; and non-recording during the cross-examination of certain data, including name, place of birth, residence and work, profession, and age.

Legal Restraints

A few restraints exist within the legal system of Greece that may hinder Greece's cooperation with third countries (other than EU) in the fight against terrorism.

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[21]The Law was adopted in order to transpose Directive No. 95/46/EC on the protection of personal data into Greek law.

In extradition cases, Greece retains the principle of non-extradition of its nationals to third countries. Extradition to countries which impose the death penalty may also be refused. Greece has ratified Protocol No. 6 of the Council of Europe on the abolition of the death penalty. However, it reserved its right to retain the death penalty for war crimes. The same language on the death penalty was incorporated into the 2001 amendment to the Constitution.[22]

Extradition to countries where there is fear of subjecting the requested person to torture or inhuman or degrading treatment may also be refused due to Greece's various commitments arising from ratification of international legal instruments.

Within the Greek legal order, any restraints that exist are derived from the general constitutional obligations of public authorities to respect and observe human rights in their fight against terrorism. Greece is further constrained by the implementation of the human rights provisions embodied in the EU Treaties and especially those enshrined in the European Convention on Human Rights and Fundamental Freedoms which has the force of domestic law and prevails over any contrary previous or subsequent legislation.

One example, that of the principle of the protection of personal data and the right to privacy, highlights this aspect. Greece enacted Law No. 2472/1997 to implement EU Directive No. 95/46/EC on the Protection of Personal Data, which contains specific rules as to the processing of data through manual or automatic means. In 2001, the principle of protection of personal data especially by electronic means was included in the Constitution of 1975. The current language reads:

> Everyone has the right to protection of personal data with regard to the collection, processing and use, especially through electronic means, as determined by law. The protection of personal data is safeguarded by an independent authority, which is composed and functions, as determined by law.[23]

Since 1997, any legislation adopted which may infringe upon the right to personal data and the right to privacy must be in compliance with the requirements of Law No. 2472/1997. For instance, implementing No. Decree 69/1999 on the Procedural Aspects of Asylum states that "any statements made by the applicant as well as the data included in his application are considered 'sensitive data' in accordance with the Law 2472/1997."

On the other hand, in compliance with the EC Directive, Law No. 2472/1997 allows exceptions in cases of national safety and public security. The above Law No. 2910/ 2001 on criminal organizations made use of that exemption and allowed investigating authorities to use personal data under the condition that they respect the guarantees provided by Law No. 2472/1997.

The Law also established an independent agency, the Authority for the Protection of Personal Data, to ensure the correct implementation of the Law. Its main task is to review the implementation of the Law in a number of fields, based upon individual applications and to report its findings in an annual report.

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[22] EKHD, Part A, No. 85 (Apr. 16, 2001).

[23] *Id.*

In its 2000 report, the Authority referred to problems linked to the data inserted in the Schengen Information System (SIS), which operates under the Schengen Agreement.[24] The Schengen Agreement imposes a series of obligations on Member States regarding the entry and processing of personal data. The Authority reported that it accepted 128 applications to review entries in the SIS and their legality during 2000. The requests were made by Greeks and foreigners, especially Albanians. The requests were placed mainly for two reasons: to determine whether one is listed or not in the SIS, since eligibility for a green card is based on *not* being listed in the SIS; and because of theft or loss of a passport or other documents. In the second case, a comparison of fingerprints of the applicant with those that exist in the SIS is made.

The conclusions reached by the Authority on the entry and processing of personal data into SIS include the following:

- The local office (which is known under the EU name SIRENE) incurred unjustifiable delays in the transmission of information into the SIS even though it had online access to the SIS.
- The information is not complete: either it does not contain all the necessary data or does not refer specifically to the reasons for inserting the data. In the opinion of the Authority and in order to ensure the legality of the personal data inserted into SIS, the information must refer to all the pertinent facts that led to the inclusion of the information and whether a judicial decision or prosecutorial order has been issued.
- If there is need for correcting data, the corrections are not made promptly.
- Local authorities discriminate in the way in which data about foreigners has been input. The Authority noted that such data do not make a distinction as to whether they are inserted because of rejected asylum applications, illegal entry and stay in the country, or due to a judicial sentence or prosecutorial order. The Authority recommended that a distinction be made between such cases, with a view to avoiding inequality.

A right to confidential communications is enshrined in article 19 of the Greek Constitution. It provides that the judicial authority is not bound by this principle for reasons of national security or for the investigation of very serious crimes. In 2001, a new paragraph was added, which reads: "evidence obtained in violation of the principle of confidentiality of communications, the right to family and private life and the right on the protection of personal data is prohibited."[25]

Consequently, in balancing the rights of the individual with those of the public authorities and that of society at large, the Greek Government, within the "margin of appreciations" allowed by the European Court of Human Rights in Strasbourg, has to make critical decisions as to how far to go when considering restraints on an individual's rights while still protecting Greek society against terrorism.

3. Legislation Enacted after September 11, 2001

Transposition of European Union Law into the Greek Legal System

[24] KODIKAS NOMIKOU VEMATOS [Code of Legal Tribune], No. 50, at 95 (2002).

[25] EKHD, Part A. No. 85 (Apr. 18, 2001)

European Framework Decisions on Combating Terrorism and European Arrest Warrant

In March 2002, the Greek government took a step towards adopting a specific law on terrorism based on the EU definition and constituent elements of terrorism.[26] The Minister of Justice appointed a committee (composed of a Supreme Court Justice, a judge of the court of appeals, two prosecutors, and a member of the bar) to study and draft new legislative measures in the area of terrorism. The specific tasks of this committee include:

- transposition into the Greek legal order of the Framework Decision on combating terrorism adopted by the EU
- implementation of Security Council Resolution No. 1371/2001
- implementation of any other decision or measure taken by an international organization on terrorism related issues.

As far as the European Arrest Warrant is concerned, on December 2001, the Greek Minister of Justice announced that Greece plans to transpose it into the domestic legal order within the implementation period, which ends in December 2003.[27]

Eurojust

Eurojust is a judicial unit that was established by the EU in January 2000, composed of magistrates, prosecutors, judges and other legal experts from every member state for the purpose of investigation and prosecuting serious cross-border crimes. In May 2002, the Minister of Justice appointed another committee to draft the legislation in order to transpose the Council Decision on the establishment of Eurojust for combating serious forms of crime.[28]

Financing

Greece has expressed its commitment to the legal instruments issued by the EU with respect to the freezing of funds, assets, and resources of persons or legal entities involved in terrorist activities. The following EU acts are applicable in Greece:

- a common position that updates an earlier position on the application of specific measures to combat terrorism.[29] The Annex contains a list with the names of persons, groups, or entities involved in terrorist acts. Member States are required to take measures to:
  - prohibit the supply, sale, and transfer to individuals, groups, or entities of arms and related materiel of all types from their territories or using their flag vessels or aircraft or by nationals of Member States outside their territories; and

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[26]Decision No. 27145 of the Minister of Justice, EKHD, Part B, No. 341.

[27]Press Office of the Embassy of Greece in Washington D.C. *at* http://www.greekembassy.org/press (Dec. 14, 2001).

[28] EKHD, Part B, No. 540.

[29]Council Common Position of May 27, 2002, concerning Restrictive Measures Against Usama bin Laden, members of the al-Qaeda organization and the Taliban and other individuals, undertakings and entities associated with them and repealing Common Position 96/746/CFSP OF L139/4 (5/29/2002).

– freeze the funds and other financial assets or economic resources of persons, groups, or entities.

- common position of June 17, 2002, which updates Council Position 2001/931/CFSP on the application of specific measures to combat terrorist.[30]

- issue an implementing Decision which establishes the list provided for in article 2(3) of Regulation No. 2580/2002 on specific restrictive measures directed against certain persons and entities.

Moreover, Greece agreed to incorporate into its legal system the eight special recommendations of the Financial Action Task Force on Money Laundering (FATF) which were adopted on October 30, 2001, by FATF pertaining to the inclusion of the offense of the financing of terrorism in the predicate offenses, the proceeds of which are deemed as "money laundering" assets.[31]

The Ministries of Justice and Finance are currently reviewing domestic Law No. 2331/1995 on the prevention and suppression of the legalization of the proceeds of crime in order to harmonize it with the money laundering directive as recently amended by the EU.

Border Control

Greece, as a member of the Schengen Agreement and the SIS, is in full compliance with its provisions dealing with visas, border controls, and circulation of third country nationals.

Since September 11, Greece has taken additional measures to ensure that travel documents and identity papers are not subject to counterfeiting. Within the Greek police, a new unit has been set up which is responsible for the issuance of new passports and for preventing fraud and forgery of documents. An effort is currently underway to supply all the passport check points with the most advanced devices in order to detect counterfeit documents.

In addition, the Greek government has increased the security controls on all entry points along the border. It has also proceeded in preparing contingency plans.[32] Applications for asylum are methodically reviewed, especially those which originate from countries which are known for harboring terrorists or encouraging terrorist actions.

Measures Within the Administration

The Government established an *ad hoc* Coordination Office within the Ministry of Foreign Affairs responsible for coordinating all the ministries that deal with aspects of terrorism. In light of the implementation of UN Resolution No. 1373, another Task Force Unit was established with the specific task to review any further action that needs to be taken.

Civil Protection

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[30] OF L 16/32 (6/18/2002).

[31] *See* the Report on Resolution UN 1373.

[32] *Id.*

Since 1995, following the trend in other EU countries, Greece has been involved in the development and coordination of the area of civil protection. The first step was the establishment of a Service on Civil Protection with the task of organizing and centralizing into a single unit all the services in charge of major natural emergencies.

In May 2002, Law No. 3013 on Upgrading the Civil Protection was enacted. According to the justification report that accompanies the Law, bio-terrorism, chemical, and nuclear accidents as well as the occurrence of new and old epidemics and climate changes are the chief reasons for the passage of this Law. The Law makes a distinction between civil protection during peace time and civil defense that occurs during times of war. Under the concept of civil protection, the citizen is called to play an active role in taking measures for self-protection and for protecting those in his immediate surroundings.

Bilateral Agreements

The Agreement on Mutual Judicial Assistance in Criminal Matters between the United States and Greece, which was signed in Washington D.C. on May 26,1991, entered into force on December 12, 2001.

At the regional level, Greece has signed a number of bilateral agreements and multilateral agreements dealing with cooperation and exchange of information on illicit activities.

The Agreement between the governments of the Member States that participate in the financial development of the Black Sea in the areas of cooperation on crime and especially organized crime entered into force in Greece on March 7, 2002,[33] in order to eliminate organized crime.[34]

In January 2002, the Ministry of Public Order signed two more agreements for police collaboration with Turkey.

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[33] Law No. 2925/01. Part A. No. 137 A.

[34] EKHD, Part A, No. 137 .

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IRELAND

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Terrorism, in the form of attacks on the public by Republicans advocating the unification of Ireland or Loyalists supporting Northern Ireland remaining part of the United Kingdom, has long been a major concern of the Government of the Republic of Ireland. The major applicable statute, the Offenses Against the State Act, was created in 1939. Since then, this statute, which is best known for outlawing membership in such organizations as the Irish Republican Army and creating Special Criminal Courts for trials without juries, has been tightened on a number of occasions. The most recent amendment was adopted following the 1998 bombing at Omagh that killed 29 persons in that Northern Ireland city.

Concern over international terrorism is a newer phenomenon, spured on by the shock of September 11 and an unprecedented influx of asylum seekers and illegal immigrants to the country. Recent reports have disclosed that there has been an al-Qaeda connection in Dublin linked to at least one terrorist attack planned against a Los Angeles airport at the end of 1999.

The Government of Ireland has indicated that it is fully committed to enacting the European framework for combating international terrorism and a number of international conventions the country is not yet a party to. Bills have been prepared and are moving through the legislative process. The fact that Ireland is not rushing to be the first to enact implementing legislation is consistent with past practices in other related areas. For example, the Government only recently enacted legislation to implement the 1995 European convention on extradition.

In most of the areas covered in this paper, the Government has proceeded to legislate relatively slowly. In some cases, this pattern has been attributable to special constitutional considerations or court decisions limiting Parliament's legislative powers. In other cases, the Government has simply demonstrated a tendency to study issues very carefully before acting upon them. Similarly, within the EU, Ireland has often expressed serious reservations to proposals more readily accepted by the majority. These reservations have, on occasion, led to the Government opting out of at least parts of such agreements as the Schengen Treaty providing for relatively free movement within the European Economic Area.

1. Legislation Prior to September 11, 2001

Asylum

Ireland has long been a nation that experienced far more nationals leaving than foreigners entering the country for permanent residence; however, recent Irish prosperity has led to a reversal in this situation. The strong "celtic tiger" economy, that is often credited with having had the highest growth rate in Europe over the past decade, has also attracted a tremendous upswing in refugee applications.

From the extremely small number of 39 in 1993,[1] the annual totals have risen to between 10,000 and 11,000 applications being filed in both 2000 and 2001.[2] Approximately half of these applicants came from the countries of Romania and Nigeria.[3] The others represented a wide range of nations.

Although Ireland ratified the 1951 Convention of the Status of Refugees in 1956, until very recently, Ireland's process for weighing applications was largely an administrative procedure. In fact, this former non-statutory regime, which was characterized as being very "uncertain,"[4] was not largely replaced until the Refugee Act, 1996[5] was brought into force near the end of 2000. This Act provided for the establishment of a Refugee Applications Commissioner with the responsibility for determining refugee claims and for rights of appeal to a Refugee Appeals Board, which was to be established under the Act. The Refugee Act also expanded the grounds upon which an application could be based under the Convention to include sexual orientation, gender, and membership in a trade union.[6] Another feature of the Act that exceeded the Convention's requirements was the extension of the principle of *non-refoulement* to "all persons" and not just persons recognized as Convention refugees.[7]

For the further benefit of persons presenting claims that did not measure up to Convention standards, but nevertheless had some merit, the Act gave the Minister of Justice broad discretionary powers to grant leave to remain.

The Refugee Act, 1996 contains safeguards that are quite broad. Section 8 of this law authorizes immigration officers and members of the Garda Síochána (national police) to detain persons who pose a threat to national security or public order; persons who have committed a serious non-political crime outside the country; and persons who have not made reasonable efforts to establish their true identity.[8] However, it appears that these powers have seldom been exercised by either immigration officials or members of the Garda Síochána[9] and, at least for the year 2001, it has been reported that they were definitely not so exercised.[10]

One of the most contentious provisions of the Refugee Act, 1996 authorizes the Minister of Justice to refuse to extend refugee status to a person when he/she believes that recognition of that person's claim

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[1] Ross Hurwitz, IRELAND: FROM IMMIGRANT NATION TO ASYLUM-SEEKER DESTINATION, at 3 (2002) http://www.lehigh.edu/~ inctr/Hurwitz/.

[2] U.S. Committee for Refugees, Ireland, *at* http://www.refugees.org/world/countryrpt/europe/ireland/htm.

[3] *Supra* note 1.

[4] Irish Current Law, Statutes Annotated 17-02 (1997).

[5] Refugee Act, 1996, 1996 Irish Statutes (hereafter I.S.), No. 17.

[6] *Id.* §2.

[7] *Id.* §5. This principle recognizes that no person should be expelled or returned to another state where their life or freedom is threatened.

[8] *Id.* §8(7).

[9] Amnesty International Irish Section, Detention, at 2 (2002), *at* http://www/amnesty.ie/act/refug/det.shtml.

[10] *Supra* note 2.

would not be in the "interest of national security or public policy."[11] The Act does not attempt to list types of activities, such as serious criminal offenses or membership in a terrorist organization, that automatically disqualify a person from recognition. As a result, even though decisions to withhold recognition of refugee status by the Minister may be appealed to the courts, judges are given little legislative guidance in determining when such actions are properly viewed as being necessary in the interests of national security or public policy.

During the three years following its enactment, only a small portion of the Refugee Act, 1996 was brought into force. In the meantime, the law authorizing the Minister to deport persons was successfully challenged on the grounds that it did not lay down any set of principles or a policy as was required by the Constitution.[12] The Government responded by enacting the Immigration Act, 1999[13] to create more specific rules for deportations and to amend the Refugee Act, 1996 in ways that were then deemed necessary before the entire Act could be brought into force. The deportation process created by this new law is time-consuming and contains a number of safeguards for the applicants. By the end of March 2000, the Minister had issued over 300 deportation orders. However, while this number appeared to be quite large, the Minister also reported that, as of that date, only 19 of those orders had actually been carried out.[14] The others were apparently either on appeal or unenforceable because the subjects had disappeared.

The Immigration Act, 1999 replaced the not yet formed Refugee Appeals Board with a Refugee Appeals Tribunal consisting of a chairman and a panel of lawyers, each having at least 10 years of experience. The Act also created a Refugee Advisory Board to make recommendations on law and policy matters. On the substantive front, the Act provided for the making of exclusion orders that are enforceable with imprisonment of up to 12 months and fines of up to £1,500.[15]

The Government apparently sought this power to bar war criminals and "offenders against the State where there is reason to believe that such persons may seek entry."[16]

The Immigration Act, 1999 was generally seen as an attempt to deal with abuses of the laws respecting asylum. One provision of the Act created a procedure for fingerprinting all asylum applicants over the age of 14.[17] A proposal that was not included in the Act would have given asylum seekers the right to work while their applications were being processed. This proposal was defeated by a split vote in the Select Committee to which the bill had been referred.[18] One more vote for the proposal would have sent it to Ireland's House of Representatives (*Dail Eireann*).

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[11] Refugee Act, 1996, 1996 I.S., No. 17, §17.

[12] Laurentiu v. Minister for Justice, Equality, and Law Reform, (2000) 1 ILRM.

[13] 1999 I.S., No. 22.

[14] *Immigration and Asylum*, IRISH TIMES, Mar. 28, 2000, *at* http://www.ireland.com/newspaper/special/2000/odonoghuestatement. This page reproduces a statement by the Minister for Justice, Equality, and Law Reform.

[15] *Id.* §§5 and 9.

[16] Irish Current Law, Statutes Annotated 1999, 22-17.

[17] *Id.* §11.

[18] Irish Current Law, Statutes Annotated 1999, 22-02.

In 2000, the Government stepped up its efforts to address what it considered to be problems with its immigration laws by enacting the Illegal Immigrants (Trafficking) Act, 2000.[19] During the preceding year, Ireland had been receiving an increasing flood of illegal immigrants, many of whom were literally being driven to Dublin from Northern Ireland. The Government believed that because it was one of the few European countries that did not have legislation in this area, Ireland had become a particularly attractive target for traffickers in humans. The Illegal Immigrants (Trafficking) Act, 2000 therefore contains stiff penalties for convicted offenders, as well as broad forfeiture provisions. The powers of the police to detain vehicles suspected of being used for illegal trafficking were also increased.

In addition to its stated purpose, the Illegal Immigrants (Trafficking) Act, 2000 contains several provisions designed to deal with backlogs in asylum applications and deportation orders. The most significant provision addressing the former problem reduces the amount of time to 14 days that an applicant normally has to seek review of a negative determination and to require an appellant to show "substantial grounds" as to why his/her application should be granted. Final appeals to the Irish Supreme Court were also limited to cases in which a question of "exceptional public importance" is presented. As to the backlog in enforcing deportation orders, the Act expanded the grounds upon which persons may be detained pending deportation. However, as has been noted, it does not appear that detention is being used in the case of asylum seekers as opposed to persons who might be excluded for engaging in such activities as criminal offenses.

The legality of the "get tough" measures taken by the Government was eventually upheld by the Supreme Court.[20] However, one area that the Government has found more difficult to reform involves its citizenship law. Ireland, like other common law countries, such as the United States and Canada, gives automatic citizenship to all persons born in the country to parents who are not in diplomatic service. In fact, in Ireland, citizenship by birth has been guaranteed by an amendment to article 2 of the Constitution since 2000. Another article of the Constitution recognizes the importance of the family. In 1989, this provision was interpreted to give asylum seekers the right to remain with their children born in the country. Consequently, nearly one-third of the asylum applications filed during the past year have been from persons who fit into this category.[21] The Government recently won another court challenge when the court qualified its earlier ruling by holding that an asylum seeker who had come from a safe third country could be returned to that country even if he/she had a child born in Ireland. However, this case leaves many questions unanswered and is on appeal to the Supreme Court.

Under the current system, asylum seekers undergo a preliminary interview and complete a questionnaire. Applications that are deemed to be "manifestly unfounded" are handled through an accelerated procedure, and applications from persons who were eligible to file in a safe third European country within the meaning of the Dublin Convention have their cases transferred to that other country for processing. It has been reported that, thus far, Ireland has so referred 197 cases to other European countries and it has, in turn, had 125 cases referred to its own authorities.[22] Many of those persons who have been identified as multiple claimants have been identified through the mandatory fingerprinting of applicants over the age of 14.

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[19] 2000 I.S., No. 29.

[20] [2000] 2 I.R., 360.

[21] *What's to Befall Irish Children*, IRISH TIMES, Apr. 9, 2002, at 4.

[22] Amnesty International Irish Section, Dublin Convention *at* http://www.amnesty/ie/act/refug/dc.shtml.

Since April 2000, asylum seekers have been housed in accommodations established in approximately 50 towns around the country. This dispersal plan is viewed as a hardship by many applicants who believe that Dublin was a more hospitable environment that gives them greater opportunities to meet other asylum seekers from their own country or region. Many applicants also believe that the weekly welfare payment of approximately US$17 is insufficient to purchase food and other necessities that are not supplied. Refugee groups have consistently advocated the repeal of the restrictions on employment. Within the Dail, opposition members have sharply criticized the Government for putting asylum seekers in unsafe and dangerous conditions.

Despite attempts to reduce the backlogs, it appears that Ireland has approximately 10,000 persons awaiting decisions on their applications or appeals. In 2001, Ireland granted refugee status to 456 persons in the regular asylum procedure and an additional 478 persons on appeal. About 70 asylum seekers were given temporary protection. In the same year, 4,532 applications were denied and an additional 7,195 were deemed to be abandoned or were closed for administrative reasons.[23] Over the past three years, Ireland has had a low acceptance rate of less than 20 percent of asylum applications.[24]

One final step that the Government has taken to address the problem of controlling the influx of asylum seekers has been to enter into several readmission agreements. The Government has entered into agreements with Nigeria and Poland that covers nationals of those countries and an agreement with Romania that covers parties from third countries that passed through Romania as well as Romanian nationals. Over the years, asylum seekers from Romania have attracted more attention than any other group. This is partly due to the fact that in Ireland the "Roma," "Travelers," or what used to be called "gypsies" have been distinctive as a group. Studies have shown that this group of people has also encountered more local hostility than any other.[25]

Visitors

Ireland has a Common Travel Area arrangement with the United Kingdom. Under this informal arrangement, British nationals do not have to clear immigration before they can legally enter the country, and they do not have to obtain work permits before they can legally accept employment. However, Irish police and immigration officials are still authorized to check entrants and screen visitors from the United Kingdom, albeit on narrower grounds than for visitors from other countries. Border checks are routinely conducted by the police on the roads connecting the Republic of Ireland and Northern Ireland in an effort to control illegal arms smuggling and illegal trafficking in immigrants. In fact, border checks have recently been increased along many well-traveled points between Ireland and Northern Ireland.

Along with the United Kingdom, Ireland has opted out of the portions of the 1990 Schengen Treaty that are designed to eliminate border checks from travel within the European Economic Area, consisting of the members of the EU and Iceland, Liechtenstein, and Norway.[26] However, visitors from countries in the Area are not required to obtain a visa or to show a passport, but visitors from those countries, with the exception of those from the United Kingdom, do have to show at least an identity card

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[23] U.S. Committee for Refugees, Ireland, *at* 1 at http://www.refugees.org/world/countryrpt/europe/ireland.htm.

[24] *Supra*, note 1 at 9.

[25] Romanian ommunity spirit slow to take off, *Irish Times*, August 2, 2002 at 7.

[26] Http://secretarias.efta.int/euroeco.

issued by their own government. British visitors are usually admitted with a lesser form of identification such as a driver's license. Increased security at a French port that is a departure point for ships sailing to Ireland has reportedly resulted in a decrease in asylum seekers coming to Ireland through France.

Visitors to Ireland from outside the European Economic Area are required to obtain a visa to enter Ireland if the name of their country appears on the list published in the Aliens (Visas) Order, 2002.[27] The United States is not on the list and U.S. citizens do not have to obtain a visa to visit Ireland. However, U.S. citizens must produce a passport for entry to Ireland as well as to apply for a work permit if they intend to seek employment in all but a few exempted fields.

Ireland's legislation respecting aliens allows for the exclusion of persons on the grounds of "public security" even in the case of visitors from the European Economic Area. The issuance of visas is governed by statute or regulation. However, the administrative practices that prevail in this area also allow for denials on the grounds of national security. Nevertheless, while approximately 10 percent of all applications for visas are denied, it appears that most of these are for reasons relating to the inability of the applicants to support themselves while in the country. It is not clear whether a higher percentage of visa applications will be denied on the grounds of national security in light of the events of September 11, but the Garda's immigration section has been expanded to tighten the screening process.

Ireland has a registration requirement for persons who intend to remain in the country as visitors for more than 90 days. This requirement does not apply to persons from the European Economic Area who are eligible for residence documents that are valid for five years. For others, registration certificates are issued by the police and are valid for periods that usually extend from one year to an indefinite amount of time. Renewals are usually for increasingly lengthy periods. The registration certificate is a laminated document that resembles a credit card bearing a photograph of the person to whom it was issued. The Government has announced that "the existing registration document is to be replaced by a new high security electronically generated card incorporating a number of integrated security features, making it extremely difficult for criminals to abuse them through counterfeit or forgery."[28]

Ireland reportedly has approximately 90,000 visitors who have been issued registration documents.[29] While the United States has traditionally been the source country of the largest number of registered visitors, it was recently surpassed by China. Many visitors will eventually be allowed to apply for citizenship. Permission to take this step is largely at the discretion of the Minister of Justice; while Ireland does have a residency requirement, it does not require applicants to first have obtained permanent residence status or a "green card" analogous to the U.S. At the present time, there are approximately 36,000 holders of permits working in Ireland.[30]

Tracking of Immigrants and Visitors

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[27] 2002 S.I., No. 178.

[28] Ireland, Report to the Counter-Terrorism Committee pursuant to ¶6 of Security Council Resolution 1373 (2001).

[29] Bruce Ingoldsby, *Regular Migration to Ireland, at* http://www.justice.ie/802569B20047F907/vWeb/flMJDE…/regular+ migration+ to+ ireland.pd.

[30] *Id.*

As has been mentioned, Ireland has implemented a EU obligation by requiring asylum seekers over the age of 14 to be fingerprinted, and it also requires visitors from outside the European Economic Area who stay in the country for over 90 days to apply for registration certificates. However, the police have been the first to admit that locating persons who go underground after entering the country legally or illegally has been a major problem, particularly in the case of persons who have been ordered to be deported. The major initiative undertaken to address this situation was to create the Garda National Immigration Bureau in May 2000. One of the core functions of this Bureau is to develop "a comprehensive intelligence base on illegal immigration and trafficking."[31] The Garda also had some of its powers increased. For example, the Illegal Immigrants (Trafficking) Act, 2000 authorizes the police to detain vehicles suspected of being used for illegal trafficking in persons for up to 48 hours.[32]

Identity Cards

Ireland does not have a national identity card. In addition to the registration certificates mentioned above, the Government issues temporary residence certificates to asylum seekers. These cards are in an electronic format that contains "photograph, hologram, and other details etched into" them.[33] It does not appear that the government is presently considering any proposals to adopt a national identity card.[34]

Wiretapping

Wiretapping in Ireland is generally governed by the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993 (hereafter, Interception of Telecommunications Act).[35] This statute was enacted five years after three journalists successfully sued the Government for violating their constitutional right to privacy by intercepting some of their phone conversations in an attempt to uncover the source of information leaked from Cabinet meetings.[36] The scandal that resulted from this case has not been entirely forgotten. In fact, when the Prime Minister of Ireland publicly apologized to the three journalists for the Government's actions in 2001, his remarks were widely quoted.[37]

Another wiretapping scandal arose in Ireland when it was reported that the British Government illegally intercepted telephone calls, electronic messages, and data communications between Ireland and the United Kingdom from 1990 to 1997. The electronic test facility allegedly used for this purpose has since been shut down. However, the disclosure was first made in a television documentary that led one

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[31] *Supra* note 23, at 10.

[32] 2000 I.S., No. 29, §3.

[33] *Supra* note 23, at 10.

[34] *Id*.

[35] 1993 I.S., No. 10.

[36] Kennedy v. Ireland, [1987] I.R., 553.

[37] Caroline O'Doherty, *Ahearn Apologises to Journalists*, IRISH TIMES, Oct. 11, 2001, at 6.

of the alleged targets, the Irish Council for Civil Liberties, to initiate proceedings against the British Government in both Europe and the United Kingdom.[38]

The Interception of Telecommunications Act authorizes the Minister of Justice to approve proposals to intercept communications for the purpose of detecting a serious crime or to protect the security of the State. The term "serious offence" is defined to mean an offense that is punishable with five or more years' imprisonment and that involves: loss of human life, serious personal injury, or property loss; substantial gain; or facts and circumstances that make it a specially serious case of its kind.[39] The Interception of Telecommunications Act applies to criminal acts or omissions done or planned to be done outside of Ireland and would thus apply to acts of international terrorism. Wiretap authorizations must not continue beyond an initial three-month period, unless they are renewed. Warrants must be both dated and specific in nature, unless this would be prejudicial.

The criteria governing an application for an interception for the purpose of a criminal investigation are that the investigation would otherwise be likely to fail to produce needed information or to produce needed information with sufficient speed, and there must be a "reasonable prospect" that the wiretap will be of "material assistance." In weighing an application, the Minister is directed to take into account "the importance of preserving the privacy of postal packets and telecommunications messages."[40]

The criteria for authorizing interceptions in the interests of the security of Ireland are generally similar to those for authorizing interceptions as part of a criminal investigation. The Interception of Telecommunications Act requires that "there are reasonable grounds for believing that particular activities that are endangering or likely to endanger the security of the State are being carried on or are proposed to be carried on."[41]

Ireland's wiretap legislation does not require all warrants to be issued by or approved by a judge. However, the legislation does provide for the designation of a High Court judge to report to the Prime Minister every 12 months on the general operation of the Interception of Telecommunications Act and gives this judge wide powers to investigate the circumstances of any particular case where authorization has taken place. The Act also provides for the appointment of a Complaints Referee to adjudicate on complaints brought by individuals who contend that the Act has not been properly observed.[42] The Complaints Referee can award compensation and the Act does not attempt to establish upper limits on the sums that may be ordered to be paid. Decisions are subject to judicial review, but it appears that the High Court would not readily interfere in the normal process.[43]

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[38] Joe Humphreys, *Irish group starts action over alleged phone-tapping by British*, IRISH TIMES, Aug. 17, 2001, at 8.

[39] 1993 I.S., No. 10, §1.

[40] *Id.* §4.

[41] *Id.* §5.

[42] *Id.* §9.

[43] O'Keefe v. An Bord Pleanala, [1993] 1 I.R. 39.

At the time that the wiretapping law was created, the Minister of Justice indicated that there were approximately 40 authorized official interceptions in place.[44] Since then, there do not appear to be any widely reported cases of successful prosecutions that were based on information uncovered by wiretapping. The successful prosecution of the one person convicted in connection with the Omagh bombing, Colm Murphy, was largely based upon an analysis of phone calls made that day, but not on recorded conversations.[45]

Physical Surveillance

In *Kane v. Governor of Mountjoy Prison*,[46] the appellant was arrested on suspicion of being a member of the outlawed Irish Republican Army. After being released from detention, the suspect was subjected to "intense surveillance" while the police sought a provisional extradition warrant. In fact, Mr. Kane "was openly followed by several Garda on foot and by at least two patrol cars, first to a solicitor's office and later to a private house where he met a number of persons known to be sympathetic to him."[47] After attempting to elude the police, the suspect got into an altercation with several officers and was charged with assault and malicious damage. Mr. Kane complained to the High Court that he was being unlawfully detained and that the surveillance had been a breach of his constitutional right not to be unlawfully detained.

The Supreme Court found that the surveillance in this case would have been an objectionable interference with an unspecified constitutional right to privacy if it had not been justified. The Court held that all the circumstances of the case must be considered, including the nature of the surveillance and the nature of the police duty being discharged. Considering all the facts in the case, the Court held that the police could not have relied upon covert surveillance to ensure knowledge of Mr. Kane's whereabouts. Ireland's Law Reform Commission later interpreted this finding to create a "criterion of proportionality [that] is implied both by the view of the majority that less intrusive forms of surveillance would not have sufficed to keep Kane's whereabouts known to the Garda and the view of the minority that in the circumstances the surveillance was not excessive."[48] The action was consequently dismissed.

The Kane case appears to indicate that the issue of when physical surveillance is justified and proper is not governed by specific statutes or regulations in the same way that wiretapping is governed by the statute described above. The Law Reform Commission study concluded that a "variety of criminal offences may be committed in the course of surveillance" without expressly attempting to distinguish between offenses committed by law enforcement officials and private persons. One problem with this part of the study is that it is based on very little authority. For example, after listing breach of the peace as the first type of relevant common law offense, the study admits that "[i]t is not altogether clear whether a breach of the peace constitutes an offence in Ireland."[49] The statutory Criminal Justice (Public Order) Act, 1994 is then quoted for making it an "offence for any person, in a public place, to 'use or engage in

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[44] Irish Current Law, Statutes Annotated 1992-93, 10-02 (1993).

[45] Jim Cusack, "Omagh pledge by Ahearn after guilty verdict in bombing trial," *Irish Times*, Jan. 23, 2002 at 1.

[46] [1988] I.R., 757 (S.C.).

[47] *Id.*

[48] Law Reform Commission, Consultation Paper on Privacy: Surveillance and the Interception of Communications, 3:17 (1996).

[49] *Id.* at 5.5.

any threatening, abusive, or insulting words or behavior with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned.'"[50] This provision would appear to actually impose minimal constraints on physical surveillance since the types of actions described are hardly routine police practice.

Whether a person can sue for damages on account of an unconstitutional surveillance is also in doubt. The Law Reform Commission study acknowledges that "unlike the situation in several other jurisdictions, there is in Ireland no cause of action for breach of privacy as such either in equity or under statute."[51] Some torts, such as assault or trespass, could be committed in the course of a particular case, but would normally be difficult to establish. The Law Reform Commission concludes that one possible area of development in Irish law is the emergence of a specific tort of invasion of privacy.

In light of the above, it would appear that the police have broad powers to conduct overt and covert surveillance and that the Courts are not inclined to question their actions or methods unless they are clearly abusive. It also appears that attempting to charge the police with a criminal offense or to sue them for a tort conducted in the course of a surveillance operation would be very difficult.

Financial Reporting

The major financial reporting requirement of current Irish law is contained in the money laundering provisions of the Criminal Justice Act, 1994.[52] Section 57 of this statute requires directors, employees, and officers of banks and other financial institutions to report to the police "where they suspect that a [money laundering] offence…in relation to the business of that person or body has been or is being committed." [53] The report may be made to the Garda Síochána in accordance with an internal reporting procedure established by an employer for the purpose of facilitating cooperation with the police. In fact, so reporting a suspicion to a supervisor in accordance with an established procedure is a valid defense to any charge of failing to comply with the provisions of the Criminal Justice Act, 1994. This rule tends to focus primary responsibility on senior officials. Persons who fail to comply with the financial reporting requirements of the Criminal Justice Act, 1994 are liable to a maximum punishment of a fine and five years' imprisonment. The amount of the fine is at the discretion of the court. There have been no prosecutions under this section thus far.

Prohibited Organizations

Under the Offences Against the State Act 1939, organizations which engage in specific types of activities or that have been specifically mentioned in a suppression order are illegal. The types of organizations so outlawed are very broad and include any organization which:

- engages in, promotes, encourages, or advocates the commission of treason or any activity of a treasonable nature

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[50] *Id.* at 5.13.

[51] *Id.* at 4.1.

[52] 1994 I.S., No. 15.

[53] *Id.* §57.

- advocates, encourages, or attempts the procuring by force, violence, or other unconstitutional means of any alteration of the Constitution

- raises or maintains or attempts to raise or maintain a military or armed force in contravention of the Constitution or without constitutional authority

- engages in, promotes, encourages, or advocates the commission of any criminal offense or the obstruction of or interference with the administration of justice or the enforcement of the law

- engages in, promotes, encourages, or advocates, the attainment of any particular object, lawful or unlawful, by violent, criminal, or other unlawful means

- promotes, encourages, or advocates, the non-payment of moneys payable to the Central Fund[54]

Specific organizations have been outlawed through regulations issued under the 1939 Act. The most notable example, the Unlawful Organization (Suppression) Order 1939, declared that the organization styling itself the Irish Republican Army (also IRA and *Oglaigh na heireann*) is an unlawful organization and ought, in the public interest, to be suppressed.[55] In 1983, a similar instrument was enacted to outlaw the Irish National Liberation Army (INLA).[56] At that time, the INLA was thought to pose a greater threat to the peace process than the older group that had come to be known as the Provisional IRA. Since then the emergence of the "Real IRA" has been of greatest concern to many law enforcement officials.

In the aftermath of the August 1998 bombing in the town of Omagh in Northern Ireland, the Government enacted the Offences Against the State (Amendment) Act, 1998.[57] This law created five new offenses. Among these was directing an unlawful organization, possessing certain illegal articles, unlawfully collecting certain types of information, withholding information, and training persons in making or using firearms for certain illegal purposes. The Act also changed the rules of evidence to allow certain inferences to be drawn from an accused's silence and to extend the length of time a suspect may be detained without being charged from 48 to 72 hours.[58]

In April of 2002, the 1998 law was renewed for another year. It was reported that the withdrawal of the right to silence was used 22 times in the previous years, resulting in two convictions and 20 pending cases. It was also reported that two persons were convicted of illegally collecting information likely to be useful to an unlawful organization.[59] Critics have contended that the legislation is too strict and that it has been unsuccessful in bringing more than one person to trial for the Omagh bombing thus far. The Minister of Justice has indicated that the entire Offences Against the State Act is currently under review and that it would not make sense to repeal the 1998 amendments before the Committee studying the law

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[54] 1939 I.S., ch. 13, §18.

[55] 1939 S.I., Reg. 2.

[56] 1983 S.I., Reg. 2.

[57] 1998 I.S., No. 39.

[58] *Id*. §30.

[59] Marie O'Halloran, *Dail renews post-Omagh law on terrorism for further 12 months*, IRISH TIMES, Apr. 9, 2002, at 6.

has had an opportunity to report its finding. The Minister was also quoted as stating that the law "plays a major role in the fight against subversive activity…[and that] it is having an effect."[60]

Terrorist Funding and Recovery of Assets

The Offences Against the State Act, 1939 has long provided that when a suppression order in respect of an unlawful organization is issued all property of that organization is forfeited to the Minister of Justice.[61] A 1985 amendment to this statute creates a procedure whereby the Minister can authorize the restraint of funds held by any person which are believed to be for the use or benefit of an unlawful organization. This Act also gives the owners of such funds the right to seek recovery of their funds in proceedings before the High Court.

Other domestic statutes that could be relevant in efforts to stem terrorist funding and to recover assets illegally gained are the Criminal Justice Act, 1994[62] and the Proceeds of Crime Act, 1996.[63] The former contains detailed rules for the confiscation of the proceeds of crime, and the latter provides for the freezing and disposal of property which the court is satisfied on a balance of probabilities is the proceed of crime. The advantage of proceeding under the 1996 Act is that it does not require either a prior conviction or criminal proceedings.

Despite the above, combating international terrorist funding is one area in which EU measures that have direct effect in Ireland have surpassed domestic legislation in importance. These measures will be noted in a subsequent section.

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[60] *Id.*

[61] 1939 I.S., Ch. 13, §22.

[62] 1994 I.S., No. 15.

[63] 1996 I.S., No. 30.

Use of Internet

Ireland does not have a statute that is specifically aimed at cyber-terrorism. However, Ireland does have laws prohibiting hacking as well as more traditional types of criminal laws, such as laws prohibiting treasonous acts, laws prohibiting offenses against the state, and laws protecting aeronautics and navigation that may be relevant in particular cases. Ireland has signed the Convention on Cyber-Crime, but it has been reported that the Convention "is not expected to become law for some time."[64]

In 2000, Ireland enacted the Electronic Commerce Act.[65] This law has been described as "an enabling piece of legislation [that] gives full legal effect to electronic signatures and advanced electronic signatures,"[66] but it actually has a broader application. Section 9 of the statute provides that "[i]nformation (including information by reference) shall not be denied legal effect, validity or enforceability solely on the grounds that it is wholly or partly in electronic form, whether as an electronic communication or otherwise."[67] There are some exceptions to this rule. For example, the Electronic Commerce Act does not apply to "the imposition, collection or recovery of taxation of other Government imposts."[68] Nevertheless, the Act generally allows persons to fulfill requirements that submissions be in writing by submitting them in electronic form. Electronic originals and contracts also have statutory recognition. The Government was anxious to create such a law because Ireland has become a major supplier of electronic programs and services utilized in international electronic commerce.

In order to protect electronic commerce, the Act prohibits fraud and misuse of electronic signatures and signature creation devices.[69] The maximum penalty that can be imposed upon conviction is a fine of £500,000 and imprisonment for up to five years.[70] Investigative powers are quite broad. The Minister of Public Enterprise or a senior member of the Garda Síochána can apply to a District Court judge for a warrant when there are reasonable grounds to believe that evidence of an offense may be found at a particular place. The Garda can also require the user to provide the decryption technology in order to reduce an encrypted electronic communications into an intelligible form.[71]

It appears that email is not covered by the Interception of Telecommunications Act's general prohibition on interceptions of telecommunications, and email is not subject to the exceptions to that law allowed for in the Act.[72] This suggests that email is not protected from being searched and that the police do not have to comply with wiretapping laws in order to monitor email, although they will be subject to

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[64] L.K. Shields, *Combating Cyber Terrorism In Ireland*, at 1 (2002), *at* http://www.lkshields.ie/publications/documents/articles/pub042.htm.

[65] 2000 I.S., No. 27.

[66] *Supra* note 58.

[67] 2000 I.S., No. 27, §9.

[68] *Id*. §11(a).

[69] *Id.* §25.

[70] *Id.* §8.

[71] *Supra* note 58, at 2.

[72] *Id.*

other general rules on the gathering of evidence if they attempt to do so. Employers can monitor email if they inform employees of their intentions. The law respecting the monitoring of emails by Internet service providers is reportedly unclear.[73]

International Conventions on Terrorism

In its first report to the Chairman of the Counter-Terrorism Committee Established by the Security Council of the United Nations, the Irish Government stated as follows:

> Ireland has given effect to the...Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963), the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), the Convention on the Physical Protection of Nuclear Material (1980), the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1988).[74]

The Government also reported that legislation to give effect to additional Conventions addressing terrorism was being prepared. The Conventions listed in this regard were:

- Convention Against the Taking of Hostages,
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
- Convention on the prevention and Punishment of Crimes Against Internationally Protected Persons
- International Convention for the Suppression of the Financing of Terrorism
- International Convention for the Suppression of the Financing of Terrorist Bombings
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf

In its June 2000 update to the above report, the Government indicated that Ireland would not need to enact legislation in order to implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991 as the Government would soon move a Parliamentary motion to seek approval of the terms of that Convention.[75]

Terrorist Incidents and Infiltration

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[73] *Id.* at 4.

[74] *Supra* note 24, at 8.

[75] Ireland, Second Report to the Counter-Terrorism Committee Established Pursuant to ¶6 of Security Council Resolution 1373, at 13 (2002).

The vast majority of violent incidents that have occurred over the 30 years of bombings, shootings, and associated acts often referred to throughout Ireland as the "troubles" have occurred in Northern Ireland. There have been some exceptions. For example, Lord Louis Mountbatten, who served as the First Governor General of India among other offices, was assassinated when a bomb exploded on his boat anchored on the Irish coast. Also, some bombings in the Republic of Ireland have been thought to have been conducted by Loyalists from Northern Ireland. Nevertheless, most of the violence has occurred in Northern Ireland. Many of the Republican participants in these acts of violence have been citizens of Ireland and the Irish police have long been actively involved in attempting to apprehend persons in Ireland who have violated laws for political purposes on both sides of the border. (Violence committed by Loyalists seems to have originated almost exclusively within Northern Ireland.)

In April of 2001, it was reported that the Garda, along with the FBI, had infiltrated dissident Republican groups through their fund-raising arms in the United States. At that time, "almost the entire resources of the Garda National Surveillance Unit…(were) devoted to an investigation of the 'Real Irish Republican Army'" and a separate investigation into the 1998 bombing at Omagh that was attributed to the RIRA was the main focus of another branch of the Garda.[76] The Omagh bombing, in which 29 people were killed and almost 300 people were injured, occurred after the Garda Special Branch had been reduced in the aftermath of the Provisional Irish Republican Army's cease-fire. To date, only one person has been convicted in connection with what was Northern Ireland's worst bombing. However, five persons, including the suspected leader of the RIRA, are currently awaiting trial in Ireland on charges of being members of a prohibited organization.

Information on infiltration of Ireland's prohibited organizations is seldom released. This is in large part due to fears of retaliation. The agent who reportedly infiltrated the RIRA in the United States has reportedly been under FBI protection.

Over the years, there have also been claims of infiltration of the Garda by various Republican groups. Investigations into allegations that certain individuals were terrorist sympathizers or supporters have been launched. However, it does not appear that such infiltration, if it has in fact occurred, has ever been at a senior level or in more than isolated cases.

The specter of international terrorism is a much newer phenomenon in Ireland. In the aftermath of September 11, it was reported that the Garda had "been aware for a number of years that al-Qaeda had infiltrated members into the Arab Community in Dublin."[77] These individuals are suspected of a petrol bomb attack at a mosque in that city, as well as of acquiring false documents and arranging transactions involving relatively small sums. A leading organizer of the group is believed to be a naturalized Irish citizen and the group itself is thought to have once been up to 40-strong, with 35 members being full-time participants.

An Irish connection with al-Qaeda seems to have first been uncovered during the investigation into the plot to bomb Los Angeles Airport at the end of 1999. This led to the arrest of four men in Ireland. During the search of the premises these individuals occupied, documents relating to citizenship applications, credit cards, and travel tickets were found. The Garda released these four men when they concluded that there was insufficient evidence to charge them with criminal offenses. Interest was renewed by the events of September 11, and the documents previously seized were reexamined. Some

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[76] Jim Cusack, FBI, *Garda infiltrate republican groups in U.S.*, IRISH TIMES, Apr. 9, 2001, at 13.

[77] *FBI Turns Spotlight on al-Qaeda's Dublin Operations*, IRISH TIMES, July 31, 2002, at 14.

of these documents apparently point to an al-Qaeda tie with an Egyptian financier who has since disappeared. The FBI is continuing its investigations into the Dublin connection.[78]

2. Legal Enforcement Against Terrorism

Criminal Laws

Ireland has not yet enacted a law that specifically prohibits various types of support for or engagement in terrorist activities. However, the Offences Against the State Act was undoubtedly one of the first European statutes passed to address the problem of domestic political violence. Created in 1939, this statute specifically outlaws the IRA and INLA, and it generally prohibits membership in such organizations as the "Real IRA" and the "Continuity IRA." As was previously mentioned, the 1998 amendment to the Offences Against the State Act created five new substantive offenses. One of these offenses is for withholding information that might have been of material assistance to the police in preventing the commission of a serious offense or in prosecuting someone for a serious offense.[79] Information covered by the law must be disclosed to the Garda "as soon as it is practicable."[80] Although even the Government has described this rule as having a "wider potential application" than the others, it does not violate the normal right of an accused to remain silent because that right can be overridden when this is reasonably necessary to preserve the public peace.[81]

Specific Terrorism Laws

For relevant offenses the Offences Against the State Act provides for trials in Special Criminal Courts. Trials in the Special Criminal Courts are conducted in accordance with modified procedures and are held without juries. The Government has indicated that it would like to do away eventually with the Special Criminal Courts, and it recently submitted the question to a diverse panel. Although abolition was advocated by a strong minority, retention of the Special Criminal Courts was recommended by the majority.[82] The majority agreed that the Belfast Agreement of 1998 had reduced fears of Republican violence, but also concluded that organized crime and international groups present a greater threat of violence than ever before. Following the preparation of the review committee's draft, the Government extended the Offences Against the State Act, 1998. The Government's position was that the country is not yet ready to have trials of persons involved in the "troubles" held in the regular criminal courts.

Many constitutional challenges to the operations of the Special Criminal Courts have been launched over the years. One avenue pursued by defense attorneys was created by the enabling provision of the Offences Against the State Act that allows Defence Forces officers who are not below the rank of commandant to be appointed to the bench.[83] This provision was upheld and between the years 1961-62,

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[78] *Id.*

[79] 1998 I.S., No. 39, §9.

[80] *Id.*

[81] Rock v. Ireland, [1998] 2 I.L.R.M. (S.C.).

[82] *Reviewing Emergency Law in the Context of Peace*, IRISH TIMES, May 30, 2002, at 4.

[83] 1939 I.S., ch. 13, §39(3).

the Special Criminal Courts were composed solely of officers. However, the situation has changed; since 1972, the judges of the Special Criminal Courts have all been judges and retired judges.[84]

The jurisdiction of the Special Criminal Courts extends to both scheduled and non-scheduled offenses. All of the offenses created by the 1998 amending law are scheduled offenses. This means that the Director of Public Prosecutions (DPP) can direct that charges laid under that law are to be heard in a Special Criminal Court. In order for a non-scheduled offense to be sent to a Special Criminal Court, the DPP must certify that it is his or her opinion that the ordinary courts are inadequate to secure the administration of justice and the preservation of public peace and order with respect to the case at hand.

Conspiracy

As a common law jurisdiction, Ireland recognizes that conspiring to commit virtually all of the criminal offenses relating to acts of violence is a crime. While it is an indictable offense at common law for two or more persons to agree to commit an unlawful act, reliance upon the common law is not necessary as the major criminal statutes contain incorporating provisions. For example, section 37 of the Offences Against the State Act, 1939 provides that "attempting or conspiring or inciting to commit, or aiding or abetting the commission of, any…scheduled offence shall itself be a scheduled offence."[85] This means that it is illegal to conspire to commit all crimes specifically created in response to "the troubles" and that the procedures and punishments set out in the Offences Against the State Act are applicable.

Despite being a creation of both the common law and statutes, "conspiracy is rarely charged because of the rules whereby an unfairness is perceived against an accused."[86] The law of conspiracy is also very complex, raising many questions about proximity, coincidence, reservations, the unlawful element, vagueness, the mental element, impossibility, and abandonment.[87] In Ireland, the charging with conspiracy in 1881 of Charles Stewart Parnell, a well-known Irish political leader who had served in the British Parliament and championed the Irish cause, for allegedly encouraging tenants engaging in a rent strike to "boycot" those who were continuing to pay their rent seems to be generally regarded as abusive and is an example of how the law of conspiracy can itself, be used for political purposes.[88] Nevertheless, the rules respecting conspiracy remain an important part of Irish criminal law that, despite their history and relative lack of recent use, could be employed to prosecute members of suspected terrorist organizations.

Legal Restraints

Ireland is a member of the European Union. Appeals against convictions can be made on the grounds that Irish criminal law violated European law in some material respect.

3. Legislation Enacted After September 11

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[84] James Casey, CONSTITUTIONAL LAW IN IRELAND, at 328 (2000).

[85] 1939 I.S., ch. 13, §37.

[86] Peter Charleton, CRIMINAL LAW, at 297 (1999).

[87] *Id.* at 296-327.

[88] (1881) 4 Cox 508.

Ireland has not yet enacted any special legislation in response to the events of September 11. However, the Government has approved proposals for the drafting of a Criminal Justice (United Nations Conventions) Bill and a Criminal Justice (Financing of Terrorism) Bill. These laws will give effect in Irish law to a host of International Conventions, including the 1999 International Convention for the Suppression of the Financing of Terrorism. Preparation of these bills is claimed to be "well advanced."[89]

4. Limits on Counter-Terrorist Activity

The Government has announced that it will expand judicial powers in the area of mutual legal assistance, particularly as a consequence of instruments issued by the European Union and the Council of Europe. At the present time, mutual legal assistance is limited for countries outside of Europe that have not entered into bilateral agreements with Ireland. Assistance in such cases is said to be given on a case-by-case basis. However, Irish officials often find that they are bound by legal and judicial constraints.

Ireland recently enacted an Extradition (European Union Conventions) Act, 2001.[90] This step represents the latest in a series of reforms that the Government has taken over the years to address problems that it has encountered and complaints that it has received from other countries that have attempted to secure the return from Ireland of persons who have committed crimes within their own jurisdiction. The United Kingdom, in particular, has long been very displeased with judicial interpretations of what constitutes a non-extraditable "political" offense. Other problems British authorities have encountered with some frequency involve the requirements of timeliness and double criminality.[91]

The Extradition Act, 2001 has not yet been brought into force. Also, proclamation of the law will not affect the ability of the Government to extradite persons to other countries. That process is limited by several interpretations of the Constitution that have favored persons seeking refuge in Ireland. Reform of the general Extradition Act [92] will be required to reform the country's laws respecting extradition outside Europe. This is also true with respect to the two countries, the United States and Australia, with whom Ireland has entered into bilateral extradition treaties.[93]

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[89] *Id.*

[90] 2001 I.S., No. 49.

[91] Gerard Hogan and Clive Walker, POLITICAL VIOLENCE AND THE LAW IN IRELAND, 280-293.

[92] 1965 I.S., No. 17, as amended by 1994 I.S., No. 6.

[93] T.I.A.S., 10813.

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ITALY

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Between 1969 and 1982 Italy went through the worst experience of terrorist violence among western democracies. Beginning in 1975 emergency legislation to confront terrorism was approved, which changed the approach of legislation enacted up to the early 1970s by reformist governments in defense of individual rights. In addition to granting greater powers to the police and imposing on citizens the duty to report any property transfer, use, or rental, the emergency legislation required identification from anyone performing bank transactions in excess of 20 million liras, and introduced new terrorism related crimes. Legislation favoring disassociation from terrorist organizations was developed in 1982, which may be credited for most of the successes in defeating those organizations.

Following the attacks of September 11, 2001, many provisions of the Italian Penal Code and of the other special laws were amended to respond to the new threats. Legislation aimed at combating and preventing money laundering has been strengthened and made somewhat more efficient, though analysts maintain more consolidation is needed. New provisions to confront international terrorism were approved. Existing legislation was amended in various areas including wiretapping, undercover operations, assisting members of terrorist organizations, financial security, arms and ammunition, and immigration.

In the area of cyber-crime the provisions of the Penal Code govern. Italy has already well established legislation for airport security and identity cards. Regarding ID cards, some important additional developments are currently taking place.

1. Legislation Prior to September 11, 2001

Immigration

Traditionally a country of emigration rather than immigration**,** until 1990 Italy lacked comprehensive legislation specifically regulating immigration and asylum. The rules, issued when the fascist regime was in power, viewed the presence of foreigners in terms of protecting public order, and were kept to a minimum, permitting the administrative authorities, from the Minister of the Interior to the local police, to regulate and manage this delicate field. Such rules, applying to the entrance of foreigners into the country and their sojourn, also regulated eventual long-term stays.

After the collapse of the fascist regime and the establishment of a democratic Republic after the end of World War II, entry and sojourn in Italy were still governed by the few provisions dating back to 1931, while the provisions specifically pertaining to refugees were essentially those contained in international instruments and in the Republican Constitution of 1948. Law No. 39/1990 of February 28, 1990 introduced urgent provisions on political asylum, entry and sojourn of citizens from outside the European Communities, and legalization of the position of citizens of countries outside the European

Union and stateless persons already present in the territory of the Republic. Though, it may be argued, Law No. 39 of 1990[1] did not fully implement article 10 of the Constitution, it represented a substantial improvement over the previous situation since through this law Italy withdrew its reservations to the Geneva Convention on Refugees.[2] Italy is a party to the European Union Convention determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities, signed at Dublin on June 15, 1990.[3]

Asylum

Italy had traditionally been a country of first refuge, especially for those emigrating from Eastern Europe. Considering itself unable to absorb refugees in its social fabric and integrate them into the local economy, Italy became a temporary stop for refugees in transit to other destinations, mainly the United States, Canada, and Australia, where they could settle permanently. Although this low settlement rate was consistent with the aim of Italy's reservations to the Geneva Convention, it contradicted the humanitarian purposes that action in favor of refugees implies. In reality a benevolent attitude of the Italian authorities towards refugees evolved in many cases into an implicit consent to stay and work due to the fact that the so-called temporary permit was repeatedly granted, so that refugees could take advantage of the provisions implemented in Italy to legalize the working position of many illegal immigrants.[4]

According to article 10 of the Italian Constitution, foreigners who are denied, in their own countries, the effective exercise of the democratic freedoms guaranteed by the Italian Constitution have a "right to asylum" in Italy, in accordance with the conditions set by law, which is more than the legitimate interest afforded other foreigners.[5]

Law No. 39/1990 establishes that, based on an "objective border police check" an asylum seeker may be prohibited entry into Italy under specific circumstances which include: having been sentenced in Italy for certain crimes specified by law, having been proven to be dangerous to the security of the State, or belonging to drug trafficking, terrorist, or mafia-type organizations.

Applicants to asylum are granted a temporary permit to stay in Italy for the time necessary to process the application. Each case is decided by a special committee, composed of various Italian ministry officials, which deliberates with the consultative participation of a representative from the delegation of the United Nations High Commissioner for Refugees. If the application is rejected the applicant must leave the territory of Italy unless a permit to stay is issued for other reasons. Against the decision of the

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[1] Law No. 39/1990,Gazzetta Ufficiale della Repubblica Italiana (official law gazette of Italy, G.U.) 49 of Feb.28,1990, implemented Decree-Law No. 416/1989, G.U. No. 303 of Dec. 30, 1989.

[2] Italy ratified and implemented the 1951 Geneva Convention on Refugees with reservations, by Law No. 722, of July 24, 1954.

[3] Law No. 523 of Dec. 23, 1992.

[4] Consulta Europea Rifugiati ed Esiliati, Il diritto d'asilo nella comunita' europea(Eurostudio, Torino, 1989); B. Nascinbene, Lo straniero nel diritto Italiano (Milano, Giuffre, 1988); Rivista di diritto internazionale Privato e processuale (April-June 1987); P.L. Zanchetta, Essere stranieri in Italia (Milano, Angeli, 1991). See also B. Nascimbene, La condizione giuridica dello starniero (Padova, CEDAM, 1997).

[5] A. Cassese, Commentario alla Costituzione 532 (Bologna, il Mulino, 1975). The distinction between a right and a legitimate interest under Italian law is discussed in any commentary of Italian administrative law.A right may be defined as as an interest directly guaranteed by law to an individual, whereas a legitimate interest may be defined as an individual interest closely connected with a public interest and protected by law only through the legal protection of the latter. See Cappelletti, Merriman, Perillo, THE ITALIAN LEGAL SYSTEM (Stanford University Press, 1967) at 81.

Committee, and against expulsion, appeal is granted to the Regional Administrative Tribunal. Once refugee status is recognized, the alien enjoys the same public assistance and social security as Italian citizens. Conditions for the acquisition of Italian citizenship by refugees is discussed below.

Other Immigration Laws

In 1998 Law No. 40, which abrogated Law No. 39/1990 except for the provisions pertaining to refugees contained in article 1, paved the way to the promulgation of the Immigration Act in 1998.[6] The Law is devised to better confront the increasing influx of foreign immigrants resulting in part from Italy's geographic position, close to Eastern Europe and the African countries.

This comprehensive legislation establishes the general principles of Italian immigration law and its sphere of application. Provisions on entry and sojourn regulate in detail documents and residence permits, as well as the conditions and procedures that may lead to expulsion from the country. The strengthening of border controls and the coordination of such responsibility with other countries is provided in the law. On the other hand, facilitating the unlawful or clandestine entry into Italy of illegal immigrants is severely punished by imprisonment and fines which are substantially increased when prostitution or the exploitation of children is involved.

The right of legal foreign immigrants to keep or reestablish a family unit is recognized and guaranteed under precise conditions, especially in the interest of minor children. For protection of the rights of these children, pursuant to the provisions of the 1989 Convention on the Rights of Children ratified by Italy in 1991, the 1998 Law established a supervisory committee under the authority of the Prime Minister's Office.

Citizens of countries that are members of the European Union are not subject to this Law. However, Parliament delegated to the Executive the issuance of *ad hoc* regulations pertaining to the presence in Italy of such foreign citizens, in full implementation of European Union legislation.

Aliens in possession of the required documents may enter Italy and may stay for certain periods of time, which is determined according to the purpose of their entry. They need to apply to the police authority in the province in which they enter for a temporary permit, and such permit may be renewed on request by the same authority. The Law does not require aliens to check in with Italian authorities on a regular basis, however, during their stay in Italy, aliens have to inform the competent police authority of their change of domicile within 15 days. In cases of doubt concerning his/her personal identity, an alien may be subject to identification procedures including fingerprinting. In addition, anyone giving an alien, even if a relative, lodging or employment, or transferring to the alien immovable property, or the use of it, must notify the police authority within 48 hours. Aliens must exhibit, under penalty of law, an identification document or their permit of sojourn on the request of the police, unless there is a valid reason not to comply. The government may impose to aliens limitations pertaining to their place of residence in areas of interest for the military defense of the State. Aliens who do not qualify for entry or sojourn are stopped at the border or are expelled from the country.

In recent years the growing number of aliens in Italy has created serious concern among the population. The mass influx of Albanians in 1990 and 1991 clearly demonstrated the great pressure

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[6] Legislative Decree No. 286 of July 25, 1998, as amended. G.U. No. 191 of Aug. 18, 1998, ordinary supplement. Implementing Regulations were issued by Presidential Decree No. 394 of Aug. 31, 1999, G.U. No. 258 of Nov. 3, 1999, ordinary supplement.

refugees placed on Italy's immigration system. More than 24,000 Albanians sought refuge in Italy during February and March 1991 alone.[7] Pressure from illegal Albanian immigrants continued in the following years and a new flux of Kurdish refugees coming from Turkey, Iran, and Iraq developed in the second half of 1997, in addition to refugees from the former Yugoslavia and other Eastern European countries.

The United Nations High Commissioner for Refugees expressed appreciation for the Italian authorities' decision to give Kurdish asylum seekers access to the procedures leading to acquiring refugee status and pointed out that the issue of such migrants is not an exclusively Italian problem. However, concern over the alleged inability of the Italian authorities to stop these immigrants at the border was strongly voiced by the German and the Austrian governments, and prompted the government of the Netherlands to call for an emergency meeting of the Schengen group. At the same time a meeting of the police authorities of Germany, France, The Netherlands, Turkey, Greece, and Italy convened in Rome in 1998 upon Italian request, to study the security implications of the wave of illegal immigrants to Europe.[8]

It has been pointed out that immigration to Italy is not destined to stop, and is expected to become an ordinary process. An official demographic forecast prepared by the Italian government projects continued immigration for the next few decades.[9] According to an Italian security status report prepared by the Ministry of the Interior in February 2001, between 1974 and 2000 there was a remarkable increase in the number of aliens with a regular residence permit. There were 1,340,655 such aliens in 2000. The increased numbers were attributed to the family reunion policy and to regularization of the status of clandestine immigrants in 1995/1996 and in 1998/1999. The number might be somewhat larger if aliens under the age of 14, who are usually registered on their parents' residence permits, are taken into account.[10]

As for illegal immigrants, estimates of their numbers vary. Those who oppose immigration, including members of the governing coalition who have successfully promoted more stringent legislation on immigration, tend to overestimate the numbers and to link illegal immigrants to supposed increases in crime.[11] On the other hand, charitable organizations that assist immigrants claim that, according to their data, the number of illegal immigrants is less than 20 percent of the total number of legal immigrants. Legal immigrants are estimated to number about 2.2 percent of the Italian population, which is well below the equivalent percentages for the population of France, Germany and Britain.[12]

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[7] B. Nascimbene, *The Albanians in Italy: The right of asylum under attack?* 3 INTERNATIONAL JOURNAL OF REFUGEE LAW (No. 4, 1991). See also *Italy's Painful Plight: Huddled Masses at its Door*, The N. Y. Times (Sept. 18, 1991).

[8] La Repubblica, January 6 and 7, 1998.

[9] P. Bonetti, *Italy*, in B. Nascimbene, *ed.* EXPULSION AND DETENTION OF ALIENS IN THE EUROPEAN UNION COUNTRIES (Milano, Giuffre, 2001) at 313.

[10] *Id.*

[11] *Supra*, note 8.

[12] La Repubblica, Feb. 24, 1998 and Jan. 18, 2001.

Italian public opinion contains paradoxical elements, with large percentages of the public believing that there are too many immigrants, while at the same time recognizing that foreign workers are needed by Italian employers, who would like to see more immigrant workers.[13]

Identity Cards

Italian Law does not provide for the compulsory issuance and holding of an identification card, but ID cards may be issued upon request. This is often done since they are useful official documents and are also valid, as a substitute for a passport, for travel in the member States of the European Union and in other countries when provided by bilateral agreements.

ID cards contain personal data such as one's full name, place and date of birth, residence, and a photograph, but no statement of religious affiliation is required on the card. When issued to foreigners their citizenship must be mentioned. It is prohibited to add to the card any information different from that required by law.[14]

A new digital version of the card will contain a much wider range of information than the traditional format and will eliminate the need for many certificates normally issued by the Office of Vital Statistics. This alone is expected to generate savings in the order of billions of *lire*. In addition, the new card will provide automatic access to services such as those of the National Health System and will render even the issuing of the electoral certificate obsolete.[15] The new digital version of the identity card will include registration of fingerprints and a scan of the retina, an element of novelty that has raised serious concerns in Italy about violation of individual privacy.[16]

In cooperation with several municipalities, the central Government launched a pilot project aimed at introducing the new card for 100,000 citizens in 83 municipalities beginning in January 2001, and increasing that number to one million people by the end of the year, according to guidelines issued by a Decree of the President of the Council of Ministers in 1999, and in conformity with the technical and security regulations issued by a Decree of the Minister of the Interior in July 2000.[17]

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[13] *Id*.

[14] Testo Unico di Pubblica Sicurezza, art. 289.

[15] La Repubblica, Dec. 17, 2000.

[16] Id.

[17] G.U. No. 169/2000.

Citizenship

Italian citizenship is governed by Law No. 91 of 1992[18] and by the implementing regulation enacted in 1993, as amended.[19] The Law adheres to the principle of *jus sanguinis,* based on descent or parentage, as was the case with previous legislation. The principle of *jus soli*, based on the place of birth, is only applied as a subsidiary criterion, essentially to prevent statelessness.

According to the Law, Italian citizens by birth are:

- a child of an Italian mother or father
- a child born in Italy, if both parents are unknown or stateless, or if the child does not acquire the citizenship of his foreign parents in accordance with the law of the country of their citizenship
- an infant found in Italy and born of unknown parents, unless the possession of other nationality may be proved

A minor adopted by Italian citizens acquires Italian citizenship. Law No. 91 specifies that a minor who lives with a parent who acquires or re-acquires Italian citizenship also acquires it, but at the age of majority such individual may renounce Italian nationality, provided another nationality is held. It has to be pointed out, however, that relevant consequences derive from the immigration status of a foreign child born in Italy since birth in the territory of the Republic does not automatically confer citizenship. Law No. 91 in fact states that a foreigner born in Italy who resides there legally and without interruption until the age of 18 is reached becomes a citizen if the intention to become a citizen is stated within one year prior to the date of reaching the age of 18.

A foreigner recognized as a refugee by Italy is dealt with as a stateless person for the purpose of Law No. 91. He/she has to reside legally in the country for at least five years to be granted citizenship. Compared to previous legislation, Law No. 91 expresses a more conservative approach toward foreigners. In fact only residency at the time of reaching the age of majority was previously sufficient to attaining Italian citizenship.[20] In addition, the period of legal residency for foreigners coming from countries other than those members of the European Union was doubled from five to 10 years to obtain citizenship.

A foreign or stateless spouse of an Italian citizen is granted more favorable conditions to acquire Italian citizenship, since he/she has to reside legally in the country for only a minimum of six months, otherwise after three years from the date of marriage, if it has not been dissolved, annulled, or its civil effects declared to have ceased, and provided that there has not been a legal separation.

The Minister of the Interior, by his own decree, which sets forth the reasons, may reject a spouse's petition, precluding acquisition of citizenship if the spouse has been found guilty of a crime against the personality of the State or of other non-negligent crimes punished by no less than three years imprisonment, or has been found guilty by a foreign judicial authority for a non-political crime involving

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[18] G.U. No. 38 of Feb. 15, 1992.

[19] Presidential Decree No. 572 of Oct. 12, 1993, G.U. No. 2 of Jan. 4, 1994; and Presidential Decree No. 362 of Apr. 18, 1994, G.U. No. 136 of June 13, 1994.

[20] Art. 3 of Law No.555 of 1912 repealed by Law No. 91 of 1992.

a penalty of more than one year's detention, if the foreign judgment is recognized in Italy. The existence of proven reasons relating to the security of the Republic constitute additional justification to preclude acquisition of citizenship by the spouse. Five years after the petition was rejected the spouse may file again.

Wiretapping

The interception of telephone conversations or communications, as well as that of other forms of communications through computer or telecommunications systems, regulated by the provisions of the Code of Penal Procedure,[21] may take place in investigations concerning:

- non-negligent crimes punishable by life imprisonment, or more than five years' imprisonment
- crimes against the public administration punishable by imprisonment for more than five years
- drug- related crimes
- crimes concerning weapons and explosives
- crimes of contraband
- crimes of insults, threats, usury, illegal financial activities, molestation or harassment directed to persons through the use of the telephone
- crimes concerning distribution, through any means, dissemination, and advertisement of pornographic material involving minors, as well as dissemination of information for the purpose of sexual exploitation of minors

In these same cases, the recording of communications taking place among people present in a place may also be authorized. If the place in question is a private domicile, the operations are allowed only when there are well-founded reasons to believe that criminal activity is actually taking place.

Wiretapping must be authorized by the Judge of the Preliminary Investigations, upon request of the Public Prosecutor, when it is essential for the continuation of the investigations, based on very serious leads, for an initial period of 15 days and may be extended for subsequent periods of 15 days. Only in urgent cases, when there is valid reason to believe that any delay would seriously endanger the investigations, the Public Prosecutor may authorize wiretapping, but his action must be approved by a decree of the Judge, setting forth the reasons. The Code spells out the procedures for wiretapping operations, for the protection of the documents, and the conditions under which the information may be used. The Law also indicates the subjects whose conversations or communications may not be tapped. Regarding organized crime activities, wiretapping may be authorized for a period of 40 days and may be extended for subsequent periods of 20 days, under less stringent conditions.[22]

Physical Surveillance

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[21] Wiretapping is governed by arts. 266 through 271 among the means of search for evidence.

[22] Art. 13 of Law No. 203 of July 12, 1991.

The Italian Penal Code contains provisions for the imposition of security measures, detentive and non-detentive, both for criminal offenders and for those who are deemed to be socially dangerous. The latter include *liberta' vigilata*, a type of supervised freedom or release consisting of certain restrictions imposed by a judge under the surveillance of the police, and the prohibition of sojourning in one or more municipalities or provinces.[23]

Preventive measures may also be imposed on individuals found to be dangerous for society and for public morality, and on members of mafia-type and terrorist organizations. Preventive measures include special surveillance by the public security authority.[24]

Money Laundering and Reporting Provisions

The Italian legislative approach to money laundering contemplates the criminalization of such activities, the imposition on credit institutions and financial intermediaries of reporting obligations concerning the identification of clients and the communication of suspicious operations to the competent authorities, and the seizure of money and property originating from those illegal activities.

Provisions of the Italian Penal Code, as amended, establish that conversion, transfer, concealment, and the re-investment of money, goods, and other proceeds of criminal activities are punished by imprisonment from 4 to 12 years and a fine from 2 to 30 million lire. Penalties are increased when the crime is committed in the exercise of a professional activity.[25]

In addition to the criminal provisions of the Code, a substantial body of legislation aimed at preventing and monitoring money laundering activities was developed, in a piece-meal fashion over a period of about two decades, in an attempt to confront the progressive development of criminal organizations which derived astronomical profits from drug dealing and weapons trafficking, prostitution, gambling, and other frauds, and reinvested such profits in the economic and business sectors. Several of these laws were adopted to implement international initiatives to which Italy participated. The legislation imposes additional disciplinary measures when money laundering violations are committed in the exercise of banking, foreign exchange trading, or other professional activities subject to authorization, licensing, or other qualifying requirements.[26] Some provisions are aimed at restricting the use of cash and bearer instruments and to prevent the exploitation of the financial system for money laundering purposes,[27] while other provisions address matters such as public procurement, and the acquisition of ownership interests in banks and credit institutions.[28]

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[23] The Penal Code, arts. 199-203; 215; 228; 230; 233.

[24] Law No. 1423 of Dec. 27, 1956, and Disposizioni contro la Mafia, under *Sicurezza e Ordine Pubblico*, Quattro Codici con le leggi complementari (Torino, UTET, 2001). *See* Decree 374, art. 7.

[25] T. Padovani, ed., CODICE PENALE (Milano, Giuffre',2000) arts. 648*bis* and 648*ter*.

[26] Law No. 55/1990.

[27] Law No. 197/1991.

[28] *Id.* See also Legislative Decree No. 385 of 1993, the Unified Banking Act.

In 1997 two legislative Decrees[29] were adopted to implement Council Directive 91/308EEC on the prevention of the use of the financial system for the purpose of money laundering, which is based on the consideration that when credit and financial institutions are used to launder proceeds from criminal activities the soundness and stability of the institutions concerned and the confidence in the financial system as a whole could be seriously jeopardized, thereby losing the trust of the public. The Directive was also based on the awareness that combating money laundering is one of the most effective means of opposing organized crime which constitutes a particular threat to the societies of the European Union's Member States.[30]

Under the amended legislation any transfer across the border made by resident or non-resident individuals of cash or bearer instruments, both in foreign and Italian currency, for aggregate values in excess of 20 million lire must be reported in writing to the *Ufficio Italiano Cambi* (UIC, Italian foreign exchange office) for the appropriate verifications.[31] In addition, the law prohibits any other transfer of cash or bearer instruments both in foreign and Italian currency, for aggregate values in excess of 20 million lire unless such transfers are made through approved intermediaries upon written instructions from the client and accepted by the intermediary.[32] Approved intermediaries are under the obligation to identify and register the client and the nature of the transaction in question,[33] and must report without delay any suspicious transaction that may involve proceeds from the crimes of money laundering under articles 648*bis* and 648*ter* of the Penal Code.[34] The law assures confidentiality concerning the identity of the reporting subjects and identifies the Special Unit of the Financial Police and the Anti-mafia High Commissioner Office as the investigative authorities. It sanctions violations by imprisonment and fines, as well as seizure of the assets involved.[35]

The amending legislation of 1997 appears to have increased the efficiency of the system by concentrating the collection of all relevant data in one single entity, the UIC, which has become in practice the Italian central authority in all matters of preventing and combating money laundering activities. It has been observed, however, that Decree No. 153/1997 constitutes only a stepping stone rather than a conclusion of the amending process, since the legislative framework still needs improvements, and that the enactment of a consolidation act could bring about the necessary rationalization and coordination of the complex body of money laundering legislation.[36]

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[29] Decree No. 125 of Apr. 30, 1997, G.U. No. 111 of May 15, 1997, and Decree No. 153 of May 26, 1997, G.U. No. 136 of June 13, 1997.

[30] Official Journal of the European Communities, No. L 166/77, June 28, 1991.

[31] Law No. 227/1990, art. 3.

[32] Law No. 197/1991, art. 1.

[33] Law No. 15/1980, art. 13.

[34] Law No. 197/1991, art 3.

[35] Law No. 227/1990, art. 5*ter*.

[36] L. Donato, La riforma della disciplina antiriciclaggio del 1997, in F. Bruni, D. Masciandaro, ed., Mercati Finanziari e Riciclaggio (Milano, E.G.E.A., 1998) at 154.

Though a specific provision granting foreign authorities direct access to bank records could not be found in the Italian law, it is important to note that the Law on Drugs[37] states that the Minister of the Interior may share information and documents relevant for investigative purposes with foreign law enforcement authorities on the basis of specific agreements for the purpose of fighting drug trafficking and other forms of organized crime.

Furthermore, article 11 of Law No. 197/1991 states that those Italian authorities who control and supervise credit institutions and other similar entities, as regulated by the law, may share information and cooperate under conditions of reciprocity with foreign administrative authorities for the purpose of preventing money laundering.

Cyber-Crime and Protection of Computer Information

The provisions introduced by Law No. 547 of December 23, 1993[38] amended various Titles of Book II of the Penal Code dealing in particular with crimes against: the administration of justice, public safety, public confidence, persons, and property. The arbitrary exercise of one's rights by violence against property is punishable under article 392. Violence is considered to have occurred also when a computer program is altered, changed, or partially or totally erased, and when the correct functioning of any computer or telecommunications system is obstructed or disturbed.

Attempts against public utility installations aimed at damaging or destroying them, as well as actually damaging or destroying them, are crimes punishable under article 420. These crimes include acts directed against computer or telecommunications systems of a public utility as well as pertinent data, information, and programs. According to article 491*bis*, the provisions pertaining to the falsification of public and private documents apply to computer-generated documents or programs for their production.

Unauthorized access, possession, and dissemination of access codes to computer systems, and the spreading of computer programs intended to damage a system or cut off its functioning even partially, are crimes dealt with in articles 615 *ter*, *quarter*, and *quinquies*, in the context of the illicit interference with privacy. Article 616 established that the term "correspondence" is intended to include not only what takes place through mail, telephone, and telegraph, but also that which is conducted through computer and telecommunications systems, to which the pertinent provisions of the Penal Code on the inviolability of secrets apply. In addition, the provisions pertaining to the disclosure of the contents of secret documents other than correspondence, apply to any computer software containing data, information or programs, to be considered as documents for the purpose of the law.[39] Furthermore, the Code provisions on the inviolability of secrets apply to any other transmission of sounds, images, or other data.[40]

The interception, obstruction, and illicit interruption of a computer or telecommunications system is made a crime by article 617*quarter*, while the two following articles punish the setting up of any equipment capable of enabling the interception, obstruction, and interruption of such systems; as well as the falsification, forgery, or suppression of the content of the communication produced by those systems.

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[37] G.U. No. 255 of Oct. 31, 1990, O.S.

[38] G.U. No. 305 of Dec. 30, 1993.

[39] PENAL CODE, art. 621.

[40] PENAL CODE, art. 623*bis*.

Finally, the amending legislation introduced new provisions on damage to computer and telecommunications systems and on computer fraud. The first crime is committed by whoever destroys, impairs or renders unusable in whole or in part those systems as well as programs, information, or data belonging to others.[41] Fraud is perpetrated when, by altering a system in any way or gaining illegal access to related data, information, or programs, the violator procures, to another's detriment, a wrongful benefit for himself or others.[42]

Airport Security

Under Italian law, control services for security purposes in airports are granted to private entities unless the exercise of public authority is necessary or the deployment of police officers is specifically required. The granting of said services may not interfere in any way with the competence and duties of the public security authorities, the customs service, and the responsibilities of the local organs of the aviation administration.[43] The law states that the conditions under which such granting of services is allowed, as well as procedures, personnel qualifications, technical equipment to be used, or any other order deemed necessary for the correct functioning of airport activities must be issued by Decree of the Minister of Transport in coordination with the Minister of Interior.[44]

Legislation enacted in 1976 deals with crimes against the safety of civil aviation. It punishes any act aimed at taking control, hijacking, or destroying an aircraft, as well as destroying or altering, for the stated purpose, the functioning of ground installations for air navigation.[45]

Prohibited Organizations

The Italian Penal Code contains various provisions to confront criminal activities carried out by a plurality of individuals. In addition to what was described earlier about associations for the purpose of terrorism, the provisions dealing with associations for the purpose of committing crimes, political conspiracy, subversive organizations, or armed bands impose substantial prison terms especially under aggravating circumstances. Article 416*bis* of the Code punishes promoters, leaders, and participants in Mafia-type associations, and in any other organizations that, though under different names, pursue similar criminal activities.

Law No. 17 of 1982[46] implemented article 18 of the Constitution concerning the prohibition of secret organizations. It imposes penal sanctions as well as administrative and disciplinary measures. The dissolution of the prohibited organization is mandatory once its existence is judicially ascertained.

Terrorist Funding; Recovery of Assets

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[41] PENAL CODE, art. 635*bis*.

[42] PENAL CODE, art. 640*ter*.

[43] Law No. 217 of Feb. 28, 1992, art. 5, G.U. No. 57 of Mar. 9, 1992.

[44] Implementing Decree No. 85 of Jan. 29, 1999, G.U. No. 77 of Apr. 2, 1999.

[45] Law No. 342 of May 10, 1976, G.U. No. 144 of June 3, 1976.

[46] Quattro Codici con le leggi complementari (Torino, UTET, 2001) at 863.

Until the enactment of legislation in 2001, fund-raising and other support activities to help terrorists were not expressly or specifically prohibited. The illegality of such actions seemed to derive from the penal system which contained provisions making it illegal to assist members of a political conspiracy or of any armed band in the form of giving refuge or providing food, as well as aiding such persons in an effort to evade investigations or searches by the authorities, and helping anyone to secure the fruits, benefits, or proceeds of a crime.[47]

Article 240 of the Italian Penal Code states that upon conviction, the judge may order the confiscation of any object which was used or intended for use in committing the offense and any object which is its fruit or benefit. Anything which constitutes the proceeds of the offense and things whose manufacture, use, transportation, possession, or transfer constitutes an offense, even when no conviction has been pronounced, must be confiscated. The Law, however, guaranties the rights of persons not concerned in the offense.

Use of Internet

It has been observed that the Internet, due to its global nature, cannot be effectively regulated by any one country. Undesirable content accessed domestically is often hosted by a server from a different nation. It is difficult to enforce one country's laws against website publishers and Internet providers that operate in another country's jurisdiction. Sometime violations in one nation are perfectly legal in others.[48]

It appears that Italy has chosen not to put specific legislative restrictions on Internet content, and contacts at the Italian Parliament point to the non-existence of proposed legislation under consideration for the purpose of imposing such restrictions.

The presence on the Internet of illegal and harmful content, however, has raised serious concerns in the European Union in several areas such as national, economic, and information security; and protection of human dignity, of minors, of privacy, and of reputation as well as intellectual property.[49]

In Italy, legal protection for computer and telecommunications systems is provided by the provisions of the Penal Code discussed in a separate section of this report. Regarding crimes punished under Italian penal law that may be committed through the Internet, special attention is paid to pornography and sexual exploitation of minors. Though obscenity is punished under articles 527-529 of the Penal Code, the provisions of Law No. 269 of 1998[50] aimed at protecting minors from exploitation connected with prostitution, pornography, and sex tourism, are all considered to be new forms of slavery. The law imposes stiff penalties, increased under aggravating circumstances, and fines. It made the necessary amendments to the Penal Codes and spelled out the procedures to strengthen investigative

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[47] CODICE PENALE, arts. 307, 378, 379, and 418.

[48] F. Valverde, *The International Internet Rating System: Global Protection for Children, Business, and Industry*, NEW YORK JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, Vol.20,No.3, 2000, at 568.

[49] Interim report on initiatives in EU member states with respect to combating illegal and harmful content on the Internet, *at* Http://www2.echo.lu/legal/en/internet/content/ihc18-chap.htm1#2A.

[50] G.U. No. 185 of Aug. 10, 1998.

activities undertaken to acquire evidence. The extra territorial application of Italian law concerning these crimes is established in article 604 of the Penal Code.[51]

International Conventions on Terrorism

Italy signed on March 4, 1998 the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997, and, on January 13, 2000, the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999.[52] In addition Italy signed and ratified the European Convention on the Suppression of Terrorism done at Strasbourg on January 27, 1977 which entered into force on June 1, 1986.

The United States and Italy signed an extradition Treaty at Rome on October 13, 1983, which entered into force September 24, 1984, and a Treaty on mutual assistance in criminal matters, with a memorandum of understanding, signed at Rome on November 9, 1982, and entered into force on November 13, 1985.[53]

2. Legal Enforcement Against Terrorism

Introduction

The year 1975 may be considered a turning point in the enactment of the so-called emergency legislation, approved under the pressure of terrorist activities in Italy. It changed the approach adopted by the legislation that reformist governments had enacted in defense of individual rights up to the early 1970s. The new criminal law measures drastically increased the maximum period of preventive detention as well as sentences for crimes such as armed robbery, extortion, and kidnapping. Greater powers were granted to the police in telephone surveillance operations and in apprehending and interrogating suspects, even without the presence of an attorney.[54] More stringent provisions were enacted regarding the control of arms, ammunition, and explosives.[55] Under this legislation, bail possibilities were limited, and a suspect could be searched and arrested without a warrant and held without a charge for 48 hours.[56] Preferential treatment for violations committed by on-duty policemen was introduced.[57] In addition, such legislation permitted the immediate emergency search of premises in buildings or blocks of buildings where suspects were believed to be hiding, with the option to block the movement of persons and vehicular traffic in areas of interest to police operations.[58] New crimes regarding terrorism, subversion of the

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[51] A recent decision of the Penal Tribunal of Rome imposed a 12-year sentence on a defendant who had violated the provisions of law No. 269, abroad. LA REPUBBLICA, Jan. 2, 2002.

[52] Http://untreaty.un.org/English/Terrorism.asp.

[53] United States Department of State, Treaties in Force.

[54] Law No. 191 of 1978, arts. 5-12.

[55] Especially Law No. 533 of Aug. 8, 1977.

[56] Law No. 15 of Feb. 6, 1980, art. 6.

[57] Law No. 152 of May 22, 1975, arts. 27-32.

[58] Law No. 15 of 1980, art. 9. *See* art. 25*bis* of Law No. 356 of Aug. 7, 1992, as amended by Decree No. 374/2001.

democratic order, and conspiracy were created. Aggravating circumstances resulted in a drastic increase in sentences.

In 1982 the provisions regulating the collaboration of members of terrorist groups with investigative authorities was first developed, favoring their "disassociation" from those organizations by means of reduced sentences and in some cases early parole.[59] This type of legislation may be credited for most of the successes in defeating terrorist organizations.

Other measures that were taken to confront terrorism included a complete reorganization of the police forces, the creation of specialized units of judicial police, the construction of new high security prisons, and the establishment of a center for computerized information at the Ministry of the Interior. A public opinion poll in 1984 found that a substantial plurality of respondents thought the wave of terrorism the county had just gone through was the most significant event of the last 50 years of Italian history.[60]

Applicable Laws

There is no single law in the Italian system that specifically addresses the crime of terrorism. On the contrary, the legislation referred to above enacted in the 1970s and 1980s remained in force as subsequently amended directly through legislation or by new provisions of the Code of Criminal Procedure. Some provisions have found their way into the Penal Code.[61]

Italian law does not offer a definition of the term "terrorism." Crimes related to terrorism may, however, be classified as follows:

- Associations for the purpose of terrorism or the subversion of the democratic order aimed at committing violent acts for the stated purpose. Promoters and leaders of such associations are subject to imprisonment from 7 to 15 years, and simple participation entails imprisonment from 4 to 8 years.[62]

- Attacks for the purpose of terrorism or subversion. Under this title whoever attempts to take another person's life for the stated purpose is punished by no less than 20 years of imprisonment, and an attempt made against the physical integrity of a person is punished with no less than 6 years' imprisonment. When personal injury results from such an attack, the punishment is increased according to the seriousness of the injury. However, when the attack is directed against a member of the judiciary or a public security official, the punishment is increased. If death occurs, life

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[59] Law No. 34 of Feb. 18, 1987, G.U. No. 43 of Feb. 21, 1987.

[60] W.L. Eubank *and* L. B. Weinberg, *Terrorism and democracy within one country: the case of Italy*, in 9 TERRORISM AND POLITICAL VIOLENCE, No.1, Spring 1997, at 99.

[61] *See*: Law No. 152 of May 22, 1975, Special Provisions for the Protection of Public Order; Law No. 533 of Aug. 8, 1977, on the same subject; Law No. 191 of May 18, 1978, on Penal and Procedural Provisions for the Prevention and the Repression of Serious Crimes; Law No. 15 of Feb. 6, 1980, on Urgent Measures for the Protection of Democratic Order and Public Safety; Law No. 304 of May 29, 1982, on the Defense of the Constitutional Order; Law No. 34 of Feb. 18, 1987, on Provisions in Favor of Those Who Dissociate Themselves from Terrorism.

[62] CODICE PENALE, art. 270*bis*.

imprisonment can be imposed.[63]

- Kidnapping for the purpose of terrorism or subversion. Such an act entails a penalty from 25 to 30 years' imprisonment. If the death of the abducted person is a consequence of the act, the punishment is 30 years' imprisonment or life imprisonment depending on whether or not the offender caused it. Penalties may be drastically reduced when the offender, by disassociating from other members of the band, cooperates to free the hostage.[64]

Other Relevant Provisions

The anti-terrorism legislation imposed the duty on citizens to give detailed information to police authorities within 48 hours of any property transfer, rental, or other use of properties, as well as the identification of anyone performing any bank transactions in excess of 20 million Italian *liras*.[65]

According to article 312 of the Criminal Code, a foreigner who has been convicted for one of the crimes against the "Personality of the State," which include association for the purpose of terrorism and subversion of the democratic order, may be expelled from the country.

3. Legislation Enacted After September 11, 2001

As a response to the terrorist attacks on September 11, 2001, Italy approved new urgent provisions[66] to confront international terrorism, which were not addressed in the previous formulation of the pertinent article of the Penal Code. Consequently the amended provision now addresses associations for the purpose of terrorism, including international ones, and for the subversion of the democratic order aimed at committing violent acts for the stated purpose. Promoters and leaders of such associations and those individuals financing the associations, even indirectly, are subject to imprisonment from 7 to 15 years. Simple participation in such associations entails an increased term of imprisonment of from 5 to 10 years. Violent acts directed against a foreign State or an international institution or organization are also considered terrorism. Upon conviction, the confiscation of anything that was used or intended for use in committing the crime, and anything that represents the proceeds, the fruit, the benefit, or the investment thereof, is mandatory.[67]

Decree No. 374 created a new crime by establishing that whoever harbors or provides food, hospitality, transportation, and means of communication to members of terrorist associations, apart from cases of complicity therein or cases of assisting an offender, may be punished by imprisonment up to four years. Continuous assistance entails increase in punishment.[68] In addition, article 307, dealing with

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[63] *Id.* art. 280.

[64] *Id.* art. 289*bis*.

[65] Law No. 191 of 1978, art. 12; Law No. 15 of 1980, art. 13 as amended by art. 2 of Law No. 197/1991

[66] Decree-Law No. 374 of Oct. 18, 2001, G.U. No. 244 of Oct. 19, 2001. Decree No. 374 was converted into Law No. 438 of Dec. 15, 2001, G.U. No. 293 of Dec. 18, 2001. According to art. 77 of the Italian Constitution, urgent provisions issued by the executive (decree-law) become null and void if they were not converted into law by the Parliament within 60 days of their publication.

[67] CODICE PENALE, art. 270*bis* as amended by Decree No. 374/2001.

[68] Id. art. 270*ter* as introduced by Decree No. 374/2001.

assistance provided to members of a conspiracy or of an armed band, and article 418, dealing with assistance provided to members of associations for the purpose of committing crimes and to members of Mafia-type organizations, were amended by Decree No. 374 by adopting the same language of the newly created article 270*ter*.

Decree No. 374 deals with monitoring and control on all forms of communications for the purpose of investigations for crimes of terrorism. It extended to these crimes the parameters adopted for wiretapping against organized crime.[69] Consequently also in cases of terrorism such monitoring and control activities, may be authorized for a period of up to 40 days which may be extended for additional periods of 20 days, provided the conditions established by law persist.[70] Undercover police operations, carried out by the judicial police in coordination with the office of the public prosecutor, are specifically authorized in investigations pertaining to crimes of terrorism.[71]

A new law, approved by Parliament but not promulgated and published yet, amending the Immigration Act of 1998, provides that foreigners who apply for a residence permit or for its renewal, as well as those whose identity is not certain, will be subject to identification procedures including fingerprinting.[72]

Emergency Measures

Following the attacks of September 11, 2001, a special emergency unit established at the Office of the Prime Minister, has been working on the implementation of a national plan of defense against terrorist attacks of a biologic, chemical, and/or radioactive nature.[73] The plan also addresses possible threats coming through the computer networks. Attention is concentrated in three areas: possible attacks to telecommunications structures for the purpose of disrupting the stock exchange and the economy in general; protection of institutional websites; and careful monitoring of the Internet carried out by specialized police units in search of websites that may pose a terrorist threat.

Terrorist Funding; Recovery of Assets

Pursuant to international obligations shared by Italy within the strategy of combating international terrorism, a Committee for Financial Security was created by Decree No. 369 of 2001.[74] The Commentate is charged with the responsibility to collect and coordinate information concerning measures against financing international terrorism, and to establish the appropriate contacts with authorities in other countries for the necessary international coordination of activities. Decree No. 369, in connection with

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[69] *Supra*, note 18.

[70] Decree No. 374, art. 3 and 5.

[71] *Id.* art.4.

[72] www.Parlamento.it.

[73] News Agency ANSA, Nov. 18, 2001.

[74] Urgent measures for the purpose of contrasting the financing of international terrorism, G.U. No. 240 of Oct. 15, 2001. The Decree was converted into Law No. 431 of Dec. 14, 2001, G.U. No. 290 of Dec. 14, 2001.

Decree No. 353 of September 28, 2001,[75] imposed sanctions for the violation of measures adopted by the Council of the European Union, also in relation to resolutions of the Security Council of the United Nations, against the Taliban movement in Afghanistan.

In addition to the earlier description of the funding and recovery of assets under legislation before September 11, the provisions introduced by Decree No. 374/2001, amending article 270*bis* of the Penal Code, make confiscation of assets used in committing acts of terrorism mandatory.[76]

Bio-Terrorism

Provisions specifically pertaining to bio-terrorism are not found in Italian law. However, Decree No. 374/2001[77] amended article 1 of Law No. 110 of 1975 which deals with war weapons and ammunition and war-type-weapons, and included among them, together with warfare chemical agents, also biologic and radioactive agents. Law No. 110 established a total prohibition for private individuals to acquire, possess, collect, or carry said weapons, and imposes serious penalties for violations.[78]

Preventing, monitoring, and responding to public health emergencies including epidemics, even when caused for terrorism purposes, are generally the responsibility of the Ministry of Health which disseminates information and issues directives.[79] It may be noted that the special plan of defense against terrorist attacks is expected to implement measures for the protection and the de-contamination of the population.[80]

4. Limits on Counter-Terrorist Activity

It has been said that responses to terrorism can be dangerous for a democratic regime. "No policy toward terrorism is free of social and political costs. All policies toward terrorism can be analyzed in terms of negative side effects for civil liberties."[81]

Regarding the Italian experience, it may be noted that many provisions of the emergency legislation of the 1970s and 1980s provoked doubts concerning their constitutional legitimacy for their bearing on the right to assemble, on the free expression of thought, as well as the conflicting relation between detention for public security and article 13 of the Constitution protecting "inviolable" personal freedom.

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[75] G.U. No. 226 of Sept. 28, 2001.

[76] *Supra*, note 62.

[77] *Supra*, note 61.

[78] Law No 110 of 1975 as amended, is the centerpiece of Italian legislation on weapons, ammunition, and explosives. See: D. Carcano, A. Vardano, La disciplina delle armi delle munizioni e degli esplosivi (Milano, Giuffre, 1999).

[79] Http://www.sanita.it/malinf/Rischi/comunicati/noteinf.htm.

[80] *Supra*, note 68.

[81] M. Crenshaw, *Introduction: Reflections on the effect of terrorism*, in M. Crenshaw, ed., TERRORISM, LEGITIMACY AND POWER: THE CONSEQUENCES OF POLITICAL VIOLENCE 13 (Middletown, CT, Wesleyan UP, 1982).

The Italian Government has consistently rejected any allegations of misconduct of the police forces during anti-terrorist operations. It was hoped, perhaps, that the conditions under which the police had to operate during those years would not affect their conduct in more peaceful times; however, the recent reports of Amnesty International discussing cases of gratuitous and deliberate brutality against people in the custody of police and of prison guards raises serious concerns.[82] Criminal investigations for police misconduct on the occasion of international events in Naples and in Genova are presently under way.[83]

It must be pointed out, however, that the fundamental principles of the Italian Constitution were substantially upheld, that terrorists were tried, according to rules of procedure, under public scrutiny, in ordinary criminal courts, standing the prohibition established in article 102 of the Constitution for the creation of special or extra ordinary courts. Defendants were allowed rights of defense. Many were convicted and sentenced to long prison terms.

On the basis of the analysis of the legislative responses after September 11, it appears that Italy is going to uphold the rules imposing limits to the authority and powers of the government to combat crime and to cooperate with other countries for that purpose. Limits are imposed not only by the national Constitution and by the ordinary laws, but also by the international instruments of which Italy is a party. Fundamental rights and liberties find protection in European Union law, in various European Conventions, and in the rulings of the European Court of Justice.

Cooperation

It has been reported that, according to official sources, probes of terrorist activity have spread throughout Italy to cover more than 500 individuals, and the security forces remain on alert for possible attacks on targets and other targets. A report of the Interior Minister to a parliamentary committee on the subject, in early June 2002, coincided with Italy's diplomatic efforts in the European Union to tighten immigration law[84] and increase already close cooperation with the United States in tracking down terrorist suspects. In the same month, Italian prosecutors from Rome, Naples, and Milan traveled to the United States for contacts with FBI officials. Criminal courts in Milan have already convicted several Tunisian citizens for terrorism-related crimes and for producing false documents.[85]

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[82] LA REPUBBLICA, Apr. 26, 1995, and May 30, 2001.

[83] www.La Repubblica.it.

[84] *Supra*, note 67.

[85] www.la Repubblica.com. *See* also www.washingtonpost.com.

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LATVIA

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Latvia's involvement in European legal cooperation against terrorism is dominated by its aspiration to accede to NATO and the European Union. In order to bring domestic laws in the field of immigration policy, identification documents, and border control into conformation with the EU requirements, recently adopted amendments simplify the naturalization procedure for non-ethnic Latvians and extend citizen's rights to refugees and asylum seekers. Latvia is a party to all major anti-terrorist international legal instruments and is actively involved in the U.S. led anti-terrorist coalition, focusing on regional cooperation among the Baltic states, especially in the field of financial control and prevention of money laundering. After the events of September 11, 2001, Latvian legislation was amended with provisions strengthening criminal liability for terrorism-related activities and focusing on prevention of infiltration of potential terrorists.

The Republic of Latvia is a small Baltic nation that is striving to accede to NATO and the European Union. Latvia hopes to finalize EU accession requirements by late 2002, and join the European Union before the 2004 EU Parliament elections. Unlike Estonia and Lithuania, the Republic of Latvia did not adopt a new Constitution after the dissolution of its links with the Soviet Union in 1990. Instead, the new Supreme Council passed a resolution on May 4, 1990, which declared the independent Republic of Latvia, recognized internationally in 1920, to be *de jure* still in existence and reinstated Latvia's Constitution of 1922. The Constitution states that Latvia is an independent and democratic republic, the sovereign power of which belongs to the people. In 1998, Section 7 was added to the Constitution incorporating a bill of rights, guaranteeing the fundamental rights and freedoms to all persons residing in Latvia. Prior to 1998, these rights and freedoms were guaranteed by the Constitutional Law on Rights and Duties of a Citizen and a Person of December 1, 1991.

1. Legislation Prior to September 11, 2001

Acquisition of Latvian Citizenship

After the restoration of its sovereignty in 1990, the Republic of Latvia enacted a provisional statute entitled "Disposition of the Renewal of the Republic of Latvia Citizens' Rights and Fundamental Principles of Naturalization" on October 15, 1991. That resolution reestablished separate Latvian nationality and granted Latvian citizenship to certain categories of persons (basically those who were Latvian citizens at and before the date of the Soviet annexation of Latvia in 1940 and their descendants). The present law, which was passed by the Latvian Parliament in 1994, and subsequently amended, supersedes the 1991 provisional statute, and makes Latvian citizenship legislation one of the most restrictive in Europe. The new law determines who is a Latvian citizen and provides other persons permanently residing in Latvia with the opportunity to apply for citizenship through naturalization. It divides the applicants into two categories: those who may acquire Latvian citizenship on a priority basis (persons who have rendered outstanding services for the benefit of Latvia and other categories of persons) and those whose applications will be reviewed in the order in which they are received. The latter provision was introduced in 1998, after much international criticism which demanded that Latvia expedite

the naturalization process and repeal the previous regulation that divided the "non-citizen" population into brackets, each of which was entitled to apply during a specific year between 1996 and 2003. Only persons who meet residency requirements, have a command of the Latvian language, and comply with several additional conditions may apply. Persons who, during the Soviet period, were engaged in repressive activities of the Soviet power and those who were, or are, members of organizations deemed to be "anti-Latvian" do not qualify for Latvian citizenship. The concept of dual nationality is rejected by Latvian law. Consequently, those being admitted to Latvian citizenship are required to renounce any other citizenship they may have.

The status, rights, and obligations of former USSR citizens residing permanently in Latvia, who have not been granted Latvian citizenship nor acquired the citizenship of another newly-independent country formed in the territory of the former Soviet Union, are regulated by the Law on the Status of Former USSR Citizens Who Have Neither Latvian Nor Other State's Citizenship of April 12, 1995.[1] These individuals, many having been born in Latvia, are technically stateless but their status differs in some respects from the status of foreigners and other stateless persons. Since 1997, they are issued special identification documents called "non-citizen's passports," which may be used also for foreign travel because these documents are machine readable and secure against counterfeiting. During the last five years, 600,000 non-citizen's passports were issued. Foreign nationals and stateless persons other than those who arrived from the countries of the former Soviet Union may apply for alien status in Latvia, which entails the right on permanent residency. Those who have the right to have a permanent residence in Latvia, cannot be expelled from the country, either individually or collectively, and are entitled to use their own language in their contacts with the authorities. They can obtain Latvian citizenship through naturalization in accordance with the Law on Citizenship.

Status of Foreigners

The entry, stay, and deportation of all other foreigners is regulated by the Law on the Entry and Residence of Foreign Citizens and Stateless Persons in the Republic of Latvia of June 9, 1993.[2] A valid travel document and a visa (unless an international treaty waives the visa requirement) are required for entering the Latvian territory. It is possible to obtain a Latvian visa on arrival at the border check point for US$20. The following are defined by the State Border Law of November 2, 1995:[3] the principles of organization of the state border control, procedures for crossing the state border, the regime at the border control points, conditions for the temporary closure of the state border, and the list of possible violations of the border. In October 2002, Latvia's Government accepted an action plan for introducing Schengen requirements on Latvia's borders before joining the EU. The action plan has a number of sections: border control, visas, migration, police cooperation, drugs control, police cooperation, etc. The action plan contains information on Latvia's suitability for Schengen requirements and implementation of legislation. The time table for harmonization and implementation of the legislation is provided, and responsible institutions are determined. Most of the events determined in the action plan will be financed by the national budget or international assistance. The largest costs are related to securing Latvia's external border and establishing the Schengen information system.

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[1] LATVIJAS VESTINESIS [official gazette of the Republic of Latvia, LV], 1995, No. 11, Item 54. Translated and published by Parker School of Foreign and Comparative Law. CENTRAL AND EAST EUROPEAN LEGAL MATERIALS. Release 72.

[2] *Id.*, 1993, No. 22, Item 96.

[3] LV, 2000, No. 16, Item 341 (as amended).

Immigration Policy

The Citizenship and Immigration Department is the state agency that controls and regulates the entry and stay of foreigners in Latvia. Persons who intend to stay longer than three months must obtain a residence permit. A temporary-residence permit authorizes a stay for up to six months. A permanent-residence permit is required for a longer stay. The grounds for issuance of a permanent-residence permit are extremely limited. They include marriage, family reunification, and investment of substantial capital in Latvia's economy. Forcible deportation of foreigners is envisaged by the Law in cases when: a person has arrived in Latvia illegally; a person knowingly provided false information in order to obtain a visa or residence permit; state authorities suspect that a person may hide or does not have a set place to reside in Latvia; and when a person is considered to be a threat to public order and security or state security. The deportation shall be conducted under administrative resolution of a competent official by police and border guard forces. If a person is employed without a proper residence permit in a job for which payment is anticipated, or for which he/she is entitled to receive payments, then the residence permit is annulled and the employer is held liable according to Law. Presently, Latvia is cooperating with the interested European Union institution in softening existing restrictions for obtaining permanent residency by refugees and asylum seekers. It is reported that before 2002, Latvia has granted asylum to 85 asylum seekers. Refugee status has been granted to eight people since 1998, including one person from Afghanistan in 2002. Asylum in Latvia has also been requested by nine Russians and one Belarusian. Three of the asylum seekers registered this year were children.[4]

International Legal Cooperation

Latvia participates in the following European conventions related to the issue of legal cooperation in criminal matters and matters related to combating terrorism:

- European Convention on the Transfer of Proceedings in Criminal Matters
- Additional Protocol to the Council of Europe Convention on Extradition
- Second Additional Protocol to the Council of Europe Convention on Extradition
- European Convention on the Suppression of Terrorism
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

All these documents have been ratified by the Latvian legislature. During the last decade, Latvia acceded to various Council of Europe conventions on extradition and exchange of prisoners.

Latvia has concluded a Mutual Legal Assistance Treaty with the United States, which affects legal assistance for general criminal matters, including obtaining testimony or statements of persons; obtaining documents and other physical evidence in a form that would be admissible at trial; and obtaining evidence from executing searches and seizures. The Treaty between the United States and Latvia covers all money laundering offenses under U.S. law, whether or not such offenses are tax-related. This Treaty does not contain any restrictions regarding assistance for tax matters, and obtaining assistance for tax-related money

[4] BNS Baltic News Service. Daily News. Feb. 8, 2002.

laundering offenses should not be problematic. Latvia's Ministry of Justice is authorized to be the central authority.

In 2001, Latvia received more than 800 assistance requests from abroad. Latvia has been less active in requesting legal assistance from abroad during the first five months of this year, filling six times fewer legal assistance requests from abroad than other countries requested from Latvia, according to Prosecutor General's Office international legal cooperation department.[5]

Financial Controls

Latvia already has elaborate legislation in the area of preventing money laundering. Banks and other financial institutions are obliged to report suspicious transfers. The Government has submitted to the Parliament a package of further amendments to the Banking Law and the Law on Prevention of Laundering of Proceeds Derived from Criminal Activity. The banking sphere is the area where other countries most frequently need legal assistance from Latvia because Latvia's banks are broadly used for international financial transactions, much more than the other Baltic states. The highest number of requests in the banking sphere came from Russia and Belarus. Even though most of the transactions are legal, information from Latvia's banks on the flow of finances is needed. Meanwhile, Latvia most frequently requests legal assistance from other countries while investigating smuggling and tax evasion. In 2001, Latvia most frequently filed legal assistance requests to Russia (16), Estonia (4), Lithuania (3), and Germany (3). Twice legal assistance was requested from the United States.[6]

2. Legal Enforcement Against Terrorism

There is no specific anti-terrorism law in Latvia. The Criminal Code of Latvia includes particular provisions defining specific crimes, such as destroying state institutions, assassination of public officials, kidnaping, sabotage, diversion, illegal entry to the Latvia's territory, etc., as terrorism and terrorist acts, and provides for legal measures of prosecution and punishing of criminals conducting such acts.[7] Depending on the severity of the crime, the Code makes terrorism-related activities punishable by imprisonment for a term of 10 to 20 years. In Spring 2002, the Code was significantly amended and the definition of terrorism was extended. More criminal activities were specified as terrorism-related (see section 3).

Among other major legal acts determining legal enforcement against terrorist activities are the National Security Law[8] and Investigatory Operations Law.[9] The National Security Law defines the jurisdiction of leading Government agencies and their role in formulating policy and conducting activities aimed at the prevention of threats to the State, public safety, and democratic development of society. A major part of Latvia's legislation has been devoted to recovery from emergency situations. The

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[5] BBC Monitoring, Apr. 19, 2002.

[6] BNS Baltic News Service, Daily News, June 18, 2002.

[7] Criminal Code of the Republic of Latvia. Section 2.1(A). Articles 68-84.

[8] *Supra* note 1, 2001, No. 2, Item 18, Release 31 2/2002.

[9] *Id.* 1997 No. 31, Item 264, Release 67.

Investigatory Operations Law specifies what kind of overt and covert legal activities can be undertaken in order to prevent criminal and terrorist activities.

The Law on the State of Emergency of December 2, 1992,[10] authorizes restriction of individual rights and freedoms within strictly limited bounds when a state of emergency is proclaimed by Parliament or the State Defense Council. In case of an emergency situation, which can be declared with the purpose of recovery from a terrorist attack, decisions of state and local authorities can be suspended by the State Defense Council. Restrictions on individual freedom may include restrictions on movement, ban on meetings, rallies, marches, strikes, and others. The Law requires that any measure in connection with the state of emergency be employed only to the extent necessary to bring the situation that led to the proclamation of the state of emergency under control. Supervision of the observance of the rule of law during emergencies is the responsibility of the Chief Prosecutor of Latvia.

3. Legislation Enacted After September 11, 2001

Latvia welcomed and supported the UN Security Council Resolutions 1368 and 1373, setting out principles and measures for combating international terrorism on all levels. In order to implement these resolutions, a high-level task force was established in Latvia to coordinate national efforts against terrorism. An Action Plan for Combating Terrorism was approved by the Government.[11] This Plan provides a set of measures aimed at strengthening Latvia's ability to prevent its territory, banking system, and other assets from being used by terrorists. Latvia has initiated the national legislative process for ratification of the International Convention for the Suppression of the Financing of Terrorism.

Involvement in the Anti-terrorist Coalition

In order to enhance the fight against crime and terrorism, the Baltic Crime Prevention and Anti-terrorism Forum was conducted in Riga in June 2002, and registered as an international organization.[12]. The Forum includes representatives of Latvia, Lithuania, Estonia, and Russia. The main goal of the forum is to provide its participants with the opportunity to exchange ideas, information, and experience, because the former lack of cooperation and information exchange had a negative impact on crime prevention. Among the issues that have to be addressed primarily in the Baltic Sea region are automobile theft, drugs, arms trafficking, and illegal immigration.

Latvia's participation in the international anti-terrorist operation Enduring Freedom as part of the Danish contingent, has been postponed because Kyrgyzstan denied Latvia the right to send its peace-keeping troops to that country. A group of 14 Latvian soldiers was trained in Denmark to perform support functions for the aviation base without joining combat operations.[13]

Criminal Law Amendments

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[10] *Id*. 1992, No. 14, item 75, Release 48.

[11] *Supra* note 3, 2002, No. 18, Item 1327.

[12] *See*, http://www.baaf.lv/eng/cronic.html

[13] BNS Baltic News Service. Daily News. March. 23, 2002.

Amendments to the Latvian Criminal Code include a provision on terrorism stating that terrorist actions targeted against the Latvian state and its people and also against other countries are punishable. Such actions will involve a prison term of up to 20 years or life imprisonment. Also, the Criminal Code contains provisions for punishment of the financing of terrorist activities regardless of where these activities take place, prescribing sentences of up to 10 years of imprisonment, together with fines and confiscation of property. Fraud, blackmail, harming supplies, information technology interference, and cyber-attacks against foreign states became punishable by imprisonment of up to 12 years. The new law also includes sentence-reducing mechanisms for cooperating with the crime investigation and sentence-increasing measures for crime aimed at a number of people or officials.[14]

Immigration Control

The new Law on Asylum passed in May 2002, ensures compliance with EU requirements.[15] The Law states that an asylum seeker can be eligible for refugee status if the person is not a citizen of Latvia or a former Soviet Union citizen or non-citizen resident in Latvia, and is residing in Latvia because of a well-grounded fear of persecution due to race, religion, ethnicity, social belonging, or political beliefs in the country of his/her citizenship or homeland and cannot use the legal protection offered by that country. The Law states that an asylum seeker shall be identified by the State Border Guard to which the alien must submit an application before entering the country. The major new feature of this Law is the requirement to put all asylum seekers, if their asylum requests are accepted as founded, into an asylum-seeker center. Since its creation in 1998, the center has housed 37 asylum-seekers but has modern facilities for between 200 and 250.[16]

Immigration police, formerly a part of the national police, became a unit of the State Border Guard Service, the only authority responsible for dealing with refugees and illegal immigrants. It is expected that this move will simplify the complicated process of extraditing illegal immigrants and make it easier to fight the influx of illegal immigrants after Latvia joins the EU. Upon admission to the EU, only a nominal border guard will remain on borders with Estonia and Lithuania with the main part of the force to be used to guard Latvia's eastern border and increase domestic control.

Identification Documents

In May 2002, the Latvian Parliament adopted the Law on Identification Documents[17] envisaging that, after the Law takes effect, Latvia will have two types of valid identification documents: identification cards and passports. According to the Law, the possession of an ID card is compulsory for all citizens and non-citizens of Latvia having reached the age of 15 for use mainly within the territory of Latvia, whereas the new passports will be used as travel documents outside the country. The ID cards will include information on the bearer's place of residence, but the new passports will no longer include stamps marking the place of residence. There will be three types of ID cards: citizen's, non-citizen's, and foreigner's; and six types of passports: citizen's, non-citizen's, diplomatic, service, stateless person's, and

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[14] *Supra* note 3, 2002, No. 31, Item 2614.

[15] *Id.* 2002, No. 29, Item 2487.

[16] M. Kovalick. *Discussing New Procedures For Accepting Refugees*. THE BALTIC TIMES. May 26, 2002. Published by the FBIS Document ID: EUP20020527000221.

[17] *Supra* note 3, 2002, No. 32, Item 2694.

refugee's travel document. Until now Latvia has issued passports to all people age 16 or older for use as both personal identification and travel abroad. The new passports will be issued upon request. Even though the Law entered into force on July 1, 2002, it allows for the regulations on citizen and non-citizen ID cards to take effect on January 1, 2005, and for foreigners and refugees as of January 1, 2004.

4. Limits on Counter-Terrorist Activity

Latvian legislation does not provide for the limitation on counter-terrorist activity. In fact, the law obliges the Government to use all power and force at its disposal to eliminate the threat to the security of the state, safety of Latvian people and to minimize the harm caused by a terrorist attack. The law allows restriction of individual rights to fulfill this mission within the constitutional framework.

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LITHUANIA

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Lithuania's involvement in European legal cooperation against terrorism is dominated by its aspiration to join NATO and the European Union. There is no specific anti-terrorism law in Lithuania, and terrorism-related issues are regulated by the National Security Law and a number of criminal procedural laws, which determine the investigation and prosecution of terrorist activities. According to the EU requirements, Lithuania's domestic legislation on such issues as immigration policy, identification documents, and border control has been modified and resulted in reducing the flow of illegal migrants. Expanded money laundering and financial control legislation made international financial transactions transparent in Lithuania. After the events of September 11, 2001, Lithuanian legislation was amended with provisions strengthening criminal liability for terrorism-related activities and focusing on regional cooperation among the Baltic states in prevention of terrorist acts.

The Republic of Lithuania is a small Baltic nation that is striving to join NATO and the European Union. Together with the two other Baltic states, Lithuania hopes to finalize EU accession requirements by late 2002, and join the European Union before the 2004 EU Parliament elections.

1. Legislation Prior to September 11, 2001

Acquisition of Lithuanian Citizenship

The Law on Citizenship[1] prescribes the following ways to acquire Lithuanian citizenship: by birth, by restoration, and by naturalization. In order to be naturalized, a person shall have had a permanent place of residence in Lithuania for the last 10 years, be permanently employed in the country, pass tests on knowledge of the language and Constitution, and prove that he/she has no citizenship or will lose the citizenship of another state upon acquiring Lithuanian citizenship. Issues concerning dual citizenship of Lithuanian citizens shall be regulated by bilateral agreements of the Republic of Lithuania with the foreign state or country of the individual requesting Lithuanian citizenship. In cases of marriage between a foreigner and a Lithuanian citizen, the residency requirement can be reduced to three years.

Lithuanian legislation does not provide for a separate regulation of status, rights, and obligations of former USSR citizens residing permanently in Lithuania, who have not been granted Lithuanian citizenship, nor acquired the citizenship of another newly-independent country formed in the territory of the former Soviet Union. These individuals, many having been born in Lithuania, are technically stateless and their status has been adjusted to the status of permanent residents.

Identification Documents

The first passports certifying citizenship of the Republic of Lithuania and meeting international requirements were issued in April 1992. The passport of a Lithuanian citizen was the only identification

[1] Parliamentary Records [Lithuanian official gazette, in English, PR], 1995, No. 1 at 2.

document issued to the citizens of the country who are 16 years old or older. This passport was valid for use inside the country and abroad. A total of 4,693,000 passports were issued during the last 10 years, almost three million of which are still valid. The passport issuance procedure was poorly controlled by the authorities, and there are cases reported of an individual having been issued as many as 26 passports.[2] A new Law on Identification Documents enters into force in fall 2002 (*see* section 3).

Status of Foreigners and Immigration Policy

Issues related to the status of foreigners, and the requirements for entry into and exit from the territory of the Republic of Lithuania are regulated by the Law on the Legal Status of Aliens,[3] the Law on Immigration, and the Law on Emigration.[4] Foreigners in Lithuania enjoy the same rights and freedoms as Lithuanian citizens except in cases where domestic laws and international agreements provide otherwise. However, the Lithuanian Government may establish reciprocating restrictions of the rights of foreigners of a state that violates universally recognized norms. In order to reside permanently in Lithuania, a foreigner must have a residence permit issued by the Ministry of Internal Affairs (police) and register with local police authorities. Foreigners must inform the police about changes of their place of abode. A permanent residence permit may be issued to a foreigner if a foreigner is:

- an immediate relative of a Lithuanian citizen
- a dependent of a Lithuanian citizen
- married to a citizen of Lithuania
- supports a Lithuanian citizen
- invests in the Lithuanian economy.

Foreigners may apply for a residence permit in Lithuania only if they have an invitation from a Lithuanian citizen. In addition to obvious reasons for prohibiting immigration such as having a dangerous contagious disease, drug addiction, engagement in activities against Lithuania, previous deportation from Lithuania or being sentenced for a crime committed during the last five years, Lithuanian legislation prohibits immigration of mentally ill and retarded people and of those who have no permanent place of residence or no legal source of subsistence in the state from which he/she wants to emigrate.

Foreigners who are in Lithuania on other grounds are qualified as foreigners temporarily residing in the country. They must register their passports or other equivalent documents and leave the country upon the expiration of a visa or residence permit. A foreigner may be prohibited to depart Lithuania if he/she has been charged with crime, has been sentenced for the committed crime, or has not discharged his/her property obligations. Foreigners who pose a threat to national security or public order may be deported according to the decision of the Internal Affairs Minister. The deportation order is subject to administrative review; however, it cannot be appealed in a court. Before obtaining a proper identification document and registering with the police, all foreigners are located at the Foreigners Registration Center, a special housing facility for illegal migrants and refugees.

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[2] *BNS Daily Report,* BALTIC NEWS SERVICE, May 17, 2002.

[3] PR. 1999, No. 7 at 2.

[4] *Id.* 1992, No. 5 at 6.

Border Protection

The state border regime is elaborated by the Law on the State Border of the Republic of Lithuania.[5] The Law establishes the procedure for crossing the border, carrying freight and goods over the border, aircraft flights, sojourn of vessels, and for maintaining the border. It states that the border can be crossed only at established points, which are to be established in accordance with international agreements. Persons crossing the border shall present their passports or other documents conforming to international requirements of passport control. Foreign citizens crossing the Lithuanian state border shall have a visa for the Republic of Lithuania. However, a simpler procedure would be established under implementing legislation that is under parliamentary consideration now. Since 1996, citizens of the United States and most of the West European countries do not need a visa in order to enter Lithuania for a period of up to 90 days. Persons, motor vehicles, and freight are subject to mandatory customs inspection. The Law definitively prohibits carrying nuclear or other weapons of mass destruction across the state border of Lithuania by any means of transport. The Law imposes criminal punishment for violations of the state border. Foreign citizens who have violated the state border of Lithuania may be expelled from Lithuania's territory. The protection of the state border is conducted by the State Border Protection Service, which is a part of the Lithuania's national armed forces.

The flow of illegal immigrants across the Lithuanian border has declined and stabilized in recent years. In 1996, 1,551 illegal migrants were detained on Lithuanian borders and 1,382 in 1997, and then the numbers dropped sharply to 495 in 1998, 261 in 1999, and 100 in 2000.[6] The number of those detained in 2001 is similar to the figure from 2000. In 2001, 107 illegal migrants were apprehended on Lithuanian borders, of whom 61 were citizens of Afghanistan who had left their home country about two months prior to the U.S. anti-terrorist campaign in Afghanistan. Among the detained were citizens of Pakistan (10), Sri Lanka (10), India (9), Russia (5), Somali (4), Vietnam (4), and one citizen each of Georgia, Iraq, Sudan, and Tanzania. These figures show a decreasing tendency in the number of persons trying to use Lithuania as a transit point on their way to Western Europe after Lithuania took additional measures to tighten its borders.

International Legal Cooperation

Lithuania participates in the following European conventions related to the issue of legal cooperation in criminal matters and matters related to combating terrorism:

- European Convention on the Transfer of Proceedings in Criminal Matters
- Additional Protocol to the Council of Europe Convention on Extradition
- Second Additional Protocol to the Council of Europe Convention on Extradition
- European Convention on the Suppression of Terrorism
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

All these documents have been ratified by the Lithuanian legislature. During the last decade, Lithuania acceded to various Council of Europe conventions on extradition and exchange of prisoners.

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[5] *Id.* 1992, No. 8 at 6.

[6] *BNS Daily Report,* BALTIC NEWS SERVICE, Jan. 11, 2002.

The Extradition Treaty between the United States and Lithuania signed in October 2001, was ratified by the Saeimas (Lithuanian Parliament) in January 2002. The treaty is still not in force because it has not been ratified yet by the U.S. Senate.[7] Assuming this document enters into force, it will replace a treaty on extradition of 1924, which is in effect now.[8] The current treaty allows turning over only foreign citizens and stateless people. The new Extradition Treaty will be the first international treaty signed by Lithuania which provides for turning over a Lithuanian citizen to a foreign country. Under the Treaty, both parties agree to hand over people on their territories accused or convicted of crimes for trial or sentencing in the other country according to the specified conditions. According to the Treaty, the sentence passed in one of the states and the term served by the convict will be recognized and not altered in the other. The Treaty will allow Lithuania to refuse requests for extradition of people who might be sentenced to death in the United States, because Lithuania has abolished the death penalty.

The Mutual Legal Assistance Treaty between the United States and Lithuania of 1999,[9] affects legal assistance for general criminal matters, including obtaining testimony or statements of persons; obtaining documents and other physical evidence in a form that would be admissible at trial; and obtaining evidence by executing searches and seizures. The Treaty between the United States and Lithuania covers all money laundering offenses under U.S. law, whether or not such offenses are tax-related. This Treaty does not contain any restrictions regarding assistance for tax matters, therefore, obtaining assistance for tax-related money laundering offenses should not be a problem. Lithuania's Ministry of Justice is authorized to be the central authority.

Financial Control

Lithuania has already expanded legislation in the area of preventing money laundering. The Law on the Prevention of Money Laundering[10] passed in 1997, establishes measures for the prevention of money laundering. This Law is considered a major legal act aimed at the prevention of financing of terrorism. The institution assigned the duty to collect, record, and examine the required information, to communicate it to the law enforcement authorities and to cooperate with foreign public institutions is the tax police. Credit and financial institutions shall communicate information about suspicious customers and transactions to the tax police as well as about all transactions exceeding the amount of US$15,000. All customers conducting transactions exceeding this amount of money shall be identified. Also, insurance companies shall identify their customers, and report all monetary transactions if the annual sum of the insurance premiums is in excess of US$3,000. The Law specifies a number of professional activities which are under additional scrutiny of the financial control authorities. Among them are the car trade, organization of lotteries, real estate business, travel business, wholesale of spirits and tobacco goods, auditing, and the oil trade.

As a Lithuanian daily newspaper reported, there is a suspicion that a Lithuanian bank has been used for transferring funds to terrorist organizations. According to its report, US$100,000 was transferred from an offshore company account in the Lithuanian bank, the name of which was not disclosed in the report, to an individual of Arabic origin living in a Mediterranean country whose name is on the U.S.

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[7] U.S. Senate Treaty Document 107-6.

[8] U.S. Treaty Series 179.

[9] U.S. Senate Treaty Document 105-51.

[10] PR, 1997, No. 10 at 2.

special service record of individuals involved in terrorism. Lithuanian officials informed the U.S. special services about the suspected money transfer.[11]

2. Legal Enforcement Against Terrorism

There is no specific anti-terrorism law in Lithuania. In 1997, the Law on the Basics of National Security of Lithuania[12] determined terrorist threats, infiltration of terrorists from abroad, and their activities in Lithuania as one of the external risks conditioned by the geopolitical environment and ordered the Government to prepare and implement a special program of action to ensure the state protection from a terrorist attack. According to the Law, national security shall be ensured through the following means:

- participation in international security consolidating organizations
- membership in the European Union and NATO
- strategic planning of national security and implementation of long-range state programs
- activities of the authorized institutions and adoption of necessary legislation.

The State Security Department of the National Government is the institution accountable to the legislature and the President of Lithuania and responsible for conducting intelligence, counterintelligence, disclosure of threats, and prevention and elimination of them. The National Security Law and the Law on the Organization of the National Defense System and Military Service[13] allow national military forces to be involved in resolution of anti-terrorist tasks.

The Criminal Code of Lithuania includes provisions defining terrorism and terrorist acts as a crime and provides for legal measures for prosecuting and punishing terrorists. Depending on the severity of the crime, the Code makes terrorism-related activities punishable by imprisonment for a term of 10 to 25 years.

Among other major legal acts determining the legal enforcement against terrorist activities are the Lithuanian Law on Operational Activities[14] and the Code of Criminal Procedure. These laws specify what kinds of overt and covert legal activities can be undertaken in order to prevent criminal and terrorist activities and determine the limits of government intrusion in the private life of individuals. For example, the Code of Criminal Procedure provides for the duty of owners of telecommunication equipment to disclose to the authorities the contents of non-public radio messages, telephone conversations, and other information transmitted via telecommunications networks. Telecommunications operators shall provide a technical capability for entities of operational activities to monitor the content of the information transmitted via telecommunications networks and to provide all available information to these entities about the subscribers. The designated body of operational activity may share information obtained through monitoring of telecommunications networks with other interested government agencies. The surveillance policy was significantly simplified under the Code's amendments of April 2002, as described in section 3.

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[11] *BNS Daily Report,* BALTIC NEWS SERVICE, June 29, 2002.

[12] PR, 1997, No. 4 at 19.

[13] *Id.* 1999, No. 4 at 2.

[14] *Id.* 1998, No. 9 at 12.

All information related to counter-terrorism activities can be classified as "secret" or "top secret" according to the Law on State Secrets and Their Protection.[15] This Law provides for an extended (up to 75 years) period to withhold material if it contains information about secret participants of operative activities.

3. Legislation Enacted After September 11, 2001

Immediately after the events of September 11, 2001, the Lithuanian Parliament adopted changes to the National Security Strategy that were prepared by the Government.[16] The document names terrorism as a serious threat to national and global security, but notes that this is more of an external threat for Lithuania. Even so, the Strategy warns that Lithuania could become a potential target of international terrorism and could also become a transit state for international terrorism directed at other states.

Involvement in the Anti-Terrorist Coalition

Lithuania strongly condemned the terrorist actions of September 11 and expressed its solidarity and support, both political and practical, to the United States as well as its determination to stand alongside the international community in its fight against terrorism. The Lithuanian Government supported statements of the North Atlantic Council on terrorist issues and aligned itself with the conclusions and plan of action of the Council of Europe of September 21. The country reassessed its relations with certain countries in light of the support which those States might give to terrorism. It strengthened the control of import, transit, and export of strategic goods and technologies.

As a member of the international anti-terrorist coalition, Lithuania gave permission for the unlimited use of the country's air space by U.S. aircraft involved in the anti-terrorist operation. A group of military physicians was sent on a mission to Afghanistan.[17]

Criminal Procedure Amendments

The Amendments to the Code of Criminal Procedure that were adopted in April 2002 significantly simplified the surveillance procedures used by Lithuanian police. As a consequence of the new law, police street surveillance by camera was initiated in the capital city and in places of mass assembly. The surveillance is connected with the face identification system, which may identify a person by comparing his/her face to the photo stored in the database.

Identification Documents

In May 2002, the Lithuanian Parliament adopted the Law on Identification Documents envisaging that, after the Law takes effect, Lithuania will have a two-tier system of identification documents: internal domestic ID cards and passports valid for travel abroad. Beginning in 2003, however, upon appropriate agreements with other countries (presently such agreements have been concluded between all three Baltic states) these ID cards may serve as international travel documents. The ID card will be mandatory for all Lithuanian citizens above 16 years of age, while passports will only be issued on request. According

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[15] *Id.* 1996, No. 4 at 17.

[16] VALSTYBES ZINIOS [Lithuanian official gazette], 2001, No. 56, Item 1651.

[17] *BNS Daily News,* BALTIC NEWS SERVICE, July 15, 2002.

to the Law, ID cards shall be machine readable and contain biometric data. A separate form of an identification document will be prepared for aliens residing in Lithuania.

4. Limits on Counter-Terrorist Activity

Efforts of the Lithuanian Government to fight terrorism are supported by the national legislature, which adopted almost all legislative acts proposed by the executive branch in a timely manner and without introducing significant changes to them. The implementation of anti-terrorist legislation in Lithuania is not limited by special legal provisions, except the requirements of the Constitution and major criminal and procedural laws regarding respect for human rights, individual's privacy, and due process; however, it is subject to inspection by the interested EU institutions. Despite the fact that such recently adopted anti-terrorist measures as wiretapping and street surveillance are viewed by the leftist political parties as too intrusive, no legal challenges have been filed against them. Legal commentators in Lithuania express concerns that these measures could not be effectively challenged in a court because the judiciary in Lithuania traditionally supports the government position.[18]

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[18] *See* e.g., *Lithuanian Government Action Plan is Supported by Major Political Parties*. INTERNET SECURITIES, INC., at www.securities.uk.co.

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LUXEMBOURG

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Luxembourg does not have a special law on terrorism, but the subject is covered under the provisions for the punishment of acts actually committed. Luxembourg is a party to the European Convention on the Suppression of Terrorism, and to other conventions dealing with the suppression of terrorist acts. Luxembourg is a member of the European Union and of NATO.

Introduction

Luxembourg is a small land-locked country located between Belgium, France and Germany. It has only about 450,000 inhabitants. It has a very strong and prosperous economy, many factories and is actually one of the banking centers of Europe. Due to its banking and taxation policies, it has attracted funds which make it a financial paradise in the heart of Europe. It is not a country that attracts many immigrants; however its various industries actively recruit workers from elsewhere to work in a variety of occupations and many later apply for citizenship, which is easily acquired.

1. Legislation Prior to September 11, 2001

Asylum

An application for asylum is to be made at the border or in the interior of the country to officers of the Department of Justice, whereupon a certificate of registration is issued to the applicant. The application is examined using the criteria set forth by the Geneva Convention of July 28, 1951, on the Status of Refugees (189 UNTS 150) and the New York Protocol of January 31, 1967 (606 UNTS 267). The applicant may request an interpreter and may retain an attorney or request that an attorney be assigned. The identity of the applicant must be verified and a report made. Fingerprints and photographs may be taken. The applicant is entitled to free accommodation, food, health care, and other services.

Asylum is denied if the request does not comply with the criteria of the Convention and Protocol, if the person has already obtained protection in another country, if the fear of persecution in his home country is manifestly unfounded, or if the application is presented fraudulently. If asylum is denied, the applicant can appeal within one month to the pertinent administrative court, which will rule within a month. From an unfavorable ruling a further appeal lies to the Supreme Administrative Court. The appeal must be filed within one month, and the court will rule within another month, with a final decision on the application to be made by the Minister of Justice. If unfavorable, the applicant will be removed from the territory under established procedures.[1]

Foreigners

Passport holders of most countries of the world may enter for a stay of less than three months.

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[1] Law of Apr. 3, 1996, on Asylum Requests, MEMORIAL A-30, at 1026, as amended by Law of Mar. 18, 2000, MEMORIAL A-25, at 644, Decree of July 4, 2002, MEMORIAL A-84, at 1736.

Others require a visa. A visa is required for a stay exceeding three months and may be granted for a term of 12 months. An authorization to stay in excess of 12 months entitles the grantee to apply for an identity card.[2]

Tracking of Immigrants/Visitors

There is no provision that aliens should check-in with the authorities within a certain time.

Acquisition of Citizenship

By birth: Citizenship is acquired by birth if at least one of the parents is a Luxembourg citizen, if the parents are stateless and the child is born in Luxembourg, or if the child is found there and did not acquire another citizenship.

By naturalization: An alien having permanent residence in Luxembourg for at least five years and who is 18 years of age may request to be naturalized. He/she has to show that he/she lost his previous citizenship or will lose it by acquisition of the Luxembourg citizenship, that he/she has knowledge of at least one language spoken in Luxembourg, and that he/she has no criminal record. The application is handled by the Ministry of Justice and the House of Parliament. If approved, it is granted by law and published in the Memorial, the official legal gazette.

By option: The spouse of a Luxembourg citizen who has resided with his/her Luxembourg spouse in Luxembourg for at least three years may apply for a grant of citizenship by option. He/she has to show that he/she lost his/her previous citizenship or will lose it by acquisition of the Luxembourg citizenship, that he/she has knowledge of at least one language spoken in Luxembourg and has no criminal record

Mutual Legal Assistance Treaties

Luxembourg has a Treaty on Mutual Legal Assistance in Criminal Matters with the United States[3] and is a party to the European Convention on Mutual Assistance in Criminal Matters.[4]

Identity Cards

Every Luxembourg citizen 15 years of age and older must have an identity card.[5] Identity cards are issued by the office of local administration of the holder's place of residence. Data are printed on a special security paper and the card is laminated. It displays a photograph of the holder and lists first and last names, citizenship, sex, date and place of birth, place of residence, and address at the time of issue.

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[2] Law of Mar. 28, 1972, on the Entry and Stay of Foreigners, MEMORIAL A 1972, at 818, Coordinated Text of Feb. 1, 1996, MEMORIAL A-6, at 75, as amended.

[3] Treaty on Mutual Legal Assistance in Criminal Matters, signed in Luxembourg Mar. 13, 1997; entered into force Feb. 1, 2001, Treaty Doc. No. 105-11.

[4] European Convention on Mutual Assistance in Criminal Matters of Apr. 20, 1959, in force June 12, 1962, Luxembourg signed it Apr. 20, 1959, ratified it Nov. 11, 1976, and it entered into force for Luxembourg on Feb. 16, 1977, Council of Europe, Treaty No. 30, Chart of Signatures and Ratifications, July 22, 2002.

[5] Regulation of Aug. 30, 1939, on Identity Cards MEMORIAL 1939, at 846, as amended by Decree of Sept. 30, 1939, MEMORIAL 1939, at 929, Ministerial Decree of June 12, 1989 MEMORIAL A-70, at 1309.

It is signed by the holder. It is valid for 10 years. The card certifies the holder's entry in the register of inhabitants.

Physical Surveillance and Wiretapping

Physical surveillance and wiretapping may be ordered by the investigating judge in the investigation of serious crimes, such as threats to life, taking of hostages, abduction of minors, homicide, and robbery.[6]

Financial Reporting

The Commission of Surveillance of the Financial Sector was created by law in 1998.[7] The Commission examines requests to conduct financial business and supervises the activities of credit institutions, investment institutions, exchanges and persons involved in such activities. It applies all laws applicable to the financial sector. It may request information on pertinent business matters and may carry out on-the-spot inspections and make copies of pertinent documents. In addition, audits by approved audit firms may be undertaken. If the Commission finds deficiencies, it will take steps to remedy them, and if they are not remedied, it may suspend the activities of the establishment and may request the Commercial Court to liquidate it. Organs of the Commission are the Council and the Directorate. The Council is composed of seven members appointed by the government for a four-year term, and they may be reappointed. The Directorate is the executive branch of the Council and is composed of a director-general and two directors appointed by the government for a six-year term, and they may be reappointed. There are further employees who are civil servants.

Money laundering is dealt with by the Law on the Financial Sector.[8] Credit institutions, their officers, and all others working in the financial sector must obtain identification of their clients by documentary evidence, especially when a new account is opened or their service to hold assets is requested. Identification is also required whenever a transaction reaches or exceeds 12,500 Euros in one or several individual sums, but it must also be undertaken in the case of a lesser amount if there is suspicion of money laundering. If it appears that a person deals for another, the identity of that other person must be established. Credit institutions and all others working in the financial sector must preserve all documentary evidence concerning identification for at least five years after the termination of relations with a particular person, or from a particular transaction. Credit institutions and all working in the financial sector must pay special attention to transactions which by their nature are susceptible to money laundering.

Credit institutions and all others working in the financial sector must cooperate with the authorities in the struggle against money laundering by supplying all information at their request and also by informing the prosecutor on their own initiative of all facts which may indicate money laundering. They must stop carrying out transactions they know or suspect to be linked to money laundering and are prohibited from informing the client or third persons that information has been given to the authorities. They must

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[6] Code of Criminal Procedure, arts. 88-1-4, Ministry of Justice, Luxembourg, 1997, as amended.

[7] Law of Dec. 23, 1998, on the Establishment of the Commission of Surveillance of the Financial Sector, MEMORIAL A-112, at 2979, as amended by Law of Nov. 9, 2001, MEMORIAL A-136, at 2718.

[8] Law of Apr. 5, 1993, on the Financial Sector, MEMORIAL A-27, at 462, Coordinated Text of Oct. 18, 1999, MEMORIAL A-135, at 2459, arts. 38-41.

introduce proper internal measures to prevent money laundering. The requirement of secrecy may be lifted even retroactively by legislative enactment. The obligation of secrecy does not apply with respect to national and foreign authorities supervising the financial sector acting within their legal authority.

Money laundering is punishable by provisions of the Criminal Code.[9] All those who have acquired, detained or used property knowing that it originated from a criminal act are punishable by imprisonment from 15 days to 5 years and a fine, and from 5 to 10 years in serious cases. Those who knowingly supply false justification of the origin of property, or who cooperated in the placement, concealment or conversion of the property are punishable by imprisonment from one to five years and a fine.

Prohibited Organizations

The Luxembourg Constitution guarantees the right of association. This right may not be subjected to any prior restriction.[10] Citizens may associate for any legitimate purpose. The right is, however, subject to limitations contained in the Criminal Code. An association for the purpose to commit criminal acts against persons or property is prohibited and the very act of association is punishable.[11] A criminal organization is defined as an association of several persons for the perpetration of criminal acts.

Use of Internet

Internet service is regulated by the Regulation on Public Service Videotex.[12] The supplier of information and the user placing information on the Internet are responsible for the contents of the information and its conformity with all laws, regulations, and provisions applicable to the Internet. There is no provision to restrict the content/materials of Internet communications which would provide "how to" information.

The provisions making suppliers/users of the Internet responsible for the contents of any information they place on the Internet covers any laws and regulations which prohibit the disclosure of any particular information. There are, for example, provisions on the security of state, such as articles 114 and 118 of the Criminal Code which prohibit the disclosure of information on the defense of the country.

International Conventions on Terrorism

Luxembourg is a party to the following conventions:

- European Convention on the Suppression of Terrorism[13]

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[9] Criminal Code, arts. 505, 506, and 506-1, Ministry of Justice, Luxembourg, 1997, as amended.

[10] Constitution of Luxembourg, art. 26, Service central de legislation, L-2450 Luxembourg, 1999, as amended.

[11] Criminal Code, *supra* note 9, arts. 322-326.

[12] Regulation of Jan. 22, 1991, on the Public Service Videotex, MEMORIAL A-10,at 122.

[13] European Convention on the Suppression of Terrorism of Jan. 27, 1977, in force Aug. 4, 1978, Luxembourg signed it Jan. 27, 1977, ratified it Sept. 11, 1981, and it entered into force for Luxembourg on Dec. 12, 1981, Council of Europe, Treaty No. 90, Chart of Signatures and Ratifications, July 22, 2002.

- Convention for the Suppression of Unlawful Seizure of Aircraft[14]
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction[15]
- International Convention against the Taking of Hostages[16]
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes[17]

Luxembourg also signed the Convention for the Suppression of Terrorist Bombings[18]and the Convention for the Suppression of Financing of Terrorism.[19]

2. Legal Enforcement Against Terrorism

Luxembourg does not have any special legislation on terrorism; however, individual criminal acts of terrorism are punishable by existing provisions of the Criminal Code. For example, violence against persons and homicide are punishable by imprisonment up to life;[20] kidnapping and the taking of hostages is punishable by imprisonment from 15 years to life;[21] the destruction by any means of buildings, bridges, dams, railroads, flood gates, warehouses, docks, hangars, ships, and the like, is punishable by imprisonment from 5 to 20 years.[22]

The association of persons for the purpose of committing crimes is punishable by imprisonment from 5 to 10 years. Accessories and persons supplying the group with weapons, ammunition, lodging, etc. are punishable by imprisonment from six months to five years.[23]

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[14] Convention for the Suppression of Unlawful Seizure of Aircraft (Highjacking), done at the Hague Dec. 16, 1970; entered into force Oct. 14, 1971, 22UST 1641; TIAS 7192; 1973 UNTS 106.

[15] Convention on the Prohibition of Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London, and Moscow Apr. 10, 1972; entered into force Mar. 26, 1975, 26 UST 583; TIAS 8062; 1015 UNTS 163.

[16] International Convention against the Taking of Hostages, done at New York Dec. 17, 1979; entered into force June 3, 1983. TIAS 11081.

[17] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes, done at Paris Jan. 13, 1993; entered into force Apr. 29, 1997, [Senate] Treaty Doc. 103-21, 32 I.L.M. 800 (1993).

[18] Convention for the Suppression of Terrorist Bombings, UN Res. A/RES/54-164 Dec. 15, 1997, opened for signature at New York, Jan. 12, 1998.

[19] Convention for the Suppression of Financing of Terrorism, UN Res. A/RES/54-109, Dec. 9, 1999, opened for signature at New York, Jan. 10, 2000.

[20] Criminal Code, *supra* note 9, arts. 392-410.

[21] *Id.* art. 442-1.

[22] *Id.* arts. 510 and 521.

[23] *Id.* arts. 332-326.

The making of threats on the life of persons or their property is punishable by imprisonment from six months to five years.[24] Proceedings instituted against the accused are subject to due process of law.[25]

Luxembourg Finances

A French parliamentary commission investigated the Luxembourg banking practices especially with respect to financial crimes and money laundering.[26] It concluded that Luxembourg is a "financial paradise" in the heart of Europe and reported that despite the adoption of anti-laundering legislation and a concern to maintain all of its fame and respectability for the Grand Duchy's financial market place, Luxembourg's situation remains worrisome owing to the determination by that state, an EU Member State, to maintain for as long as possible the dispensatory situation that has allowed it to turn itself into a world-class financial marketplace and enjoy economic growth unequaled in western countries.

Since September 2001, Luxembourg froze $200 million in assets linked to organizations suspected of financing terrorist groups. Luxembourg investigators identified six companies and investment funds with connections to the Al Baraka Exchange in Dubai, a company on the U.S. Treasury Department list of 62 persons and entities suspected of financing the al-Qaeda network according of Saudi-born extremist Osama bin Laden, accused by the U.S. of the September 11 attacks.[27]

The Luxembourg court ordered the funds to be unblocked after lawyers for the Al Baraka Exchange succeeded in casting reasonable doubt on the validity of the U.S. Treasury list. It was a problem of the proof. Much of the intelligence furnished by the American authorities came from secret services, notably the CIA, and it proved impossible to produce the incriminating documents in court.[28]

3. Legislation Enacted after September 11, 2001

Luxembourg has not enacted a special law on terrorism and does not have any such law. Acts of terrorism are dealt with under the provisions of offenses actually committed, such as homicide, violence against persons, kidnapping, the taking of hostages, destruction by any means of buildings, bridges, dams, railroads, flood gates, warehouses, docks, hangars, and ships, as described in section 2.

Immigration

The Law on Asylum was further elaborated by Regulation of July 4, 2002, *Memorial* A-84, at 1736, as described in Section 1 above. The Regulation redefined the entitlement of asylants to free accommodation, food, health care, and other services.

Financial Reporting

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[24] *Id*. arts. 327-331.

[25] Constitution of Luxembourg, *supra* note 10, art. 12.

[26] French Parliamentary Commission Investigates Luxembourg's Banking Practices, Paris Le Monde (Internet Version-WWW) French, Jan. 23, 2002, FBIS Document ID:EUP20020304000428, Version Number:02, Mar, 4, 2002.

[27] Agency France Press, Mar. 15, 2002, Financial Pages.

[28] Agency France Press, Apr. 25, 2002, Financial Pages.

The Law on the Establishment of the Commission of Surveillance of the Financial Sector was amended by Law of November 9, 2001, *Memorial* A-136, page 2718, as described in Section 1 above. The amendment dealt with the Directorate of the Commission of Surveillance of the Financial Sector and provided for the grading of civil servants who are going to serve in the Directorate.

4. Limits on Counter-Terrorist Activity

A Report by the Grand Duchy of Luxembourg was made to the UN Security Council Counter-Terrorism Committee Pursuant to Security Council Resolution 1373 (2001)[29] Under that Resolution, threats to the international peace and security caused by terrorist acts requested Member States to take firm action against terrorism in all its aspects.

As a member of the European Union, the Grand Duchy of Luxembourg fully associates itself with the actions taken by the Union under the Treaty on the European Union and the Treaty establishing the European Economic Community.

The legislative framework for the prevention and suppression of international terrorism and regulating the detection and punishment of perpetrators of terrorist acts includes applicable instruments of international law, to which the Grand Duchy of Luxembourg is a party, as well as the Luxembourg domestic legislation. It is spelled out in the report by the Grand Duchy of Luxembourg to the United Nations Security Council Counter-Terrorism Committee and this report. The laws are enforced by the police.

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[29] UN Doc. S/2002/6.

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MALTA

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Malta has applied to join the European Union (EU) and, despite divided opinions in the country regarding the benefits of membership, much of its legislation has been recently updated to incorporate its potential EU obligations. Because of the large number of new laws passed prior to the September 11, 2001 attacks, which included tighter immigration controls and a Refugee Act, there has not been the plethora of subsequent new legislation that has been seen in other states.

Although it currently does not have any "terrorist-specific" legislation, Malta claims that provisions within its Criminal Code are sufficient to cover terrorist activities. As a result of the recently updated legislation, Malta has fairly comprehensive legislation that deals with various terrorist issues, particularly money laundering.

1. Legislation Prior to September 11, 2001

Introduction

The Republic of Malta consists of six small islands located in the Mediterranean Sea between Sicily and Libya and is one of the most densely populated countries in the world. It achieved independence from Britain in 1964 and adopted a Constitution in the same year. Malta has a civil law system and its Parliament has the ability to postpone the operation of laws and introduce legislation with retroactive effect, provided that it is for "the peace, order and good of Malta… [and] subject to provisions within the Constitution."[1] The President of Malta must approve any bill that has been supported by a majority in Parliament for it to become law which then becomes effective when published in the government Gazette.

Although Malta is proceeding with EU application measures, the country is evenly divided over the issue of membership in the EU, with the current government in favor of membership and the opposition considering that it is not in Malta's national interest to join. A referendum to decide this issue is expected sometime in 2003. In the meantime, many of its laws were updated prior to September 11, 2001, in order to meet with the *acquis communitaire,* approximately 80,000 pages of EU legislation that any country which wishes to accede to the EU must implement prior to accession. Not only did much of Malta's legislation have to be amended and new legislation implemented; its administrative structures also had to be altered to ensure that the changes could be implemented. Malta has currently transposed 23 out of the 29 Chapters of EU law into its domestic legislation.

The following sections examine Maltese laws and regulations affecting terrorist activities prior to September 11 2001.

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[1] CONSTITUTION OF MALTA, art. 65.

Immigration

Malta recently amended its Immigration Act[2] to include provisions that partially meet with the *acquis* of the EU. Although there are no specific provisions in the Act prohibiting the entry of or safe haven for terrorists in Malta, there is a policy of refusing entry and visas to persons identified as terrorists.[3]

The Immigration Act prohibits entry to certain immigrants based on a number of criteria such as criminal convictions by a court of criminal jurisdiction in Malta,[4] or landing in Malta without a residence permit or leave from the Principal Immigration Officer.[56]

The Principal Immigration Officer can enter or board any vessel to detain and examine any person whom he reasonably believes is not an exempt person under section 4 of the Act. If anyone is, or is reasonably suspected of being, a prohibited immigrant as defined in section 5 of the Act, that person can be taken into legal custody without warrant by the Principal Immigration Officer, or any police officer, and can be kept in custody without being charged with an offense for 48 hours.[7] The burden of proof is on the detained person to show that he/she is an exempt person, rather than a prohibited immigrant.[8]

Any person who lands in Malta without a residence permit or leave from the Principal Immigration Officer is guilty of a criminal offense under the Immigration Act and is liable, if convicted by a Magistrates' Court, to a fine and/or imprisonment of not more than six months. When the Minister considers that it is in the public good he/she can make a deportation order against any person, a power that has been recently exercised on a number of occasions against various people in Malta without leave from the immigration authorities.[9] A Libyan charged with the aforementioned offense was granted bail after the courts learned that he planned to marry a Maltese resident.[10]

The Minister can establish conditions that must be met before a residence permit is issued to a person who makes an application for retirement, settlement, or indefinite stay in Malta.[11] The conditions that an applicant has to meet are currently fairly liberal: the main ones are-

- that a person must have an annual income equivalent to approximately US$4,000 or capital

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[2] LAWS OF MALTA, Ch. 217.

[3] 2001 REGULAR REPORT ON MALTA'S PROCESS TOWARDS ACCESSION, BRUSSELS, SEC(2001) 1751.

[4] *Supra* note 2, §5(d).

[5] *Id.* §5(1).

[6] *Id.* §5(1).

[7] *Id.* §16.

[8] *Id.* §33.

[9] *Id.* §22. Various illegal immigrants have been deported including 14 men of Asian and Arab descent and 3 Libyan men. DEPORTATION ORDER, July 9, 2002; TWO TO BE DEPORTED, June 25, 2002; 14 TO BE DEPORTED, July 23, 2002, *at* www.timesofmalta.com.

[10] *Id.* §14(1).

[11] *Id.* §7(1).

equivalent to approximately US$21,000;[12]

- either purchase immovable property valued at not less than approximately US$22,000, or lease/rent property for not less than approximately US$850 per annum and provide evidence of this 12 months after residing in Malta;
- provide a certificate from a banker (or as applicable) showing either (i) an annual income equivalent to approximately US$4,000 or (ii) capital equivalent to approximately US$63,000; and
- a certificate of good conduct from either the police of the person's locality or three references from the following: banker, solicitor, medical practitioner, employer (or previous employer), accountant, or any person of a similar standing.[13]

The Immigration Act requires that persons subject to immigration procedures register their name, nationality, date of arrival, address of the last place stayed, and upon departure, the date and destination, with the keeper of the premises where they will stay, if they pay to stay in the premises.[14] The onus is on the keeper of the premises to obtain the information, and any person over 14 when requested must provide a statement of nationality. If the information is requested from a non-exempt person, they must provide the above information.[15] The penalty for not abiding by the requirements is a fine of up to approximately US$10.

Refugees

Although not considered as a "desirable" state by refugees and illegal immigrants, who are often aiming for mainland Europe, many find themselves in Malta after encountering difficulties in the seas nearby. Among those intending to head for Europe, but instead ending up Malta, were 47 Eritreans to whom refugee status was denied at the beginning of July 2002.[16] Such cases also include 228 illegal immigrants being brought ashore by the Armed Forces on July 26, 2002, 59 illegal immigrants being killed and 11 rescued when their boat capsized in the channel between Malta and Lampedusa, 208 illegal immigrants drifting into Gozo after running out of fuel in March 2002, and 280 illegal immigrants drowned in the Channel between Sicily and Malta in December 1996.[17] As the refugee application process is confidential, no information was available on the basis for the denial of the refugees' applications.

The Refugees Act 2001[18] came into force on October 1, 2001, incorporating Malta's obligations under the 1951 Convention relating to the Status of Refugees and lifting some of its territorial restrictions. The 2001 Act does not expressly refer to terrorists but excludes them from refugee status through other

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[12]One U.S. dollar is approximately equivalent to 2.35 Maltese Lira, based on the Middle Exchange Rates against the Maltese Lira prevailing on Aug. 9, 2002.

[13]Department for Citizenship and Expatriate Affairs, Permanent Residence Permits, *at* http://www.inter-lawyer.com/malta-law/.

[14]*Supra* note 2, §31. The information required on the register includes an individual's full name, date and place of birth, sex, nationality, address of the principal place of residence, photo, and an identifying number.

[15]*Id.* §31(4).

[16]Fiona Galea Debono, AFM RESCUE 228 ILLEGAL IMMIGTANTS, *at* www.timesofmalta.com, July 26, 2002.

[17]Fiona Galea Debono, 47 ERITREANS DENIED REFUGEE STATUS, *at* www.timesofmalta.com, July 5, 2002.

[18]Refugees Act 2001, Act XX of 2000, LAWS OF MALTA, Ch. 420.

provisions. For example, section 2(b) provides that the term refugee does not apply to a person to whom there are serious reasons to believe has:

> (i) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; or
>
> (ii) committed a serious non-political crime outside Malta prior to his arrival in Malta; or
>
> (iii) been guilty of acts contrary to the purposes and principles of the United Nations.

The decision as to whether a person fulfills the criteria required for the recognition of being a refugee rests with the Refugee Commissioner, a position created by the Act.[19] The applicant must be interviewed by an immigration officer as soon as possible and apply to the Commissioner for a declaration. The person is required to attend a private interview within one week. The Commissioner considers all applications for refugee status, ensuring that the applicant has thoroughly presented and supported his/her case with explanations and testimonies, and then provides a written decision stating the reasons for it.[20]

Even if the person does not satisfy the requirements to be recognized as a refugee, the Commissioner may recommend to the Minister[21] that he be given protection in Malta based on humanitarian grounds. Humanitarian protection in Malta lapses when the Minister believes that it is no longer necessary.[22]

Various privileges are granted to applicants present in Malta while awaiting a decision on their refugee status, including a residence permit and the right to leave and enter Malta without a visa. Other benefits provided are a state education, training, and medical care and services. If a person is detained solely because of a deportation or removal order, he/she has the right to be released immediately.[23]

Any person granted refugee status is required to report at specified intervals to the immigration authorities and remain and reside in the place indicated by the Minister.[24] If a refugee fails to meet with these criteria he/she is guilty of an offense and can be imprisoned for up to six months.[25]

The principle of *refoulement*, contained in Article 33 of the UN Convention on Refugees, 1951, prohibits the return of a refugee to a country where his/her life or freedom would be threatened. Under Maltese law, this prohibition does not apply to refugees when there are reasonable grounds to believe that they are a danger to the security of Malta or have been convicted of a serious crime and constitute a

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[19] *Id.* §4.

[20] *Id.* §8.

[21] *Id.* §2 of the Act defines Minister as "the Minister responsible for immigration, and any public officer to whom the Minister may delegate in writing any of the duties appertaining to him under this Act."

[22] *Id.* §8(2).

[23] *Id.* §11(a-c).

[24] *Id.* §10.

[25] *Id.* §10(2).

danger to the community.[26]

Section 16 of the Refugee Act permits the Minister to cancel a person's refugee status if an investigation reveals false or incorrect information in his/her application. The Minister may expel any refugee from Malta on grounds of national security or public order and require that such a person should be held in custody and allowed a reasonable period of time to seek admission into another country.[27]

There apparently have been no cases of refugees who have applied to Malta being involved in terrorist activities. The application system is being further supplemented by subsidiary regulations that include procedures for fingerprinting applicants.

Border Controls

Because of its potential membership in the European Union, Malta is increasing its efforts to tighten its border controls; upon accession, its ports of entry will be the southernmost external border of the European Union. In an effort to strengthen its borders, Malta is expanding its visa requirements to align them with those of current EU member states.

In addition to the legislative provisions, Malta's borders are regularly patrolled by the Armed Forces, and a computerized system at entry ports contains the details of all terrorists known to Malta. At the beginning of August 2002, border patrols caught a group of 49 illegal immigrants, consisting of Egyptians and Iraqis, shortly after they had landed in Malta. As of early August 2002, around 500 illegal immigrants are in shelters around Malta, pushing them to near full capacity.[28]

Identity Cards

Persons over the age of 14 years and residents in Malta for more than six months are required to be in possession of a valid identity card that they must produce upon demand.[29] If they cannot do so, then they must produce it no latter than 24 hours after the demand. Offenses of forgery and deception of provisions under the Act are punishable by imprisonment for a minimum of two years and a maximum of five years.[30]

Wiretapping and Surveillance

The Security Services Act 1996[31] established a Security Service, whose function is to protect national security, particularly against threats from terrorism.[32] The Act permits the use of wiretapping

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[26] *Id.* §9(2).

[27] *Id.* §17.

[28] ILLEGAL IMMIGRANTS CAUGHT, August 6, 2002, *at* www.timesofmalta.com.

[29] Identity Card Act 1976, Ch. 258, Act LI of 1975, §3 and §7(1).

[30] Ch. 258, §14.

[31] Ch. 391.

[32] *Id.* §3(2).

and surveillance to enable the Security Services to carry out their functions effectively. Section 7 of the Act gives the Minister for Home Affairs or the Prime Minister authority to grant, in writing, warrants for the interception[33] of communications and authorizes "certain activities" to ensure the security of the nation.[34]

Warrants can be issued under the Act when the information to be gathered by it cannot be obtained any other way and is considered to be of substantial value to the Security Services to allow it to carry out its functions.[35] It is an offense, punishable by up to two years imprisonment and/or a fine, to intercept communications without a warrant unless the consent of one of the parties to the communication has been obtained.[36]

The disclosure of messages and communications by a person who is in the communications services is permitted when it is for the prevention or detection of a crime or any criminal proceedings or it is for national security, the economic well-being of Malta, or public safety. This intent can be evidenced by a certificate signed by the Minister or Attorney General, stating that the disclosure was justified for the above reasons.[37]

Money Laundering

Malta's money laundering problems have mainly concerned the laundering of drug money on the island. The government has responded to this challenge by signing and ratifying the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (February 28, 1996); the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime (March 1, 2000); and the International Convention for the Suppression of the Financing of Terrorism (November 11, 2001). Malta has also implemented the various resolutions that the United Nations has issued regarding measures to be taken to suppress the financing of terrorist acts.[38]

Malta has been an offshore finance center since 1989. However, in response to conforming with the *acquis* of the European Union, Malta has changed its position and is moving its status towards becoming an onshore jurisdiction.[39] It has not granted any new offshore licences since 1996, and any licences that are still in force will be terminated by or before 2004.

Domestic legislation against money laundering is contained in the Prevention Against Money Laundering Act 1994.[40] In addition to this, drug money laundering is criminalized by amendments to the

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[33] *Id*. "Surveillance" is included under the definition of "interception" in the Act, §2(1).

[34] *Id*. §7.

[35] *Id.* §6(a-c).

[36] *Id*. §15.

[37] *Id.* §16.

[38] Including Resolutions 1267 (1999); 1333 (2000).

[39] Malta Financial Services Center – Stamping out Crime – Malta's Practical and Immediate Movement on Money Laundering Confirms its Commitment to the Global Drive to Closing the Door on Terrorist Money, THE BANKER, Nov. 1, 2001.

[40] Ch 373, Act XIX of 1994.

Dangerous Drugs Ordinance 1939[41] and the Medical and Kindred Professions Ordinance,[42] both of which can impose a penalty of up to life imprisonment.

Prevention Against Money Laundering Act. The Prevention Against Money Laundering Act 1994[43] transposed EU Directive 91/308/EEC into Malta's domestic legislation. The Act permits the imposition of a fine of up to approximately US$25,000 and/or a prison sentence of up to 14 years for persons found guilty of an offense under the Act. The definition of money laundering in the 1994 Act is in accordance with the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Gaming Act has also extended the money laundering laws to apply to casinos.[44]

The money laundering law permits the assets and property of a person charged under section 3 of the Act to be frozen and, upon conviction, the confiscation or forfeiture of any of their property.[45] A person can be convicted of money laundering under the Act despite the lack of a conviction regarding the underlying criminal activity as circumstantial and other evidence regarding the activity is sufficient for a money laundering conviction.[46]

Investigative and Cooperative Powers Under the Money Laundering Act. When the Attorney General has reasonable cause to suspect that a person is guilty of an offense under the Money Laundering Act, he/she can apply to the Criminal Court for an investigation order. The order grants the persons named therein the authority to enter any building or enclosure, to search for such materials as specified, and requires that the suspected person produce or grant access to such materials.[47]

Malta's powers under the Act are fairly broad and permit cooperation with judicial and prosecuting authorities outside of Malta where a foreign state has similar laws. The Attorney General of Malta may apply to the criminal court for a freezing[48] or investigation[49] order if the acts the person has been accused of would be an offense covered in article 3 of the Act if committed in Malta. A freezing order prevents the suspect from removing or disposing of any property belonging to him/her by attaching it to third party hands.[50] The Act allows for the enforcement of confiscation orders made by courts outside of Malta if a person has been convicted of an offense mentioned in article 3.[51] Confiscation orders may be made as

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[41] Dangerous Drugs Ordinance, Ch. 101, §22(1C).

[42] Medical and Kindred Professions, Ch. 31, §120A, (1D).

[43] *Supra* note 40.

[44] Gaming Act 1998, LAWS OF MALTA, Ch. 400, §40.

[45] *Supra* note 40, §5 and 3(3).

[46] *Id.* §2(1).

[47] *Id.* §4.

[48] *Id.* §10.

[49] *Id.* §9.

[50] *Supra* note 41, §22A(1).

[51] *Supra* note 40, §11.

judgements, decisions, declarations, or other court orders that confiscate or forfeit proceeds, income, or property that has been intermingled with the property or proceeds of the person convicted of a relevant offense.[52]

Prevention of Money Laundering Regulations. To improve transparency in the financial sector and help in the fight against money laundering, the Central Bank of Malta issued the Prevention of Money Laundering Regulations in 1994. The regulations "impose requirements for customer identification, record keeping, the reporting of suspicious transactions, and the training of employees."[53] Any suspicious information is reported to the supervisory body of the unit, for example in the cases of banks, the Central Bank of Malta is the supervisory body.

When there are investigations into suspected incidents of money laundering, or other criminal activities, banking secrecy laws are suspended.[54] Section 4 of the Professional Secrecy Act 1994 mandates that individuals who become privy to secrets during the course of their profession can only disclose such information when authorized by law. Reporting procedures under the regulations include internal reporting of suspicious transactions and the reporting and disclosure of such information to a police officer not below the rank of inspector.

International Conventions

Malta is party to a number of international conventions on terrorism including the:

- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (June 14, 1991);
- Convention for the Suppression of Unlawful Seizure of Aircraft (June 14, 1991);
- Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Sept. 26, 1991).
- European Convention on the Suppression of Terrorism (June 20, 1996); and
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (June 21, 1998).

2. Legal Enforcement Against Terrorism

Terrorist Infiltration

In the past, Malta's role in terrorism has been attributable to a lack of control and its formerly close relations with Libya. One of the high profile cases involving terrorism and Malta was that the suitcase containing the bomb that exploded on Pan Am flight 103 over Lockerbie, Scotland was reportedly loaded onto a plane from Malta. The ties to the suitcase and Malta eventually led to Libyan suspects, and Malta cooperated in the investigation of the bombers. Witnesses from Malta provided key testimonies during the controversial trial.

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[52] *Supra* note 41, §24D.

[53] Http://www.state.gov/g/inl/rls/nrcrpt/2000/959pf.htm.

[54] Professional Secrecy Act 1994, LAWS OF MALTA, Ch. 377; Prevention of Money Laundering Act 1994, LAWS OF MALTA, Ch. 373, §4(3)(b) and 30(2).

Malta's close relations with Libya led to a treaty of friendship and cooperation in 1984, which developed commercial, political, economic, and military relations between the two countries.[55] Due to these relations, many pieces of anti-western propaganda from Libya were distributed throughout Malta, and despite the fact that contributions to Malta's economy by the West far exceed Libya's, Malta stood by Libya during the United States/Libyan conflicts in recent years. The links with Libya and the terrorist presence there led to accusations that the close ties permitted Libyan terrorists to use Maltese banks and ports to facilitate their terrorist activities, although Malta strongly denied them.[56]

At the end of November 1989 the conservative Nationalist government of Malta, seeking to improve relations with the West and enter the European Union (EU), formally ended its military ties with Libya. Malta's Nationalist party is currently in power, although there is concern that it is losing support to the Socialist Party which has made clear its intention to oppose membership in the EU if it wins the general election scheduled for 2004.[57] Because of Malta's strategic location, the Socialist Party views the country as a bridge between the West and the East. Therefore they believe that Malta should remain neutral, focusing on economic ties with the EU rather than aspiring to full membership.

Enforcement Against Terrorists

In 1985, the hijacked Egypt Air flight 648 landed in Malta and demanded that it be refueled. The incident resulted in the death of 60 people, the majority of them passengers, with 38 more wounded. Malta prosecuted the surviving hijacker, Mohammed Ali Rezak. Rezak was sentenced to a prison term of 25 years, but released by Malta in 1993, despite assurances to the U.S. State Department that he would be kept in prison until 1996. The early release of Rezak prompted a U.S. House of Representatives Resolution that condemned the Maltese Government for his release.[58]

Criminal Laws: Search and Seizure

Article 38 of the Constitution protects the right to privacy of a person and his/her property. There are exceptions to this provision when the search of a person or his property is done under the authority of law and the search is (i) reasonably required in the interest of defense, public safety, public order, public morality, or decency; (ii) reasonably required for the purpose of promoting the rights or freedoms of other persons; or (iii) for the purpose of enforcing a judgment or order of a court, authorizing the search of any person or property by order of a court or entry upon any premises by such order, or that is necessary for the purpose of preventing or detecting criminal offenses, and except so far as that provision or, as the case may be, the thing done under the authority is shown to be not reasonably justifiable in a democratic society.[59]

Article 350 of the Criminal Code grants police the authority to enter any house, building, or

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[55]The Malta-Libya Treaty of Friendship and Cooperation (Ratification) Act, 1984, as amended in 1990, Ch. 311.

[56]Marlise Simons, CLAMOR IN THE EAST; MALTA, SPECK AMONG NATIONS, ENDS MILITARY LINKS TO LIBYA, The New York Times, Nov. 30, 1989, Section A, at 21, Column 5.

[57]Godfrey Grima, DOMESTIC POLITICS MAY HAMPER MALTA'S EU BID: POLL DOUBTS NEW GOVERNMENT COULD PULL ISLAND OUT AGAIN: Financial Times (London) Apr. 4, 2002.

[58]H. Res. 118 Condemning Release by Government of Malta of Convicted Terrorist Mohammed Ali Rezaq, Mar. 29, 1993.

[59]CONSTITUTION OF MALTA, art. 38.

enclosure to search or arrest a person who has committed, or is suspected of committing, an offense without a written order from a superior officer if a number of criteria are met. The criteria include there being an imminent danger that the evidence proving the offense will be suppressed; the person will escape; the person is caught while committing the crime; the intervention of the police is necessary to prevent the commission of a crime; or entry is necessary for the execution of a warrant.

Article 79(1) of the Criminal Code makes it an offense for more than three people to assemble and act in a manner designed to cause terror amongst the Maltese population.[60] An amendment to the Criminal Code in 2002 introduced the offense of conspiring to commit a crime in Malta.[61]

Police Powers

The Maltese Constitution prohibits the arbitrary arrest and detention of persons.[62] The Executive Police have the power to arrest any person who has committed, or is suspected of committing, a crime punishable with imprisonment, unless it is a crime that is punishable under the Press Act.[63] Where the police have a reasonable suspicion that a person has committed an offense they can arrest that person and hold him/her for questioning for up to 48 hours.[64] The detained person has no right to legal counsel during that time, and if the police want to detain the person for longer than 48 hours they must charge him/her with an offense.

If a crime is not punishable with imprisonment or for offenses under the Press Act, the police have authority to arrest a person if he/she is caught while committing the offense, or if the arrest is necessary to prevent the commission of an offense to which the police can institute criminal proceedings without the complaint of the injured party.[65]

Legal Restraints

The Maltese Constitution grants citizens and residents basic rights such as freedom of movement. The Constitution does allow the right to be restricted where it is reasonably required in the interests of "defense, public safety and public order … unless the provision is shown not to be reasonably justified in a democratic society."[66] The Article does not grant the same privileges to people who are not considered to be Maltese citizens under article 3(1) or 5(1) of the Maltese Citizenship Act[67] and permits laws that restrict their freedom of movement.

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[60] Criminal Code, LAWS OF MALTA, Ch. 9.

[61] *Id.* §48A.

[62] CONSTITUTION OF MALTA, Ch. IV, art. 34.

[63] *Supra* note 59, §347.

[64] CONSTITUTION OF MALTA, Chapter IV, art. 34(3).

[65] *Supra* note 59, art. 348(1).

[66] CONSTITUTION OF MALTA, art. 44(3)(a).

[67] Maltese Citizenship Act, Ch. 188.

Article 42 of the Constitution grants a person the right to belong to any associations, unless there is a law that provides otherwise. To be constitutional, any laws preventing freedom of association must be reasonably required for "the interests of defense, public safety, public order … for the purposes of protecting the rights or freedoms of other persons; or that imposes restrictions upon public officers."

Article 117 of the Constitution prohibits the establishment, maintenance, or membership in any association whose purpose is to organize and train or equip people to use or display physical force to promote any political object. Parliament has the power to decide what enforcement measures should be used for the above provisions.

3. Legislation Enacted After September 11, 2001

Malta has responded to the September 11 attacks in a number of ways. It acted quickly in implementing the various resolutions passed by the United Nations and requests from the United States, especially in the financial area. Malta issued government statements demonstrating sympathy with the United States and condemning the terrorist attacks.[68]

Malta has introduced considerable amounts of legislation and made numerous amendments to conform with the EU *acquis*. However, there is also political disagreement between the government and the opposition regarding what legislation is in the national interest, which has resulted in little legislation being introduced after September 11. Some ongoing legislative and other measures are discussed below.

Immigration

Amendments to the Immigration Act are currently being debated in a bill before Parliament. The amendments would incorporate EU regulations on the free movement of persons and the common visa policy into Maltese law. The bill increases the number of countries that have to apply for visas, which Alfred Sant, leader of the opposition, views as contrary to political, trade, and friendly relations that Malta currently has with the countries to its south to which visa controls will have to be applied.

Provisions in the bill would "ease" deportation procedures for illegal immigrants and people in violation of immigration laws. Powers under the Immigration Act would be rearranged to help streamline processes under the Act and create efficiency by permitting the Principal Immigration Officer, rather than the Minister of Home Affairs, to issue deportation orders when immigrants are discovered to be in violation of the Act. In a further attempt to relieve the burden on the courts illegal immigration would no longer be considered a criminal offense, as the proposed penalty under the bill is arrest and deportation.

Although illegal immigration would no longer be a criminal offense under the bill, the illegal trafficking of persons remains so, and penalties against it have already been increased by the Criminal Code. In an attempt to cut off illegal immigration from the source, air and ferry operators will be subject to administrative penalties if they carry passengers to Malta without adequate travel documentation, such as passports or visas.

To streamline the procedures for dealing with illegal immigrants further, the bill proposes an Immigration Appeals Court (IAC) to hear appeals from the decisions of the Principal Immigration Officer.

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[68] Malta Department of Information, THE GOVERNMENT OF MALTA CONDEMNS ATTACKS ON US BUILDINGS, Press Release No. 1319.

The IAC has been criticized by the opposition as giving the executive quasi-judicial powers in an area that should remain with the courts.

Border controls and cooperation with other countries would be strengthened by the Minister of Home Affairs being granted the power create regulations in that area to implement agreements with other countries.[69] Although applicant countries are not required to join the Schengen Agreement[70] immediately upon accession, the bill provides Malta with an adequate legal system to do so. Despite much of the bill being criticized by the government opposition, one aspect that received mainly positive attention was that of international cooperation by joint patrols of Malta's borders.

The opposition Labour party criticized the bill as being a "shameful abdication of the national interest" that relinquishes Malta's sovereignty and provides no benefit to it.[71] Alfred Sant also expressed concern about the increase of foreign workers entering Malta that the bill would allow, considering that even a small increase would pose problems for the labor sector and increase property prices.

In addition to the bill, negotiations are being conducted with neighboring countries[72] in an attempt to come to an agreement that allows Malta to send illegal immigrants back to the country of last departure, regardless of their nationality. This would solve some of the problems of illegal immigrants and refugees who, in attempts not to be deported, dispose of all evidence of their country of nationality. There have been reports that Libya is cooperating extensively in the negotiations and has already been cooperating in this policy on an informal basis.[73]

Money Laundering Laws

Malta has been viewed as vigilant against the problem of money laundering on the Island, considering it important to be cooperative in the area to attract investment, rather than "risk ending up in the hold of terrorist networks with all the horrific repercussions such a situation may entail."[74] In response to the September 11 attacks, Malta quickly distributed the names of organizations and individuals suspected of involvement in the terrorist attacks to its authorities and financial institutions, which then conducted checks to ensure that none of the names or organizations was listed on registries in Malta.[75]

Malta published a list of persons and entities associated with terrorism in the Government Gazettes in 1999 and 2001,[76] as required by various UN resolutions, and forwarded the lists to the Central Bank of Malta. The Central Bank then distributed the information to all the credit and financial institutions

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[69]SANT VIEWS BILL AS "SHAMEFUL ABDICATION OF NATIONAL INTEREST," *at* www.timesofmalta.com, July 2, 2002.

[70]The Schengen Agreement removed immigration controls at the common borders of its EU member state signatories.

[71]*Supra* note 69.

[72]Malta's immediate neighbors are Sicily, Tunisia, Libya, and Greece.

[73]NEGOTIATIONS WITH NEIGHBORING COUNTRIES REGARDING ILLEGAL IMMIGRATION, *at* www.maltatoday.com, Apr. 28, 2002.

[74]OPERATION CLEAN HANDS, *at* www.timesofmalta.com, Apr. 6, 2002.

[75]Government Notice No. 910, GOVERNMENT GAZETTE NO: 17157, Nov. 2, 2001 and Government Notice No. 967, GOVERNMENT GAZETTE NO. 17163, Nov. 20, 2001.

[76]Government Notice No. 847, 17157, and 967.

within Malta and requested that they examine any transactions and accounts that could be linked to the names issued.[77] No such links were found.

Domestic legislation dealing with money laundering has been expanded considerably since September 11. An amendment to the 1994 Prevention against Money Laundering Act created a Financial Intelligence Unit (FIU) to investigate potential money laundering incidents.[78] The FIU is independent from the police and regulators[79] and is an administrative intermediary body that has wide monitoring and information gathering powers. It analyzes, processes, and disseminates information regarding alleged instances of money laundering. When there is a confirmed case of money laundering, the FIU passes on the information to the law enforcement agency for further investigation and prosecution.[80]

International Conventions

On November 11, 2001, to show its support and solidarity in the war against terrorism, Malta signed a number of International Conventions that relate to terrorist activities including the:

- International Convention against the Taking of Hostages
- International Convention for the Suppression of Terrorist Bombings
- International Convention for the Suppression of the Financing of Terrorism
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons

The only convention relating to terrorist activity that Malta is currently not a party to is the IAEA Convention on Physical Protection of Nuclear Material which it indicates it will to accede to soon.

Criminal Laws

The Criminal Code of Malta was amended in 2001 to introduce a sub-title relating to computer misuse. The sections apply to acts committed within and outside of Malta, if they would have constituted crimes under the sub-title if committed in Malta.[81] The Minister has the power to create regulations on how police should search computers and seize data and supplies and regarding how to handle evidence in an electronic format.[82] In addition to its domestic legislation, at the beginning of 2002 Malta signed the Convention on Cyber-Crime.

Conspiracy

A new offense of conspiracy was added to the Criminal Code in 2002. The provision makes it

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[77] Central Bank of Malta, Annual Report 2001, *at* http://www.centralbankmalta.com/updates/downloads/pdfs/AR-2001.pdf.

[78] Prevention of Money Laundering Act 1994, Ch. 373, §15.

[79] *Id.* §14.

[80] Http://www.doi.gov.mt/EN/commentaries/2002/04/tim09.asp.

[81] Ch. 9, §337E.

[82] *Id.* §337G.

an offense to conspire with others, in or outside of Malta, to commit a crime within Malta.[83]

4. Limits on Counter-Terrorist Activity

Malta's contribution in the war against terrorism has been mainly linked to its activities with the European Union. Although expressing its sympathy to the United States, its support in the war against terrorism has been almost incidental to its attempts at meeting EU obligations. It has been cautious not to align itself too strongly with the war in Afghanistan as it wants to maintain its position as a "hub" in the east-west divide due to its location only 250 miles away from Moslem Africa. The government believes that if it actively supports the bombing in Afghanistan it may alienate its eastern neighbors with whom it wishes to continue to develop friendly and trustworthy relations.[84] However, despite these concerns when it emerged that al-Qaeda groups in North Africa were preparing to launch attacks in Europe, Home Affairs Minister Tonio Borg stated that Malta's Security Service and law enforcement agencies collaborated with respective foreign agencies regarding the threat.[85]

Malta has aligned itself with EU statements on terrorism and participated in a number of conferences aimed at strengthening cooperation in the Mediterranean to combat terrorism.[86] One of its main contributions and demonstrations of its cooperation has been its money laundering legislation and compliance in ensuring that, to the best of its ability, the Islands are not used by terrorists as a base for money laundering. Its ratification of a number of anti-terrorist conventions in the immediate aftermath of September 11 and the fact that it is working to ratify the remaining convention shows its desire to meet international obligations in preventing terrorist activities.

Malta's cooperation in this area is limited by constitutional guarantees that ensure basic human rights are respected, such as the right to liberty and freedom of movement, although such guarantees can be restricted when certain circumstances are met. In addition to legal restraints, actions in the legislative area regarding terrorism and membership to the EU are being met with resistance by the government opposition who have accused the current government of neglecting the Maltese population by passing legislation to meet external obligations rather than for the benefit of its residents.

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[83] *Id*. §48A(1).

[84] *No reason to be smug,* Department of Information, Malta, Oct. 10, 2001, *at* http://www.doi.gov.mt/EN/commentaries/2001/10/but10.asp.

[85] Kurt Sansone, AL QAEDA WAKE UP CALL IN MEDITERRANEAN, June 26, 2002, *at* www.maltatoday.com.mt.

[86] Malta participated in the Enlarged European Conference, Brussels, Oct. 20, 2001, and the Extraordinary Ministerial Meeting of the Mediterranean Forum, Agadir, Oct. 26, 2001. Statement by Hon. Joe Borg, Minister of Foreign Affairs of Malta, 9th Ministerial Meeting of the OSCE, Bucharest, Dec. 3-4, 2001.

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THE NETHERLANDS

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

The Netherlands does not have a specific law on anti-terrorism, nor is "terrorism" specifically mentioned in the Criminal Code. In order to give a statutory basis to a number of investigation methods used in practice by the police and criminal justice authorities, a special title was inserted in the Code of Criminal Procedure in February 2000, aimed at standardizing and improving these new criminal investigative methods and providing undercover powers. Even though Dutch law does not have specific provisions on terrorism, the applicable provisions in the Criminal Code can be applied to acts of terrorism. As a result of the September 11 attacks on the United States, an extensive package of legislation against terrorism was introduced in Parliament by the Ministry of Justice. The bills provide improved possibilities for the detection and punishment of terrorism. The proposed amendments will leave intact the balance between the importance of detection and the protection of civil rights.

1. Legislation prior to September 11, 2001

Immigration

Asylum

The rules governing the admission and expulsion of aliens are laid down in the Law on Aliens 2000,[1] the Aliens Decree 2000,[2] and various administrative circulars. Aliens can request asylum in the Netherlands if they fear persecution in their country of origin because of race, religious beliefs, nationality, social group, or political conviction. Moreover, an alien can request asylum if his/her own government is not giving any protection and if he/she had to leave the country because of serious personal experiences. An alien can also be granted temporary asylum if he/she cannot return to his/her country because the situation is not safe enough or the Dutch Immigration and Naturalization Service (IND) has not been able to reach a decision about the request for asylum yet. The IND investigates whether or not the asylum seeker is entitled to the status of a refugee as defined under the terms of the Geneva Convention on Refugees.[3]

The asylum seeker will be informed in writing of the decision of the IND to refuse an asylum request. The applicant may then appeal to the courts an IND decision refusing asylum. An appeal must be decided within six months. Asylum seekers may stay in the Netherlands pending the outcome of their appeal. The rejection of an application for asylum will automatically mean that the asylum seeker is under an obligation to leave the Netherlands within a given period, that the reception facilities are terminated, that the asylum seeker may be evicted from accommodations, and that an order may be made for expulsion

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[1]Law of Nov. 23, 2000, STAATSBLAD [official law gazette of the Netherlands, STB.] 495, as amended, which came into effect on Apr. 1, 2001.

[2]Decree of Nov. 23, 2000, STB. 497, as amended.

[3]Convention on the Status of Refugees of July 28, 1951 (189 UNTS 150).

from the Netherlands. Every asylum seeker whose application is granted will receive the same temporary residence permit conferring entitlement to a given set of rights and benefits. The holders of a temporary residence permit will be allowed to perform paid work. They will also be eligible for student financing and accommodation. Family reunification will be possible for people who have obtained a permit, but only if they have an independent income equal to 100 percent of the supplementary benefit level. The application for family reunion by the relative must be made from abroad. If necessary, the family tie will have to be established by a DNA test. The asylum seekers who have a temporary residence permit have the obligation to follow a special program aimed at acclimatizing the asylum seeker, such as learning the Dutch language, to their new country.[4] After three years the asylum seeker with the temporary permit will be eligble, after completing the mandatory acclimatizing program, for a residence permit for an indefinite term.

Visitors

In principle every alien may enter the Netherlands, provided he/she has a valid document for border crossing or a required visa and the visit is allowed on the grounds as set forth in the Law on Aliens and the Aliens Decree.[5] Citizens of most countries, including the Unites States, are not required to have a visa to enter the Netherlands. In most cases a valid passport will suffice for a stay that does not exceed three months. If a foreigner intends to stay longer than three months, a permit is required. Nationals of other European Union countries who come to the Netherlands to work have unimpeded entrance, may seek employment, and as soon as they have found permanent employment they are granted a residence permit valid, in principle, for five years.

Tracking of Immigrants/Visitors

The Law on Aliens[6] provides for a number of rules concerning the supervision of foreigners. In general, they may be required to carry identity papers and to inform the authorities if they change their place of residence. Those who do not have permission to stay indefinitely may be required to report within a specified period after they enter the country and periodically thereafter. Under certain circumstances, their freedom of movement may be curtailed.

Based on a recent study, the number of illegal aliens is estimated to be between 46,000 (low estimate) and 116,000 persons (high estimate).[7] This high margin of uncertainty is related to the nature of the available information. In the low estimate, about half of the aliens are coming from the traditional source countries such as Turkey and Morocco, a quarter come from Afghanistan, Iraq, Iran, Somalia, and the former Yugoslavia, and a quarter from other countries.

Citizenship

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[4]Law on the Acclimatization of Newcomers, Law of Apr. 9, 1998, STB. 261, as amended.

[5]*Supra* note 1 and 2.

[6]*Supra* note 1.

[7]E. M. J. Hoogteijling, Raming van het aantal niet in de GBA gerigistreerden [Estimate of the number of people not registered in municipalities], Apr. 2002/BPA No. 177-02-SOO, Central Bureau of Statistics.

Provisions concerning citizenship are contained in the Law of the Kingdom on Dutch Nationality.[8] The law lays down rules on the acquisition and loss of Dutch nationality. Dutch citizenship is based on the principle of *jus sanguinis*. This means that if one of the biological parents has Dutch nationality, the child obtains Dutch citizenship automatically. The same applies if one of the adoptive parents is a Dutch citizen. Some persons have the option of choosing Dutch nationality. This option is available to foreigners between the age of 18 and 25 who were born in the Netherlands, the Dutch Antilles, or Aruba and who have lived there since their birth. This option is also available to persons under the age of 25 who were born in the Netherlands, the Antilles, or Aruba and who have lived there for at least three years and who have been stateless since birth.

Dutch nationality is granted by royal decree upon request. For adults who wish to be considered for naturalization, there must be no objection to their residing for an indefinite period in the Netherlands, the Antilles, or Aruba; they must have lived there for five years prior to their request and be deemed to be integrated; and, if necessary, have attended the above mentioned acclimatization program in one of these countries. In some cases shorter periods apply. Children under the age of 18 are granted citizenship at the same time unless a reservation to the contrary has been made.

Identity Cards

Dutch law does not require the holding of a national identity card. In the Law on the Obligation to Identify One Self,[9] the obligation was introduced for persons to identify themselves in various situations including, for example, at the bank, the tax office, at the beginning of new employment, at football stadiums, when receiving certain social insurance allowances, etc. Various documents may be used to identify oneself, such as a passport, a driver's license, an identity card issued by the municipality, or a special identity card issued to aliens. The card issued by the municipality may also be used as a valid travel document for certain European countries instead of a passport.

Airport Security

The operator of an airport is responsible for security at the airport, for which a very extensive plan, containing detailed rules and procedures with respect to security, must be submitted for approval by the Minister of Justice.[10] Besides specially assigned police forces, the Royal Netherlands Military Constabulary and custom officers, the law lists as security personnel those persons who are employed by a private security business that specializes in airport security and which has been officially licensed by the Minister of Justice.[11]

Wiretapping

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[8] Law of Dec. 19, 1984, STB. 628, as amended.

[9] Law of Dec. 9, 1993, STB. 660, as amended.

[10] Law on Aviation, Jan. 15, 1958, STB. 47, as amended, art. 37e.

[11] *Id.* art. 37a in conjunction with the Law on Private Security and Detective Businesses, Law of Oct. 24, 1997, STB. 500, as amended, art. 2.

The examining magistrate or the general prosecutor has the authority to order the listening into and taping of confidential communications/telecommunications; this includes the search in automated systems. The order to wiretap has to be with respect to the investigation of a serious crime such as the taking of hostages, homicide, and threats on life. The special authority is extended if the serious crime is being planned by an organized group and if this crime would constitute a serious violation of the legal order.[12]

Physical Surveillance

The Law on the Protection of Personal Information[13] provides for the the protection of privacy of persons and the processing of all kinds of personal information including the placing of cameras. The placing of cameras is permitted in many situations, for example if it is necessary for the protection of the security and if other measures to protect security have failed. In general the use of hidden cameras is not permitted. People who feel that their right to privacy has been violated by the presence of cameras may file a complaint with a special Board on the Protection of Personal Information. The Dutch government, including local governments, and the police may use camera surveillance in public areas if it is necessary for maintaining public order, traffic safety, and the investigation of crimes. Also, this may be done only if other measures to reduce crime appeared unsuccessful.[14]

Money Laundering and Financial Reporting

The major sources of illegal proceeds in the Netherlands are believed to be fraud and drug trafficking. The principal aims of the Dutch anti-money laundering systems are to protect and maintain the integrity of the financial system and to detect and prosecute activities concerning money laundering.

In order to combat money laundering, European Union legislation[15] was enacted which led to the enactment in the Netherlands of two laws that may be instrumental in the fight against terrorism. Under the Law on the Disclosure of Unusual Transactions,[16] financial institutions such as banks, insurance companies, exchange offices, credit card companies, and casinos are required to report unusual transactions of above EUR 18,151 to a special reporting office of the Ministry of Justice. Offices that neglect this reporting procedure will be deemed to have committed an economic crime under the law. The Law on Identification at Financial Services[17] requires financial institutions to ask for identification with respect to all transactions that involve more than EUR 18,151. The law specifies which documents may be used to determine a person's identity. In order to better execute treaties, international decisions, recommendations, and agreements aimed at combating terrorism, the Sanctions Law was amended. In

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[12]Code of Criminal Procedure of the Netherlands, Book I, Titles IV A and V.

[13]Law of July 5, 2000, STB. 302, effective Sept. 1, 2001.

[14]Http://www.registratiekamer.nl/.

[15] European Community Council Directive of June 10, 1991, on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, (91/308/EEC).

[16] Law of Dec. 16, 1993, STB. 705, as amended.

[17] *Id.* STB. 704, as amended.

the amendment, the authority for supervision of the enforcement of financial sanctions that could aid in the fight against terrorism, was extended.[18]

The Netherlands is a member of the Financial Action Task Force on Money Laundering and the Caribbean Financial Action Task Force and has signed and ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990.[19]

Cyber-Crime and Protection of Computer Information

In March 1993, the Dutch Law on Computer Crime came into effect, thereby amending the Criminal Code and the Code of Criminal Procedure.[20] Under the new law, a number of new acts that were not punishable by traditional Dutch criminal law were introduced. Categories such as unauthorized access to a computer, copying of data, sabotage, distribution of viruses, computer espionage, extortion, taping of data communication, theft by deceit of services, bank card forgery, espionage, pornography, and interference with communications were included. These provisions apply to computer systems, digital networks, and telephone systems.

Article 138a 1 of the Criminal Code that deals with unauthorized access reads as follows:

> A person who intentionally and unlawfully intrudes into a computerized device or system for storing or processing data or a part of such device or system is guilty of computer intrusion and liable to a term of imprisonment of not more than six months or a fine of EUR 4500 if he:
>
> a) thereby breaches any security, or
>
> b) gains access by technological means, with the help of false signals or a false key, or by assuming a false capacity.

According to several authors,[21] it can be assumed that by inserting the word "*wederrechtelijk*" or "unlawfulness" in the offense, legislators wanted to prevent persons who use their "right" from being penalized because the officially available and established grounds for justification of an action in the Criminal Code were not sufficiently present. One can think of those persons who act out of a legal duty or have an official order, whether legislative, executive, administrative, or judicial. Similarly, those who have a consensual or contractually obtained permission or authority from the person with the "right" are excluded from an otherwise unlawful conduct. Whoever acts without one of these so-called authorities, which are vested in a person, acts without right,"*wederrechtelijk.*"

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[18] Law of May 16, 2002, STB. 270.

[19] Http://www.fatf-gafi.org.

[20] Law of Dec. 23, 1992, STB. 1993, at 33, as amended.

[21] D.Hazewinkel-Suringa's, INLEIDING TOT DE STUDIE VAN HET NEDERLANDSE STRAFRECHT, 15th ed., J.Remmelink, (Gouda Quint bv,Deventer, 1996) at 244.

The Convention against Crime in Cyber Space was signed by the Netherlands on November 23, 2001. This convention regulates international cooperation for combating crime via the Internet, which is important in combating terrorism. Implementing legislation will be prepared in 2002.[22]

Bio-Terrorism

The Law on Infectious Diseases[23] provides provisions, through strict reporting procedures, to ward off the dangers resulting from the occurrence and spread of infectious diseases among human beings. The physician or hospital that suspects or determines that a patient under his/its care has a certain infectious disease has the obligation to report this finding as soon as possible, at least within 24 hours, to the head of the Municipal Health Service, who in turn advises the Mayor as soon as possible. The Mayor may in turn decide, after consultation with the physician and informing the prosecutor's office, that the person must be isolated. In case there is a danger of the spreading of the infectious disease the mayor may take other measures such as the closing and disinfecting of buildings and areas.

In case of an epidemic, several other laws may be applicable, the main ones being the Law on Disasters and Serious Accidents[24] and the Law on Medical Assistance in Case of Disasters.[25] These laws provide administrative and organizational provisions in cases of disasters. They regulate the powers and coordination of municipal, provincial, and state legal and medical persons to carry out rescue operations in cases of disasters including epidemics. They also provide regional coordination between fire departments, police departments, and rescue organizations.

Prohibited Organizations

The Constitution recognizes the right of association as a Fundamental Right.[26] However, a legal organization whose activities are contrary to public policy or order, shall, upon the requisition of the Public Prosecutor's Office, be declared prohibited by the Court and dissolved.[27] Participation in an organization that has as its object the commission of serious offenses is punishable by a maximum prison term of six years or a fine.[28]

Use of Internet

There is no law or regulation that restricts the content/materials of Internet communications which would provide "how to" information. However, the general provisions of the criminal code could be applied to the Internet transmissions such as the protection of the security of the state, disclosure of information, distribution of child pornography, etc.

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[22] Press Release, Ministry of Justice, Dec. 21, 2001, at http//www.minjust.nl:8080/c_actual.

[23] Law of June 11, 1998, STB. 394, as amended, effective Apr. 1, 1999.

[24] Law of Jan. 30, 1985, STB. 88, as amended.

[25] Law of Nov. 14, 1991, STB. 653, as amended.

[26] Constitution of the Kingdom of the Netherlands, art. 8.

[27] Civil Code of the Netherlands, Book 2, art. 20.

[28] Criminal Code of the Netherlands, Book 2, art. 140.

International Conventions on Terrorism

The Netherlands has signed a large number of treaties that can be used in the fight against terrorism. At the UN level, twelve treaties have been agreed upon in connection with the fight against terrorism. The Netherlands has ratified all of them. The two latest UN Conventions on Terrorism (on Suppression of Terrorist Bombings and on Suppression of the Financing of Terrorism) were ratified by the Netherlands on February 7, 2002.[29] The first one came into effect in the Netherlands on March 9, 2002, and the second one came into effect on April 10, 2002. The Netherlands is also party to the European Convention on the Suppression of Terrorism.[30]

Mutual Legal Assistance Treaties

The Netherlands is a party to the European Convention on Mutual Assistance in Criminal Matters[31] and has a treaty on Mutual Legal Assistance in Criminal Matters with the United States.[32] The European Union Agreement on Legal Assistance has been sent for approval to the Second Chamber and is expected to be ratified before the end of 2002.[33] Under the new rules, the existing possibilities for legal assistance between the EU countries will be modernized. In this connection, possibilities will be created for interrogating witnesses and experts internationally by video and for setting up international communal investigative teams.

Terrorist Incidents and Infiltration

The Netherlands has experienced only a few terrorist incidents. As a result of a Parliamentary inquiry into criminal investigation methods, which underlined the fact that there are a number of investigative processes that were unknown to many parties, a special Title on Special Powers of Investigations, which came into effect on February 1, 2000, was inserted in the Code of Criminal Procedure.[34] The object of the new title is to standardize and improve methods of managing criminal investigations. The public prosecutor is the appropriate official to lead the criminal investigation. Every special power of investigation can be used once the public prosecutor has issued a warrant. Prior authorization of the examining magistrate is only required if confidential communications or telecommunications are to be recorded. The law determines that the public prosecutor must have the consent of the Board of Prosecutors-General for civilian infiltration. The board must present its decision to the Minister of Justice. The law provides for three undercover powers: covert investigation (infiltration), pseudo purchase/services, and systematically obtaining intelligence about suspects through undercover investigations. These powers involve situations in which an investigating officer is active in the milieu of the suspected persons without his identity as investigating officer being known. The law

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[29]Http://untreaty.un.org/.

[30]Http://conventions.coe.int/treaty/.

[31]European Convention on Mutual Assistance in Criminal Matters of Apr. 20, 1959, http://conventions.coe.int/Treaty.

[32]Treaty between the Kingdom of the Netherlands and the United States of America on mutual assistance in criminal matters of June 12, 1981, TRACTATENBLAD (official treaty series of the Netherlands) 1981,at 188.

[33]Progress report on Action Plan on the Fight against Terrorism and Security, Appendix to letter of July 12, 2002, (5173741/502.RD) at 33.

[34] Code of Criminal Procedure, Law of May 27, 1999, STB. 245.

further covers all types of surveillance, entering or looking into locked premises, and recording of financial information. There are also regulations describing informants, civilian infiltrators, and civilians involved in pseudo purchases/services.

In case acts of terrorism occur, a Regulation[35] provides for a cooperation agreement in the fight against the crimes of terrorism. Rules are given about the cooperation and information exchange between the different regional police departments and between the police departments and the military police. The regulation provides for the collection of information at a centralized point in order to be registered and analyzed.

2. Legal Enforcement Against Terrorism

As a result of an attempt in 1975 to take Queen Juliana hostage, a law was considered in Parliament that would make it punishable to conspire for the purpose of committing terrorist acts. In 1988, a working group was established to study the feasibility of a law that would enable authorities to file charges against persons preparing acts of hostage-taking and armed assaults.[36] To date, the Netherlands has not enacted a specific law on anti-terrorism, however.

There are no special provisions or a definition of the term "terrorism" in the Criminal Code. However, there are provisions in the Code that could be applied to acts of terrorism with respect to acts committed. For example, to deprive someone unlawfully of his/her freedom can be punishable with a prison term of a maximum of eight years. If an act of murder results, the maximum prison term is 12 years.[37] Furthermore, participation in an organization whose aim is to commit crimes is punishable with a maximum prison term of six years. Likewise, participation in the continuation of an organization which was banned through an irreversible court decision is punishable with a maximum prison term of one year.[38]

Title I of the Criminal Code deals with the extraterritorial application of the criminal law of the Netherlands. According to article 3, the Dutch criminal law may be applied to anyone who commits any crime outside of the Netherlands aboard a Dutch ship or on an airplane. Furthermore, Dutch criminal law is also applicable for a number of enumerated crimes committed outside of the country by anyone. These are, for example, crimes against the state, the royal family, the public order, counterfeiting money, or crimes committed on ships or airplanes. Criminal law also applies to citizens of the Netherlands who commit certain enumerated crimes abroad. However, in order for this provision to be applicable, it not only has to be considered a crime under Dutch law, but the act also has to be punishable in the country where the crime was committed.

Other Relevant Laws/Regulations

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[35] Regulation of July 25, 1994, no. 447921/594/GBJ and EA94/u2094, STAATSCOURANT [official daily paper] 1994, 143.

[36] A.P. Schmid *and* R.D. Crelinsten, WESTERN RESPONSES TO TERRORISM 80 (Portland, Oregon, Frank Cass & Co. Ltd., 1993) at 95.

[37] Criminal Code, Law of Mar. 3, 1881, STB. 35, as amended, art. 282.

[38] *Id.* art. 140.

In the 1970s, it was felt that the Code of Criminal Procedure[39] provision regarding the rules for house searches (reasonable suspicion that a crime was committed) was not a sufficient weapon against persons who were preparing acts of hostage-taking or armed assaults. Since 1989 the authorities have been able to request a house search when there is reasonable suspicion that illegal weapons are on the premises. This provision was inserted in the Law on Weapons and Ammunition.[40] Dutch law imposes very strict control on any activity related to firearms, ammunition, and explosives. In July 1994, the Netherlands implemented EC Council Directive No. 93/15EEC on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses in the Law on Explosives for Civil Use.[41]

3. Legislation Enacted after September 11, 2001

In response to the terrorist attacks in the United States on September 11, 2001, the Dutch Prime Minister stated in a speech that these attacks were not only an attack on the United States, but an attack on all of us.[42] He further stated that the Netherlands will exert itself to the utmost in taking measures to investigate and fight international terrorism and that a whole series of measures will be put in place in the Netherlands and internationally that will ultimately eradicate international terrorism. In the meantime, a working group was formed to present a plan for the fight against terrorism. The group, presided over by the Prime Minister, consists of the Ministers of State, Interior, Justice, and Defense. An Action Plan on the fight against Terrorism and Security was developed which contained a considerable number of measures for the government to step up the fight against terrorism.[43] Among them are extensive investments in the prevention and repression of terrorist acts.

The basis of this Action Plan is a package of measures to prevent acts of terrorism. They include, first of all, preventive measures such as intensified acquisition, analysis, sharing, and distribution of information and, in addition, the surveillance and protection of vulnerable sectors and persons. After this, other measures are set forth, to increase the chances of detaining and successfully prosecuting suspects for terrorist crimes that have been committed. This involves investigating offenses, instituting criminal proceedings, and terminating the offenses. The latter context refers not only to the actual terrorist acts, but also to offenses that are committed to facilitate terrorist acts. This includes, for example, money laundering activities, trafficking in drugs and arms, and the use of weapons.

Increase in Penalties for Terrorist Offenses

The Government has stated that, as a result of the September 11 attacks on the United States, the penalty for crimes committed with a view to terrorism would be increased.[44] The relevant amendment of the Criminal Code results from the European Union (EU) executive decision on combating terrorism. The amendment has been sent to the Council of State for advice. Implementation legislation will also be

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[39] Code of Criminal Procedure, Law of Jan. 15, 1921, STB. 14, as amended, art. 97.

[40] Law of Feb. 5, 1986, STB. 41, as amended, art. 46.

[41] Law of July 7, 1994, STB. 552.

[42] NRC-Handelsblad, Sept. 17, 2001.

[43] Appendix to letter of Oct. 5, 2001, reference 5125137/501/RTT.

[44] Press Release, Ministry of Justice, Dec. 21, 2001, at http://www.minjust.nl:8080/c_actual.

prepared in the Netherlands for the EU executive decision on an European arrest warrant.

On July 5, 2002, the Dutch Minister of Justice submitted a bill to the Lower House of Parliament increasing the penalties for terrorist offenses. The maximum prison sentences for offenses such as manslaughter, gross maltreatment, hijacking, or kidnaping are to be higher if they are committed with "terrorist intent." This means the intention of arousing fear among the population of a country, or forcing a government or international organization to do something, fail to do something, or tolerate something. One can also speak of terrorist intent if an offense is committed in order to seriously disrupt or destroy the economic, political, or social structures of a country or international organization. In most cases it involves an increase of 50 percent, but if the offense already carries a maximum prison term of 15 years, such as manslaughter, then the penalty will be raised to life imprisonment or a maximum term of 20 years. The prison term for participation in a terrorist organization will be set at eight years. Its leaders can receive a maximum prison sentence of 15 years. The bill would implement Dutch obligations resulting from international agreements with respect to the fight on terrorism.[45] This is the first time that a terrorist crime or "terrorist intent" will be defined in the Netherlands Criminal Code.

Identity Cards

As a result of the September 11 attacks on the United States, discussion started again in the Netherlands as to whether or not people should be required to carry some form of identification and be required to show it at all times. According to a national survey, 66 percent of the Dutch population is in favor of an obligation to carry identification documents at all times and for the reintroduction of border controls within Europe.[46] In response, the Minister of Justice stated that hard core criminals and terrorists could always obtain some kind of false identification and therefore he was against a mandatory identification duty. One political party wants to make it mandatory for everyone to carry an identification card; however, it would have to be shown only in case there is strong suspicion that a crime has been committed. The Minister will take this suggestion into consideration and also will consider extending the above-mentioned law in order to include more categories in which one has to identify oneself, for example to include airports.[47]

As part of an extensive package of judicial legislation against terrorism, the Minister of Justice stated that the existing obligations to carry identification papers will be extended. Under the proposal, in cases of a concrete threat of acts of terrorism, the public prosecutor will be given the power to indicate an area in which the obligation to carry identification papers applies during a certain period of time.[48]

Bio-Terrorism

Soon after the September 11 terrorism attacks on the United States, the Minister of Health stated, in a letter to the Chairman of the Second Chamber of Parliament, the actions taken and to be undertaken in the defense against bio-terrorism on the advice from the National Health Council.[49] Professional

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[45] *Id*. July 5, 2002.

[46] NRC-Handelsblad, Sept. 26, 2001.

[47] NRC-Handelsblad, Sept. 27, 2001.

[48] Press Release, Ministry of Justice, Dec. 21, 2001, at http://www.minjust.nl:8080/c_actual.

[49] Letter of Oct. 11, 2001, GZB/GZ-222228.

organizations will have to take a more active role in the education of doctors, hospitals, and other healthcare providers about the possibility of the occurrence and spread of rare infectious diseases. The present structural network and reporting procedures have to be more formalized and strengthened and broader financial assistance will have to be provided. In addition, the Minister stated that a separate scenario on bio-terrorism will be developed and once this is available, regularly planned maneuvers will be held. She further stressed the importance of international cooperation in the development and production of specific vaccines, antibiotics, and antiviral means. As a precautionary measure, the Government announced the production of sufficient (at least 16 million) doses of the smallpox vaccinations for the Dutch population.[50] As of August 2002, it was reported that sufficient vaccine has been produced to vaccinate the whole Dutch population. A complete scenario for the country on bio-terrorism is expected to be completed by the third quarter of 2003.[51]

Money Laundering and Financial Reporting

In the above-mentioned Action Plan on the Fight against Terrorism and Security,[52] with respect to the financial sector, the Council of Ministers[53] intends to put a halt to the supply of funds to terrorist groups. The measures with respect to the financial sector are divided into two groups. The measures concern the financial supervision legislation and enforcement and the investigation of suspect flows of funds. The first group relates to a reinforcement of the supervision of the compliance with the two above-mentioned laws[54] and with the Law on Sanctions[55] and a report obligation for independent (financial/legal) professionals and trust offices as well as regulations on supervision of trust offices and money transfer institutions. The second group of measures focuses on a reinforcement of the financial investigation, the improvement of the exchange of information and an efficient way of reporting information to the special reporting office of the Ministry of Justice to which unusual financial transaction have to be reported with respect to terrorism-related subjects.

In June 2002, the Government approved a proposal by the Minister of Finance for measures against the financing of terrorism. The Dutch Central Bank and the Pension and Insurance Chamber will be given more authority to take action against institutions they supervise. They will also be able to impose fines. The intent of the measures is that funds for which there is an indication that they may used to finance terrorism can be frozen on short term notice if this is determined internationally.[56]

On the basis of three existing lists (UN list, Bush list, and FBI list) and on the basis of national information, the Dutch Central Bank (the Bank) has drawn up a consolidated list. The Bank has distributed this consolidated list of persons and organizations containing over 500 names in the form of

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[50] NRC-Handelsblad, Oct. 27, 2001.

[51] *Supra* note 32, at 36.

[52] *Supra* note 42.

[53] Press Release Council of Ministers, Oct. 5, 2001, at http://www.minjust.nl:8080/c_actual.

[54] *Supra* notes 15 and 16.

[55] *Supra* note 17.

[56] {NIEUWS-NED@RNW.NL}, June 17, 2002.

a circular to all institutions that are subject to supervision of the Bank such as banks, investment institutions, and trust offices. If a listed name is reported, the balances will be frozen immediately.[57]

Airport Security

In its above-mentioned Action Plan,[58] the government stated that the existing package of security measures at airports will be structurally expanded by, among other things, more intensive monitoring and random re-checking at the gate under the supervision of the Royal Netherlands Military Constabulary. In addition to the measures that have already been taken for the prevention policy at the airport itself, in the near future measures will be proposed to adjust the system of security investigations for staff. Use will be made of biometrics (iris scans) for controlled access at the airport.

4. Limits on Counter-Terrorist Activity

Fundamental rights of persons in the Netherlands invoke a duty of the government to abstain from certain actions, which can be invoked in court. Fundamental rights and liberties are not only found in the Constitution, but also in EU law, rulings of the European Court of Justice, by virtue of its supra-national character, and by various international treaties, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the International Convention on Civil and Political Rights, and the International Convention on Economic, Social and Cultural Rights. The authorities' powers are restricted by these rights. These rights can, in principle, be enjoyed by all individuals in the Netherlands, irrespective of nationality, age, or residence. Fundamental rights establish a duty of the government to abstain from some actions, and inevitably put limits on counter-terrorist activities.

Cooperation

The District Court in Rotterdam has determined that the trial of several men of Algerian nationality who were arrested in April 2002, will start in the fall of 2002, and that they will stay in detention until then. The men are suspected of being participants in criminal activities and the terrorist activities of Osama Bin Laden. They appear to be connected to the Afghan military leader Massoud, an enemy of the Taliban, who was murdered last year by two men who possessed false Belgium passports. They are suspected of trafficking in human beings, drugs, and the falsifying of passports. They will be charged with assisting the enemy of the Netherlands and its allies.[59] The government states in a progress report on the Action Plan on the Fight against Terrorism and Security of July 2002, that there is a realistic tendency in the Netherlands of radicalization and recruitment for the *Jihad* by members of extremist organizations and that the government made the right decision in October 2001 to increase investment in prevention (extension of intelligence and security agencies) and repression (extension of investigation and prosecuting capacity).[60]

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[57] Letter of the Ministers of Justice, Interior and Kingdom Relations, Finance and Defense, to the Chair of the Lower Chamber of Parliament of Oct. 5, 2001, Reference: 5125137/501/RD.

[58] *Supra* note 42.

[59] Supra note 56, July 31, 2002.

[60] *Supra* note 32, at 1.

At the request of Dutch authorities, an Algerian national was apprehended in Canada in June 2002.[61] The man, who lived at some point in time in the Netherlands, is suspected to be involved in a plan for a terrorist attack on the United States Embassy in Paris. He appeared to be connected with four people earlier arrested in the Netherlands. After an extradition procedure to the Netherlands was initiated, he was extradited at the end of June.

The Netherlands was the first European country to sign up to a U.S. security plan, aimed at reducing the risk of terrorist attacks, that allows U.S. customs inspectors to be stationed at the port of Rotterdam. The plan is aimed at screening containers before they leave foreign ports for the United States in order to screen them for the possibility of containing nuclear devices or other mass destruction weapons that could be detonated after arrival in the United States.[62]

Aruba, the Netherlands Antilles, and the Netherlands have reached a series of agreements on combating international terrorism following the September 11 attacks in the United States. The three countries of the Kingdom of the Netherlands have agreed to work together more intensively in the area of new legislation strengthening the provisions with respect to the fight on terrorism, strengthening the supervision and control on the financial sector, combating money-laundering, and increasing cooperation between the police, justice officials, and intelligence agencies.[63]

On August 9, 2002, the Communist Party of the Philippines (CPP) whose military branch is known as the New People's Army, was designated a foreign terrorist organization by Secretary of State Colin Powell. The founder of CPP, a Maoist group founded in 1969, Jose Maria Sison and his family have lived since the late 1980s in the Netherlands. On August 13, 2002, the government of the Netherlands froze the bank accounts of CPP and of Sison at the request of the United States. The government has requested from the EU that CPP and Sison also be placed on the list of European terrorist organizations, so that sanctions may be taken.[64]

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[61] NRC-Handelsblad, June 24, 2002.

[62] NRC-Handelsblad, June 26, 2002.

[63] Press Release, Ministry of Interior and Kingdom Relations, July 11, 2002.

[64] NRC-Handelsblad, Aug. 14, 2002.

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POLAND

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

The Republic of Poland is presently neither a harboring country nor a target of political terrorist activities. So far, the issue of terrorism has not created major problems like those recently occurring in the United States. As a result, Poland does not have a specific law on terrorism, nor even a specific crime of terrorism. The new 1997 Criminal Code specifies only particular offenses such as those against public safety. However, the Polish government understands the threat posed by international terrorism, particularly after September 11, 2001, and cooperates to its best ability with the United States and other countries in combating terrorism. Poland hopes to join the European Union soon and has been adjusting all its laws to EU standards. Poland has already joined all EU countries in signing the major international conventions directed at the suppression of terrorism. Pursuant to the Polish Constitution, these conventions apply directly. Like all European Union countries, Poland does not have a death penalty.

Introduction

This report deals generally with responses of the Polish legal system to political terrorism and, particularly, with Poland's cooperation with the United States in its fight against terrorism. However, it will also include other legal and practical means used to fight all kinds of terrorism and organized crime.

1. Legislation Prior to September 11, 2001

Terrorism and Immigration Laws

Immigration matters are governed by the Aliens Law.[1] The Aliens Law regulates all major issues related to status of aliens in Poland, i.e., entry and stay visa requirements, duties and right of aliens, status of asylum and refugee seekers, etc.

Visa Requirements

An alien may be refused a visa or denied entry into the territory of the Republic of Poland if there is reasonable suspicion that the alien engages in terrorist activity, participates in such activity, organizes it, or is a member of a terrorist organization.[2] An alien may also be refused a visa and entry if there is reasonable suspicion that he/she carries across the border, without the required permission, arms, munitions, explosive or radioactive materials, drugs or psychotropic substances; participates in or organizes such an activity; or is a member of an organization engaged in such an activity.[3]

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[1] Ustawa z dnia 25 czerwca 1997 r. o cudzoziemcach [The Law of June 25, 1997, on Aliens; hereafter Aliens Law], consolidated text: Dziennik Ustaw [Polish official gazette; hereafter Dz.U.], No. 127, item 1400 (2001).

[2] *Id.* art. 13, § 1 (4).

[3] *Id.* art. 13, § 1 (5).

An alien may also be refused a visa or denied entry to Poland if his/her entry is undesired due to the obligations resulting from the provisions of ratified international treaties to which Poland is a party,[4] or if he/she is an undesired individual due to other threats to national security and defense or due to the need to protect public order.[5] The Chairman of the Office for Repatriation and Aliens maintains the list of undesired persons.[6] The list, which is updated on regular basis, is transferred to diplomatic missions and consular offices of Poland abroad.

An alien may also be expelled from the Polish territory if any of the circumstances described in article 13, section 1 of Aliens Law arises, on the basis of administrative decision issued by appropriate authority.[7]

Asylum and Refugee Status

The right to asylum and refugee status is guaranteed by article 56 of the Polish Constitution which provides:

> 1. Foreigners have a right to asylum in the Republic of Poland in accordance with principles specified by law.
>
> 2. Foreigners who seek in the Republic of Poland protection from oppression may be granted refugee status in accordance with international agreements to which the Republic of Poland is a party.

The Aliens Law provides that an alien may, at his request, be granted asylum in the Republic of Poland, when it is necessary for his/her protection and justified by important interests of the Republic of Poland.[8] An alien may be deprived asylum when reasons for granting such status cease to exist or when he/she engages in an activity directed against national defense, state security, or public order.[9]

Article 32 of the Aliens Law provides that an alien may be granted refugee status in the Republic of Poland pursuant to the Geneva Convention[10] and the New York Protocol.[11] Articles 41 and 42 of the Aliens Law describe conditions for refusal to grant refugee notably status, protecting the country against alleged terrorists. They refer explicitly to article 1A of the Geneva Convention and New York Protocol and article 1F of the Geneva Convention as a basis for refusal of refugee status.[12]

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[4] *Id.* art. 13, § 1 (8 b).

[5] *Id.* art. 13, § 1 (9).

[6] *Id.* arts. 64-67 and arts. 68a-68g.

[7] *Id.* art. 52, § 1 (4).

[8] *Id.* art. 50.

[9] *Id.* art. 51.

[10] The Convention on the Status of Refugees, done at Geneva on July 28, 1951.

[11] The Protocol Concerning the Status of Refugees, done at New York on Jan. 31, 1967.

[12] *Id.* art. 42 (2) and (3).

Tracking of Immigrants/Visitors

The Law on Aliens provides for the registration of aliens who receive any status permitting them to lawfully stay in the territory of the Republic of Poland. The Law does not have any requirements for periodic checking with government authorities.

Polish Identity Law[13] requires that Polish citizens and aliens register with appropriate authorities. Aliens are required to register within 48 hours from the time they cross the Polish border.[14] After that time, they do not have any obligation to check with appropriate authorities until the expiration of their visa or permit to stay or reside in Poland. However, appropriate authorities have the right to check the legality of an alien's stay at any time.[15]

The Requirement of a Personal Identity Card

A personal identity card is required in Poland. The current regulations on this matter are contained in the Identity Law.[16] The personal identity card (*dowod osobisty*) is a document confirming the identity of a person and his/her Polish citizenship.[17]

Article 34 of the Identity Law provides that a Polish citizen who is a resident of the Republic of Poland is obliged to possess an identity document when he/she has attained 18 years of age, or has attained 15 years of age and is either employed or does not live with persons who have parental authority, nor is under any parental authority or tutelage.[18] A Polish citizen who has attained 13 years of age has the right (but no duty) to obtain an identity document.[19]

Pursuant to article 37, section 1 and 2 of the Identity Law, the following information is required in a personal identity card:

- family name, first name(s), first names and family names of both parents, and mother's maiden name
- date and place of birth
- address and place of residence

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[13]Ustawa z dnia 10 kwietnia 1974 r. o ewidencji ludnosci i dowodach osobistych [The Law of Apr. 10, 1974, on Population Registration and Personal Identity Cards, hereafter the Identity Law], consolidated text: Dz.U. No. 87, item 960 (2001).

[14]*Id.* art. 24.

[15] Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 8 marca 2002 r. w sprawie szczegolowych warunkow przeprowadzania przez Prezesa Urzedu do Spraw Repatriacji i Cudzoziemcow, Straz Graniczna, Policje i wojewodow kontroli legalnosci pobytu codzoziemcow na terytorium Rzeczypospolitej Polskiej [The Regulation by the Minister of Internal Affairs and Administration of Mar. 8, 2002, on particular conditions of verification of legality of aliens' stay on the territory of the Republic of Poland performed by the Chairman of the Office for Repatriation and Aliens, Border Patrol, Police, and the Voivods, hereinafter the Verification Regulation], Dz.U. No. 34, item 318 (2002) issued pursuant to the legislative delegation provided in art. 95, Aliens Law.

[16]S*upra* note 13, Identity Law.

[17]*Id*. art. 1, § 3.

[18]*Id.,* art. 34, § 1.

[19]*Id.* art. 34, § 2.

- sex, height, and color of eyes
- registration number of the National Electronic Vital Statistics System (*Powszechny Elektroniczny System Ewidencji Ludnosci,* PESEL)
- name of the issuing authority, date of issue and expiration of the identity card
- photo and signature of the owner

Article 37, section 3 of the Identity Law explicitly prohibits inclusion of any other data than those enumerated in article 37, sections 1 and 2. The owner of an identity document is obliged to exchange the card in the following situations:

- change of information required in the document
- the document's damage or occurrence of another situation which would make it difficult to establish the identity of its owner
- the document's expiration[20]

The Identity Law provides a penalty of imprisonment for up to one month or a fine for the following violations of the personal identity regulations:

- failure to comply with the duty to possess or exchange the document
- retaining the identity document belonging to another person
- retaining the document after loss of Polish citizenship
- failure to inform appropriate authority about finding or returning a document previously reported as lost
- failure to return to appropriate authority a document previously reported as lost when a new document has been issued[21]

Funding of Terrorist Activities; Recovery of Assets

The suppression of the financing of terrorist acts can be ensured effectively by Poland on the basis of the Law on Preventing Introduction of Property Values Originating from Illegal or Unclarified Sources into Commercial Transactions.[22] This law defines "responsible institutions" (banks, other financial institutions and entities, as well as entities engaged in activities connected with financial means and assets), defines the obligation of registration of transactions and identification of clients, contains requirements concerning exchange of information on the transactions and offenses, lists authorities competent to prevent illegal activities with financial assets, and defines conditions for blocking transactions and monitoring the activities.

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[20] *Id.* art. 40.

[21] *Id.* art. 55 in connection with art. 42.

[22] Ustawa z dnia 16 listopada 2000 r. o przeciwdzialaniu wprowadzaniu do obrotu finansowego wartosci majatkowych pochodzacych z nielegalnych lub nieujawnionych zrodel [Law of Nov. 16, 2000, on Counteracting Introduction of Property Values Originating from Illegal or Unclarified Sources Into Commercial Transactions, hereinafter the Financial Law], Dz.U. No. 116, item 1216 (2000), as amended.

Criminal provisions for violating financial transaction restrictions are contained in article 299 of the Polish Criminal Code,[23] the so called "money laundering" provision which states:

> 1. Whoever receives, transfers, or transports abroad, assists in transfer of title or possession of legal tenders, securities, or other foreign currency values, property rights or real or movable property obtained from profits or offences committed by other persons, and particularly those relating to production of or trafficking narcotics or psychotropic drugs, smuggling, counterfeiting money or securities, robbery, or committing other offenses against property of considerable value, extortion or trade in arms, ammunition, explosives, or fissile materials, or takes other action which can prevent, or make significantly more difficult, determination of their criminal origin or place of deposition, detection, or forfeiture, shall be subject to penalty of imprisonment for a term between three months and five years.
>
> 2. The punishment specified in section 1 shall be imposed on anyone who, being an employee of a bank, financial or credit institution, unlawfully receives, in cash, significant amounts of money or foreign currency, transfers or converts them, receives them under other circumstances causing justifiable suspicion as to their origin from acts specified in section 1, or provides services aiming at concealing their unlawful origin or protecting them from seizure.
>
> 3. Whoever, being responsible in a bank, financial, or credit institution for informing the management or financial supervision authority about undertaking a financial operation, fails to do so promptly in the form prescribed by appropriate laws, in spite of the fact that circumstances surrounding the financial transaction may raise a justifiable suspicion as to the origin of the property involved from sources defined in section 1.
>
> 4. The punishment specified in section 3 shall be imposed on anybody who, being responsible in a bank, financial, or credit institution for appointing a person authorized to receive information specified in section 3, or providing it to an authorized person, does not follow appropriate laws in force.
>
> 5. The perpetrator who commits the act specified in section 1 or 2, acting in cooperation with others, shall be subject to penalty of imprisonment for a term between 1 to 10 years.
>
> 6. The punishment specified in section 5, shall be imposed on a perpetrator who gains significant material benefit from commitment of an act specified in section 1 or 2.
>
> 7. When convicting for the offence specified in section 1 or 2, the court shall impose the forfeiture of items deriving directly or indirectly from the crime, even if they do not belong to the perpetrator.
>
> 8. Whoever voluntarily discloses before a law enforcement agency, information about

[23] Ustawa z dnia 6 czerwca 1997 r. Kodeks karny [The Law of June 6, 1997, Criminal Code], Dz.U. No. 88, item 553 (1997), hereafter Criminal Code. Due to lack of implementing regulations, the Code came into force on Sept. 1, 1998. The Code was subsequently amended in: Dz.U. No. 128, item 840 (1997); Dz..U. No. 64, item 729 (1999); Dz.U. No. 83, item 931 (19991); Dz.U. No. 48, item 548 (2000); Dz.U. No. 93, item 1027 (2000); Dz.U. No. 116, item 1216 (2000); Dz..U. No. 98, item 1071 (20001).

perpetrators participating in an offense or about circumstances of an offense, when such action prevented the perpetration of another offense, shall not be liable for the offense specified in sections 1-4. When the perpetrator undertook efforts leading to disclosure of such information and its circumstances, the court applies extraordinary mitigation of punishment.

Additional duties to prevent money laundering are imposed by the Banking Law[24] and the Criminal Treasury Code.[25] Article 106 of the Banking Law imposes on a bank a specific duty to prevent the use of its activities for purposes connected with a crime defined in article 299 of the Criminal Code.

Organizations to Combat Terrorism

The Republic of Poland is a monolithic state, not a federation, and there is no duality between federal and state government. Consequently, there are no federal and state agencies. Poland is divided into administrative divisions, called *voivodships*. Therefore, there are central agencies at the national level, and local agencies, e.g., *voivodship* agencies.

There are various organizations responsible for fighting terrorism. They include the police,[26] civil and military intelligence and counterintelligence agencies, Office of Government Protection (*Biuro Ochrony Rzadu*), and military forces (army, air force, and navy).

Special counter-terrorist units include:

- Independent Counter-Terrorist Units of the Police (*Samodzielne Pododdzialy Antyterrorystyczne Policji,* SPAP)
- miner(bombs)-pyrotechnical subdivisions or groups of SPAP (*referaty minersko-pirotechniczne policji*)
- special military unit: Operational-Maneuvering Response Group of the Ministry of Internal Affairs and Administration (*Grupa Reagowania Operacyjno-Manewrowa,* GROM)
- Division of Special and Counter-Terrorist Tasks of the Office of State Protection (*Wydzial Realizacji Specjalnych i Antyterrorystycznych Urzedu Ochrony Panstwa*)[27]

Other relevant organizations are:

- Office of Airport Protection (*Biuro Ochrony Lotnisk*)

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[24]Ustawa z dnia 29 sierpnia 1997 r. Prawo bankowe [The Banking Law of Aug. 29, 1997, hereafter Banking Law], consolidated text: Dz.U. No. 72, item 665 (2002).

[25] Ustawa z dnia 10 wrzesnia 1999 r. Kodeks karny skarbowy [The Law of Sept. 10, 1999, Criminal Treasury Code, hereafter Treasury Code], Dz.U. No. 83, item 930 (1999); amended: Dz.U. No. 60, item 703 (2000); Dz.U. No. 62, item 717 (2000); Dz.U. No. 11, item 82 (2001); Dz.U. No. 106, item 1149 (2001). Recent amendments related to money laundering and similar financial transactions.

[26] Organized pursuant to the Law of Apr. 6, 1990 on Police, consolidated text: Dz.U. No. 101, item 1092 (2000); amended: Dz.U. No. 41, item 465 (2001); Dz.U. No. 81, item 877 (2001). The original 1990 Law was significantly amended in 1995 by the so-called "anti-terrorist amendment."

[27]24-73 Jaloszynski, K., *Terroryzm czy terror kyminalny w Polsce* [Terrorism or Criminal Terror in Poland], AKADEMIA OBRONY NARODOWEJ [National Defense Academy], Warsaw 2001, hereinafter Jaloszynski.

- Airport Security (*Sluzba Ochrony Lotnisk*)
- Vistula Military Units (*Nadwislanskie Jednostki Wojskowe*)
- Prevention Office of the General Headquarters of Police (*Biuro Prewencji Komendy Glownej Policji*)
- Division on Counter-Terrorist Units of the Police (*Zespol do Spraw Pododdzialow Antyterrorystycznych Policji*)
- Anti-terroristic Division of General Headquarters of Police (*Wydzial Antyterrorystyczny Komendy Glownej Policji*) and 10 local counter-terrorist police units (*lokalnych pododdzialow antyterrorystycznych policji*)
- Anti-terroristic Squad (*Platoon*) of the Airport Commissioners at the Central Airport Warsaw-Okecie (*pluton antyterrorystyczny Komisariatu Lotniczego w Centralnym Porcie Lotniczym Warszawa Okecie*)[28]

Polish International Law Related to Terrorism

Poland has signed most of the important international law conventions designed to combat the crime of terrorism:

- Convention on Offenses and Certain Acts Committed on Board of an Aircraft, signed in Tokyo on September 14, 1963
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at Hague on December 16, 1970 (The Hague Convention)
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971 (The Montreal Convention)
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973
- European Convention on the Suppression of Terrorism, done at Strasbourg on January 27, 1977
- International Convention against Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979
- Convention on Physical Protection of Nuclear Material, signed at Vienna on March 3, 1980
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988.
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on March 10, 1988
- United Nations Convention on International Organized Crime, adopted by the General Assembly of the United Nations on November 15, 2000

Pursuant to article 91 of the Polish Constitution of 1997, a ratified international agreement after its promulgation in the Official Gazette (*Dziennik Ustaw*) constitutes a part of domestic legal order and

[28] 107 Pikulski, S., *Prawne srodki zwalczania terroryzmu* [Legal Means of Fighting Terrorism], Wydawnictwo Uniwersytetu Warminsko-Mazurskiego [Warmia-Mazury University Publishers], Olsztyn 2000, hereinafter Pikulski.

applies directly, unless its application depends on the enactment of a statute. According to its report to the UN Security Council, Poland is strongly committed to full and effective implementation of all these conventions and protocols.[29]

2. Legal Enforcement Against Terrorism

There is no definition of terrorism in Polish law nor any universally accepted definition in legal scholarly writings.[30] Some legal scholars cite as many as 200 definitions of terrorism.[31] Analysis of 109 definitions led to the creation of a list of the 22 most commonly used elements of the definitions in Poland.[32] After a brief analysis of these elements, it appears that the most commonly used elements of the definition of terrorism include: the use of violence and force, political aspect of the act, causing fear and terror, threat as an element of fear, and the effects and psychological reactions.[33]

Poland does not have a specific law on terrorism. Nor is there a specific crime of terrorism in Polish law or a generally accepted scholarly definition of terrorism or a terrorist act. However, the new Polish Criminal Code provides penalties for various intentional criminal acts which constitute terrorist activities or result from them. These offenses are defined in the following Chapters of the Criminal Code:

- Chapter XVI: Crimes Against Peace, Humanity and War Crimes (arts. 118-121)
- Chapter XVII: Crimes Against the Republic of Poland (arts. 127, 128, and 134-136)
- Chapter XVIII: Crimes Against State Defense (art. 140)
- Chapter XIX: Crimes Against Life and Health (arts. 148, 156, 157, and 160)
- Chapter XX: Crimes Against Public Safety (arts. 163-169 and 171)
- Chapter XXI: Crimes Against Communication Safety (arts. 173-176)
- Chapter XXIII: Crimes Against Liberty (art. 189)
- Chapter XXIX: Crimes Against Activity of State and Local Institutions (art. 223)
- Chapter XXX: Crimes Against Administration of Justice (art. 232)
- Chapter XXXII: Crimes Against Public Order (arts. 252 and 258)
- Chapter XXXIII: Crimes Against Information Protection (art. 269)
- Chapter XXXV: Crimes Against Property (art. 281)

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[29] See: The December 21, 2001 Report on the Measures Taken by the Republic of Poland to Implement the Provisions of Security Council Resolution 1373 (2001) of 28 September 2001, United Nations Security Council document No. S/2001/1275, hereinafter 2001 UN Report, at 9.

[30] A recently published legal encyclopedia does not even contain the heading of terrorism. Prasznic U.K., (Ed.) *Encyklopedia prawa* [Legal Encyclopedia], C. H. Beck. Warsaw (1999).

[31] 7 Jaloszynski, K., *Terroryzm czy terror kryminalny w Polsce* [Terrorism or Criminal Terror in Poland], AKADEMIA OBRONY NARODOWEJ [National Defense Academy], Warsaw 2001, hereafter Jaloszynski.

[32] 38 Hoffman, B., *Oblicza terroryzmu* [Faces of Terrorism], Warsaw 1999, hereafter Hoffman.

[33] Jaloszynski, *supra*, at 8.

A translation into English of certain relevant provisions of the Polish Criminal Code as provided by the Polish Government's report to the UN Security Council, September 2001, is attached, *see* Appendix I.[34]

3. Legislation Enacted After September 11, 2001

Since September 11, 2001, the Republic of Poland has been concerned with prevention and fighting of future possible terrorist attacks internally as well as internationally. To this end, Poland issued many new laws and regulations or amended existing laws and regulations in areas which relate to or are connected with the issue of terrorism. Polish cooperation with the US in its fight against international terrorism was recently recognized by President Bush on the occasion of the Polish President's state visit to the U.S.:

> Together, Poland and America are standing and fighting side by side in the war against global terrorism. From military forces…to law enforcement, terrorist financing and intelligence, Poland's support and solidarity in this great struggle has been unqualified.[35]

The U.S. State Department has also noted Poland's cooperation:

> The Government of Poland has … taken significant steps to bolster its own internal capabilities to combat terrorist activities and the movement of terrorist funds. Poland's excellent border controls, high level of airport security, and its close cooperation on law-enforcement issues have discouraged potential terrorist movements through Poland.[36]

Identity Cards and Travel Documents

Requirements concerning procedures for the issuance of appropriate documents, and protection of identity cards and travel documents are contained in several laws, i.e., the Aliens Law, the Identity Law, and other implementing regulations. Since new identity documents were introduced in Poland in accordance with EU standards, the prevention of counterfeiting, forgery, and fraudulent use of such documents has improved significantly.

Polish Identity Law[37] requires that Polish citizens and aliens register with appropriate authorities. Aliens are required to register within 48 hours from the time they cross the Polish border.[38] After that time, they do not have any obligation to check with appropriate authorities until the expiration of their visa or permit to stay or reside in Poland. However, pursuant to a new ordinance of March 8, 2002,

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[34] Appendix I to 2001 UN Report, *supra.*

[35] *President Bush Welcomes Polish President Kwasniewski in White House Ceremony [hereinafter Bush Remarks].* The text of the president's remarks, as provided by the Department of State and the White House on July 17, 2002 during the Polish President's official state visit in the United States. States New Service.

[36] 40 *Patterns of Global Terrorism 2001*, United States Department of State, May 2002.

[37] Ustawa z dnia 10 kwietnia 1974 r. o ewidencji ludnosci i dowodach osobistych [The Law of Apr. 10, 1974, on Population Registration and Personal Identity Cards, hereafter the Identity Law], consolidated text: Dz.U. No. 87, item 960 (2001).

[38] *Id.* art. 24.

appropriate authorities have the right to check the legality of an alien's stay at any time.[39]

Crime of Terrorism in Polish Criminal Law

In the absence of a specific crime of terrorism in Polish law, terrorist activities are punishable pursuant to the various provisions of the Criminal Code. The lack of a specific crime of terrorism, terrorist act, or terrorist activity in Polish law is significant. As a result of this situation, Polish criminal law, on one hand, penalizes terrorist acts described as crimes in international conventions and treaties thus fulfilling international law obligations according to generally accepted international standards. However, prosecution of a particular terrorist act under Polish law has to meet the requirements of the particular crime as described in the Polish Criminal Code, not as it is described in international conventions or treaties.[40]

An additional drawback is that some crimes described above do not constitute felonies.[41] Article 7 of the Criminal Code states that a crime is either a felony or a misdemeanor; a felony is a crime punishable either by imprisonment for a term not shorter than three years or other more severe penalty. Some of the crimes defined in the Criminal Code which involve terrorism provide a minimum penalty less than three years. Consequently, they are misdemeanors. Such a situation caused severe criticism by Polish legal practitioners and scholars, particularly after September 11, 2001.[42]

In response to this criticism, a special commission was established by the President of the Republic of Poland to identify amendments needed to the Criminal Code and Code of Criminal Procedure with the purpose of introducing more severe sanctions for some offenses of a terrorist nature. The Commission finalized its work in June 2002 by submitting to the Polish parliament draft laws amending the Criminal Code and Code of Criminal Procedure and signaling the need for a thorough modification of the Criminal Code. Proposed amendments include:

- extending criminalization of article 166 of the Criminal Code to land transport (presently article 166 refers only to seizing control of a vessel or an aircraft)
- penalization of exportation abroad of waste or similar substances in such condition or manner that it could pose threat to life or health of many persons, destruction of flora and fauna in considerable amount (presently article 183 of the Criminal Code provides only internal protection)
- criminalization of false notice on direct threat of an event endangering the life or health of many persons or property of a significant value when the perpetrator knows of its falsity (present article 172 of the Criminal Code)

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[39] Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 8 marca 2002 r. w sprawie szczegolowych warunkow przeprowadzania przez Prezesa Urzedu do Spraw Repatriacji i Cudzoziemcow, Straz Graniczna, Policje i wojewodow kontroli legalnosci pobytu codzoziemcow na terytorium Rzeczypospolitej Polskiej [The Regulation by the Minister of Internal Affairs and Administration of Mar. 8, 2002, on particular conditions of verification of legality of aliens' stay on the territory of the Republic of Poland performed by the Chairman of the Office for Repatriation and Aliens, Border Patrol, Police, and the Voivods, hereinafter the Verification Regulation], Dz.U. No. 34, item 318 (2002) issued pursuant to the legislative delegation provided in art. 95 of the Aliens Law.

[40] 295-296 Indecki, *supra.* See also109-110 Pikulski.

[41] Daszkiewicz, K., *Terroryzm znowu staje sie zbrodnia* [Terrorism Will Become a Felony Again], RZECZPOSPOLITA [Respublica–Polish daily], Sept. 25, 2001, No. 224, Prawo co dnia [Everyday Law] C3, col. 1-7, hereafter Daszkiewicz..

[42] *Id.* Daszkiewicz.

- modification of the Code of Criminal Procedure by improving control and recording of telephone calls for the purpose of criminal proceedings and extending the scope of offences in which control and recording calls may be applied (wiretapping and log register).[43]

Reorganization of Internal and External Security

Since September 11, 2001, the Republic of Poland has completely reorganized its system of internal and external security.[44] The May 2002 Law abolished the Office of State Protection created in 1990 and subordinate to the Ministry of Interior. In its place, the Law created two separate agencies: the Agency of Internal Security responsible for the state's internal security and its constitutional order[45] and the Counterintelligence Agency responsible for state's external security.[46] Both agencies are subordinate directly to the Prime Minister (and not to the Ministry of Interior) and are subject to the Sejm (Polish parliamant) supervision.[47]

Poland also passed various other laws and implementing regulations aimed at better coping with the issue of terrorism.

International Aspects

To fight terrorism on an international level, Poland collaborates with international organizations and the United States and has been a staunch ally of the United States in the war against terrorism.[48] The U.S. State Department has reported, "Poland strongly supported the campaign against the Taliban and al-Qaeda in Afghanistan, and the US Central Command has accepted Poland's offer of specialized units."[49] The Polish government reports that it is strongly committed to fully implementing the provisions of the United Nations Security Council Resolution 1373 of September 28, 2001, concerning counter-terrorism.

On November 6, 2001, directly after the terrorist attack on the United States, at the initiative of the President of Poland, Aleksander Kwasniewski, an international conference on combating terrorism took place. It was attended by 17 presidents of foreign countries (The Republic of Poland, the Czech Republic, Slovakia, Hungary, Lithuania, Latvia, Estonia, Ukraine, Yugoslavia, Slovenia, Croatia, Macedonia, Bosnia and Herzegovina, Albania, Moldova, Rumania, Bulgaria) and observed by high level representatives from the UN, EU, Organization of Security and Cooperation in Europe, NATO, United

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[43]The June 14, 2002, Additional Information to the Report on the Measures Taken by the Republic of Poland to Implement the Provisions of Security Council Resolution 1373 (2001) of 28 September 20001, United Nations Security Council document No. S/2002/677, hereinafter 2002 UN Report, at 7-8.

[44] Ustawa z dnia 24 maja 2002 r. o Agencji Bezpieczenstwa Wewnetrznego oraz Agencji Wywiadu [The Law of May 24, 2002, on Agency of Internal Security and Counterintelligence Agency, hereinafter May 2002 Law], Dz.U. No. 74, item 676 (2002).

[45]Agencja Bezpieczenstwa Wewnetrznego, hereinafter ABW (Agency of Intrernal Security), *Id.* art 1.

[46]Agencja Wywiadu, hereinafter AW (Counterintelligence Agency), *Id.*art. 2.

[47]*Id.*art. 3.

[48] A. Gerhart and R. Roberts, *A Night for Polish Pride; State Dinner Honors "Steadfast" Ally,* Washington Post, July 18, 2002, at C01.

[49]39 *Patterns of Global Terrorism 2001*, United States Department of State, May 2002, hereinafter Patterns.

States, Russia, and Belarus.[50] In its final declaration, the Conference participants declared unanimous support and cooperation with the EU and UN and close cooperation with the United States in their fight against terrorism. "The Conference resulted in an action plan and a declaration that identified areas for regional cooperation and called for nations in the region to enhance their abilities to contribute to the global war on terrorism."[51]

The President of the Republic of Poland paid an official visit on July 17-19, 2002, to the United States. During the visit, President Kwasniewski expressed Poland's support in fighting terrorism.

> Poland and the United States believe that these efforts can contribute significantly to controlling borders, cutting off terrorist financing, stemming the smuggling of individuals and equipment for terrorist purposes, and preventing bio-terrorism.[52]

In February 2002, Poland ratified the Convention on Civil Aspects of Corruption, done in Strasbourg on November 4, 1999.[53] Although Poland is still not a party to four anti-terrorist conventions and a protocol, all of them are in various stages of the ratification process in Poland. These conventions and protocol include:

- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the UN on December 9, 1999, and signed on October 4, 2001, during the 56th Session of the UN General Assembly. Poland signed the Convention on October 4, 2001, and initiated the process of ratification[54]
- International Convention for the Suppression of Terrorist Bombing, adopted by the General Assembly of the United Nations on December 15, 1997
- Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplemented to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1998
- Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on March 1, 1991

Constitutional Law

In the case of an extraordinary event, the Polish Constitution provided for the introduction of three extraordinary "states:" martial law, state of emergency, or state of natural disaster. Recently, the Polish parliament, *Sejm*, passed appropriate laws defining conditions for the introduction of an appropriate extraordinary state and adding terrorist activities as a basis for the introduction of any of the three extraordinary states.

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[50] *Warsaw Conference on Combating Terrorism*, 1 The Polish Embassy Post, Washington, DC, No. 4 (Winter 2001)

[51] 39 *Patterns*, supra.

[52] *Joint Statement by President George W. Bush and President Aleksander Kwasniewski* during the Polish President state visit in the United States, July 17-19, 2002. 3 The Polish Embassy Post, Washington, DC, No. 6-7 (Summer/Fall 2002).

[53] Ustawa z dnia 28 lutego 2002 r. o ratyfikacji Cywilnoprawnej konwencji o korupcji [The Law of February 28, 2002, on the ratification of Convention on Civil Aspects of Corruption], Dz. U. No. 41, item 359 (2002).

[54] *See* Poland's report in United Nations Security Council, document S/2002/677, hereafter UN Polish report, at 4.

The Martial Law Bill of August 20, 2002,[55] provides that the President of the Republic of Poland, at the initiative of the Council of Ministers, may declare martial law on a part or the whole territory of Poland. Martial law may be declared in a case of external threats to the state, including terrorist activities, acts of armed aggression against the territory of the Republic of Poland, or when an obligation of mutual defense against aggression arises from an international agreement.[56]

The State of Emergency Law of June 21, 2002,[57] provides that the President of the Republic of Poland, at the motion by the Council of Ministers, may declare a state of emergency on a part or the whole territory of Poland. The state of emergency may be declared in cases of threats to the constitutional order of the State, security of its citizens, or public order, including terrorist activities, when those threats can not be eliminated by the use of ordinary constitutional measures.[58]

The Law of April 18, 2002, on the State of Natural Disaster[59] provides that the Council of Ministers may declare a state of natural disaster in order to prevent or remove the consequences of natural catastrophe or a technological disaster of similar magnitude. Pursuant to article 3 of the Law, a natural catastrophe or technological disaster may be caused by terrorist activities.

4. Limits on Counter-Terrorist Activity

The limits of counter-terrorist activity are contained in many laws, including but not limited to the Polish Constitution,[60] Criminal Code, Criminal Procedure Code, Aliens Law, and many other laws mentioned in this report. These limitations are important to prevent rights of Polish citizens and aliens from inappropriate infringement by various authorities.

For example, the Constitution provides that the law protects the freedom of individuals.[61] Any limitation of the constitutional freedoms and rights may be imposed only by law (statute), and only when it is necessary in a democratic state for the protection of its security or public order, or the protection of the natural environment, health or public morals, or the freedoms and rights of other persons. Limitations cannot violate the essence of freedoms and rights.[62]

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[55] Sejm Print No. 16 was introduced on Oct. 22, 2001. The Bill on Martial Law and Competence of the Commander-in-Chief of the Armed Forces and Rules of His Subordination to the Constitutional Authorities of the Republic of Poland was submitted to the Senate and the President on June 24, 2002. Pursuant to the Polish Constitution, the Polish parliament has two Chambers: Sejm, the lower chamber, and the Senate. Each bill, after its adoption by the Sejm, is forwarded to the Senate which has 30 days to accept it, propose amendments, or reject it. After that, it is returned to the Sejm for deliberation. Finally, the bill is forwarded to the President who has 21 days to sign it or reject it.

[56] Martial Law, art. 2.

[57] Sejm Print No. 15 introduced on Oct. 22, 2001. The Bill was adopted by the Sejm and Senate and on June 24, 2002 was submitted to the President.

[58] The State of Emergency Bill, arts. 2 and 3.

[59] Ustawa z dnia 18 kwietnia 2002 r. o stanie kleski zywiolowej [hereafter the Natural Disaster Law], Dz.U. No. 62, item 558n (2002).

[60] *Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.* [The Constitution of the Republic of Poland of April 2, 1997, hereinafter the Constitution], Dz.U. No. 78, item 483. See: Appendix II (excerpts of the Constitution).

[61] *Id.* art. 31, § 1.

[62] *Id.*, art. 31, § 3.

Article 41 of the Constitution guarantees personal inviolability and security to all individuals. Any deprivation or limitation of freedom can be imposed only according to principles and procedures specified by law.[63] Anyone deprived of freedom, except by the court verdict, has the right to appeal to a court for immediate decision on the legality of such deprivation. Any deprivation of freedom shall be immediately made known to the family of, or to a person designated by the person deprived of freedom.[64] Any detained person must be informed, immediately and in a manner comprehensible to him/her, of the reasons for detention. The person must, within 48 hours of detention, be transferred to a court for disposition of the case. The detained person must be set free unless a warrant of temporary arrest issued by a court, along with specification of the charge, has been served on him within forty-eight hours of the time given to the court's disposal. The detained must be released within 24 hours.[65] Anyone deprived of freedom shall be treated in a humane manner.[66] Anyone who has been unlawfully deprived of freedom has a right to compensation.[67]

The Republic of Poland is an associate member of the European Union and hopes to become a full member soon.

Appendices

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[63] *Id.*. art. 41, § 1.

[64] *Id.* art. 41, § 2.

[65] *Id.* art. 41, § 3.

[66] *Id.* art. 41, § 4.

[67] *Id.* art. 41, § 5.

APPENDICES

Appendix I

English translation of selected sections of the Polish Criminal Code, excerpted from the Report on the Measures Taken by the Republic of Poland to implement the provisions of Security Council resolution 1373 (2001) of 28 September 2001. United Nations Security Council document No. S/2001/1275, hereafter 2001 UN Report.

Appendix II

English translation of the Constitution of the Republic of Poland adopted April 2, 1997 which entered into force on October 17, 1997, Dz.U. No. 78, item 483 (1997).

2002-13356

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PORTUGAL

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

While Portugal's total support of the war against terrorism is strong, the country's focus has been mainly on reinforcing international security measures. Portugal's legal framework against terrorism was, for the most part, in place before the September 11 attacks on the United States, although the attacks undoubtedly sped up Portugal's process of passing terrorism-related legislation that had been pending for some time.

1. Legislation Prior to September 11, 2001

Immigration

Traditionally a nation that sent immigrants abroad, Portugal has seen the flow reverse in recent years. The number of legal immigrants in the country has almost doubled in the past two years, rising from 220,000 in 2000 to 430,000 in 2002, representing eight percent of the workforce.[1] Former colonies of Africa and Latin America traditionally have been the countries of origin for immigrants to Portugal. However, today people from Eastern Europe increasingly are choosing to immigrate to Portugal. Although Portugal's level of industrialization is modest compared with other EU countries, the injection of EU financial aid has made Portugal the EU country with the most active construction sector, which increases the demand for specialized workers.[2]

Portugal is a small country which is not currently equipped to have an open-door policy towards immigration. With the votes of the Social Democrats and the Popular Party, who together enjoy a slim majority in the legislature, Parliament recently passed a bill, discussed below, that will set limits on immigration and will amend the current Law on Foreigners[3] The opposition Socialists abstained from voting while the Communists and the far Left Block voted against the bill.[4]

Polls show that the Portuguese are becoming increasingly concerned about immigration, believing that the large number of foreigners in the country have contributed to an increase in crime.[5]

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[1] *Portuguese Parliament Approves Tough New Immigration Law*, AGENCE FRANCE PRESS, July 11, 2002.

[2] *Labor-Portugal: A Wave of Workers From East Europe*, INTER Press Service, Aug. 7, 2002.

[3] Decree-Law 244/98 on Entry, Stay and Exit of Foreigners of Aug. 8, 1998, DIÁRIO DA REPÚBLICA (D.R.) of Aug. 8, 1998, as amended by Decree-Law 4/2001 of Jan. 10, 2001, in D.R. Jan. 10, 2001.

[4] *Supra* note 1.

[5] *Id.*

Asylum

Portugal's 1998 Asylum Law[6] which replaced a 1993 Law that was widely criticized as overly restrictive, governs the asylum procedure. Under the 1998 Law, the right of asylum is guaranteed to aliens or stateless people persecuted or seriously threatened with persecution as a result of an activity exercised in the State of their nationality or habitual residence, in furtherance of democracy, social and national liberty, peace among peoples, freedom, and human rights.[7]

Asylum is also guaranteed to any aliens or stateless people who, having a well-founded fear of being persecuted for reasons of their race, religion, nationality, political opinions, or membership of a particular social group, are unable or, under such fear, are unwilling to return to the State of their nationality or habitual residence.[8]

The following individuals may not be granted asylum:

- those who have performed any acts contrary to Portugal's fundamental interests or sovereignty
- those who have committed crimes against peace, war crimes, or crimes against humankind, as defined in the international instruments aimed at prevention
- those who have committed felonious crimes punishable with more than three years' imprisonment
- those who have performed any acts contrary to the purposes and principles of the UN

Asylum may also be refused if its granting causes demonstrated danger or a well-founded threat to the internal or external safety or public order.[9]

Under the Law, the Aliens and Borders Services (SEA) determines an asylum seeker's admissibility to the normal asylum procedure when the request is made at a Border Office.[10] The SEA forwards admissible asylum claims to the National Commissioner for Refugees, which provides advisory opinions on cases. The Interior Ministry makes the final asylum decision.[11]

The 1998 Asylum Law authorizes the Portuguese authorities to reject the asylum claims of applicants who arrive via "safe third countries."[12] Asylum seekers denied access to the procedure on safe third-country grounds, however, are given the chance to rebut the presumption of safety in the third country.

Applicants whose cases are found inadmissible may appeal to the National Commissioner for

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[6] LAW 15/98 ON ASYLUM, of Mar. 26, 1998 in D.R. of Mar. 26, 1998.

[7] *Id.* art. 1.1.

[8] *Id.* art. 1.2.

[9] *Id.* art. 3.

[10] *Id.* arts. 17 to 20.

[11] *Id.* art. 23.5.

[12] *Id.* arts. 13.1.b and 13.3.a.

Refugees, who has 48 hours to make a decision. Filing an appeal does not automatically suspend deportation.[13] The Commissioner may still advise the Interior Minister to grant a residence permit on humanitarian grounds as applicable.[14]

Portugal follows the Dublin Convention in asylum cases within the EU member states.[15] The main purpose of the Convention is to ensure that asylum applicants do not lodge several claims in the EU and that an application is processed by one of the Member States.

According to the Portugal Refugee Council (PRC), a majority of asylum claims are denied at the admissibility phase because the asylum seeker lacks proof of identity or nationality, or because he/she traveled through a safe third country.[16]

Asylum seekers admitted receive a temporary residence permit, valid for two months and renewable monthly until a final decision is made. Temporary residence permits also confer the right to work, to free legal counsel, medical assistance, and benefits from humanitarian organizations such as the PRC.[17]

Persons granted asylum are permitted to reside permanently in Portugal and receive a refugee identity card, travel documents, and access to the same social services as Portuguese citizens.[18]

Visitors

The Law on Foreigners[19] provides rules for the entrance, permanence, departure, and dismissal of foreigners. It covers border controls, travel documents, entrance visas, means of subsistence, study and work visas, temporary and residence visas, expulsion from the country and readmission, fees and penalties for violations thereto, etc.[20]

A foreigner is issued a passport[21] when he/she is authorized to reside in Portugal; is stateless or a national of a country without a diplomatic or consular representative in Portugal; is under diplomatic protection according to international agreements; or if he/she is abroad and exceptional circumstances recommend the issuance of this type of passport.[22]

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[13] *Id.* art. 16.

[14] *Id.* art. 8.

[15] DUBLIN CONVENTION ON ASYLUM FOR EUROPEAN UNION COUNTRIES, signed in Dublin on June 15, 1990.

[16] U.S. COMMITTEE FOR REFUGEE SURVEY 2002-PORTUGAL *at* www.unhcr.ch, June 2002.

[17] *Supra* note 6, arts. 50 to 55.

[18] *Supra* note 6, art. 6.

[19] *Supra* note 3.

[20] *Id.*

[21] DECREE-LAW 83/2000 of May 11, 2000, in D.R. May 11, 2000.

[22] *Id.* art. 35.

Foreigners are issued an identification card for foreigners; if permanent residence is granted this ID card will be replaced by a residence card.[23]

Tracking of Immigrants

Hotels and other lodging companies are required to notify the SEA within three days after the check-in of any foreigner. Each individual is given a *boletin de alojamento* (lodging card) with a unique number that will be reported and recorded with the SEA. Notification of check-out must be provided within three days after the foreigner departs.[24]

Under Decree-law 252/2000,[25] re-structuring the SEA organization, the SEA is empowered to inspect any facility including airports, ships, airplanes, etc. to control the circulation of individuals.[26] The SEA is also required to conduct its operations in cooperation with other law enforcement agencies.[27] Individuals duly notified are required to appear in person before the SEA. Violations of this obligation are subject to a number of penalties.[28]

Nationality

Portuguese nationality[29] may be acquired by:

- minor children of naturalized Portuguese mother or father[30]
- foreigners married for more than three years to a Portuguese national[31]
- an adopted child by a Portuguese national[32]
- naturalization[33] by those who comply with all of the following requisites:
  - majority of age or emancipated
  - uninterrupted legal residence in Portugal for 10 years or 6 years if the applicant is a

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[23] *Supra* note 3 art. 90.

[24] *Supra* note 3, arts. 97 and 98.

[25] DECREE-LAW 252/2000 of Oct. 16, 2000, in D.R. Oct. 16, 2000.

[26] *Id.* art. 4.

[27] *Id.* art. 5.

[28] *Id.* art. 7.

[29] LAW ON NATIONALITY, LAW 37/81 of Oct. 3, 1981, as amended by LAW 25/94 of Aug. 19, 1994, in A. Amaral, *Colectanea de Direito de Estrangeiros*, Sos Racismo, Lisboa, 1997.

[30] *Id.* art. 2.

[31] *Id.* art. 3.

[32] *Id.* art. 5.

[33] *Id.* art. 6.

citizen of a Portuguese speaking country

– knowledge of Portuguese

– close attachment with Portugal and its society

– good civic character

– means of economic support

International Conventions on Terrorism

Portugal is a participant in the following International Conventions:

- Convention on Offences and Certain other Acts committed on Board Aircraft signed in Tokyo on September 14, 1963, and ratified by Portugal on December 4, 1969
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed in The Hague on December 16, 1970, and ratified by Portugal on November 27, 1972
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation signed in Montreal on September 23, 1971, and ratified by Portugal on January 15, 1973
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, signed in New York on December 14, 1973, and ratified on September 11, 1995.
- European Convention for the Repression of Terrorism, signed in Strasbourg on January 27, 1977, and ratified by Law 19/81 of August 18, 1981, in D.R. August 18, 1981
- International Convention Against the Taking of Hostages, signed in New York on December 17, 1979, signed by Portugal on June 16, 1980, and ratified on July 6, 1984
- Convention on the Physical Protection of Nuclear Material, signed in Vienna and New York on March 3, 1980, and ratified by Portugal on September 6, 1991
- Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on February 24, 1988, and ratified by Portugal on January 17, 2002
- International Convention for the Suppression of Terrorist Bombings, signed in New York on December 30, 1997, and ratified on November 10, 2001, by Decree 31/2001 in D.R. of June 25, 2001
- International Convention for the Repression of the Financing of Terrorism, signed in New York on December 9, 1999, and ratified by Decree 31/2002 of August 2, 2002, in D.R. August 2, 2002
- European Convention on International Judicial Assistance in Criminal Matters, signed in Brussels on May 25, 2000, ratified by Portugal on October 16, 2001

2. Legal Enforcement Against Terrorism

Substantive Criminal Law

Criminal Code

The Criminal Code[34] includes two provisions on terrorist organizations and terrorism that specifically address the crime of terrorism, and other provisions that may be applied to terrorism-related activities, as follows:

Art. 300 [35] Terrorist Organizations

1. Anyone who promotes or establishes, belongs to or supports a terrorist group, organization or association may be punished with imprisonment of five to fifteen years.

2. Any group of two or more people who, acting together, with the intention of attacking the national integrity or independence, hinder, alter or subvert the functioning of State institutions provided for under the National Constitution, force a public authority to carry out an act or to abstain from doing it, or consent thereto or even intimidate certain people, group of people or the population at large through the practice of crimes:
a) against life, physical integrity or freedom;
b) against the safety of transportation or communications, including telegraphic, telephonic, radio or television;
c) that intentionally create a common risk, through arson, release of radioactive substances or toxic or suffocating gases, flooding or avalanche, dismantling of construction, contamination of food or drinking water or spreading of illness, plague, harmful plants or animals;
d) of Sabotage;
e) that include the use of nuclear energy, firearms, explosive substances or devices, inflammable means of any type, trapped mail or postal parcel;

3. Anyone who heads or leads a terrorist group, organization or association will be punished with imprisonment of 10 to 15 years;

4. When a terrorist group, organization or association or the people mentioned in para. 1 or 3 of this provision, employ any of the means mentioned under para 2.e), the punishment may be increased by up to one-third.

5. Anyone who carries out preparatory acts for the establishment of the terrorist group, organization or association will be punished with imprisonment of one to eight years.

6. The applicable punishment under this provision, may be reduced or pardoned if the participating individual prevents the happening of a crime or seriously tries to prevent the continuation of the groups, organizations or associations, or if he or she communicates with the authorities about their existence so as to prevent the crime from happening.

Art. 301[36] Terrorism

1. Anyone carrying out any of the crimes provided for under para. 2 a and d of art. 300, or any other crime through any of the means provided for under para 2 e of same provision, with [the] same intention, will be punished with imprisonment of 2 to 10 years,

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[34] M. Leal-Henriques and M. Simas-Santos, CODIGO PENAL ANOTADO, 2nd Vol., 3rd Edition, Editora Rei dos Livros, Lisboa, 2000.

[35] *Id.* art. 300.

[36] *Id.* art. 301.

or with the punishment applicable to the crime committed increased by one-third, if this is equal or more to the punishment set under this article;

2. This punishment may be specially reduced or annulled if the individual involved voluntarily abandons his or her activity, removes or considerably lessens the risk created thereby, prevents the happening of the consequences that the law intends to avoid, or assists in gathering key evidence for the identification or capture of other responsible individuals.

Art. 298[37] Public Apology of a Crime

1. Anyone, who in a public gathering, by communicating, in writing or by any other technical means of dissemination, rewards or praises another person for having committed a crime, in such a way that would encourage the perpetration of another similar crime, will be punished with imprisonment of up to six months or a fine, unless other more serious punishment is applicable.

2. The punishment may not be more serious than the one applicable to the crime for which the apology is carried out.

Art. 5[38] Crimes Perpetrated Abroad

1. Except when a treaty or international convention states otherwise, Portuguese criminal law will apply even when the crime has been perpetrated abroad when…a) it involves crimes provided for under arts. …300; 301…

Art. 287[39] Capture or Deviation [Hijacking] of Airplane, Ship or Train

1. Anybody who takes possession, or deviates from its normal route an airplane or ship with passengers will be punished with imprisonment of five to fifteen years.

2. Anybody who takes possession of a train with passengers will be punished with imprisonment of two to ten years.

3. Anybody who takes possession of or deviates [hijacks] a bus with passengers will be punished with imprisonment of one to eight years.

Art. 288[40] Attempt Against Safety in Transportation, by Air, Water or Train

1. Anyone who attempts to act against the safety of transportation by air, water or train, by:
a) destroying, stopping, damaging or rendering useless a facility, material or signal;
b) putting an obstacle to the functioning or circulation;

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[37] *Id.* art. 298.

[38] *Id.* art. 5.1.

[39] *Id.* art. 287.

[40] *Id.* art. 288.

c) giving a false notice or signal; or
d) performing an act that might result in a disaster;

And would create risk to the lives or physical integrity of others or their assets of a great value will be punished with imprisonment of three to ten years;

2. If the risk is created by negligence, the punishment is imprisonment of one to eight years;

3. If the actions under number 1 of this provision are caused by negligence, the punishment is imprisonment of up to five years.

Other Substantive Criminal Statutes

Money Laundering

Decree-Law 325/95[41] adopted measures to combat the laundering of money derived from a number of criminal activities including terrorism, in implementation of international instruments to which Portugal is a party.[42]

The statute provides for preventive and punitive measures against the laundering of funds and other goods proceeding from drug trafficking,[43] which was regulated by Decree-Law 313/93, and from other crimes, such as terrorism, arms trafficking, extortion, kidnaping, corruption, etc. [44]

Financial institutions and non-financial institutions (such as casinos; real estate agents; lotteries that pay with bearer coupons and securities; companies that trade goods of high individual value such as antiques, objects of art, aircraft, boats, cars, precious stones or metals, etc.) have the duty under this statute to identify and report to the competent authorities any suspicious clients or transactions based on the amount involved or its frequency.[45] Any breach of the duties imposed is sanctioned as a regulatory offense punishable with a fine.[46]

Law 36/94[47], as amended, on Measures for Combating Corruption and Economic and Financial Crime provides that the Criminal Investigation Department through the Central Directorate for the Fight Against Corruption, Fraud, and Economic and Financial Infractions has exclusive competence or authority

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[41] DECREE-LAW 325/95 ON PREVENTIVE AND REPRESSIVE MEASURES AGAINST THE LAUNDERING OF MONEY AND OTHER PROPERTY THAT PROCEED FROM CRIMINAL OFFENSES, of Dec. 2, 1995, in D.R. of Dec. 2, 1995.

[42] *Id.* introductory statements.

[43] *Id.* art. 1.

[44] *Id.* art. 2.

[45] *Id.* arts. 3 through 9.

[46] *Id.* arts. 11 and 13.

[47] LAW 36/94 ON MEASURES FOR COMBATING CORRUPTION AND ECONOMIC AND FINANCIAL CRIME of Sept. 29, 1994, in M.J. Antunes, CÓDIGO PENAL, 3rd Edition, Coimbra Editora, 1999.

for the investigation of crimes of terrorist organizations and terrorism.[48]

Criminal Procedure

Constitutional Provisions

Restrictions on some fundamental rights in the Portugese Constitution may take place only within the framework of limitations established by the same Constitution.[49] These limitations are that rights, freedoms, and guarantees may be restricted by law only if expressly provided for in the Constitution. Restrictions must be limited to the extent necessary to protect other rights or interests that are protected constitutionally also.[50]

Laws restricting rights, freedoms, and guarantees must be general and abstract in character, may not be retroactive and may not limit, in extent or scope, the essential content of constitutional principles.[51]

Under the National Constitution[52] the domicile of a person and correspondence of a person , as well as other private communications, are inviolable.[53] Entry into the domicile of people against their will may only be conducted under the order of a competent court and with proper formalities.[54] None may enter the domicile of any person at night without his/her consent.[55] Interference by public authorities with correspondence, telecommunications, or any other means of communication is prohibited except in specific cases provided in criminal procedure law.[56]

Exceptions to these constitutional guarantees that are applicable to terrorism-related crimes are found in the Code of Criminal Procedure as discussed below.

Code of Criminal Procedure

The Code of Criminal Procedure[57] (CCP) defines several terms used in the Code, including terrorism. Crimes provided for under articles 299, 300, or 301 of the Criminal Code are considered

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[48] *Id.* art. 10.

[49] J.M. Sardinha, O TERRORISMO E A RESTRIÇÃO DOS DIREITOS FUNDAMENTAIS EM PROCESO PENAL, Coimbra Editora, Lisbon, 1989 at 84.

[50] CONSTITUÇÃO DA REPÚBLICA PORTUGUESA, Lex, Lisboa, 2000, art. 18 ¶2.

[51] *Id.* art. 18 ¶3.

[52] *Id.* art. 34.

[53] *Id.* art. 34.1.

[54] *Id.* art. 34.2.

[55] *Id.* art. 34.3.

[56] *Id.* art. 34.4.

[57] M. Lopes Maia Goncalves, CÓDIGO DE PROCESSO PENAL, Anotado e comentado, 11th Edition, Almedina, Coimbra, 1999.

terrorism[58] as well as those actions which are intentionally attempted against the life, physical integrity, or freedom of people. These actions are sanctioned with a maximum imprisonment of five years.[59]

The special regime applicable to these crimes under the CCP is as follows:

Art. 143[60] First Non-judicial Interrogation

4. In cases of terrorism, acts of violence or highly organized crimes, the *Ministerio Publico* may decide that the arrested person may not communicate with anybody, except with an attorney, prior to the first judicial interrogation.

Art. 174[61] Search and Seizures

1. When there is suspicion that someone is hiding an object that might be related to a crime or that might assist in proving it, a search will be ordered;

2. When there is suspicion that the objects mentioned in the preceding paragraph, or the suspect or any other person who must be arrested, are located in places with limited public access, a search will be ordered;

3. Searches are authorized or ordered by the competent court, if possible in person by the judge;

4. The requirements of the preceding paragraphs will not be applicable to searches carried out by the criminal police in the following cases:
a) in cases of terrorism, acts of violence or highly organized crimes, when there is a well-founded suspicion of the imminence of a crime that will put the life or physical integrity of a person at risk;…

5. In the above case, the search must be notified immediately to a competent court which will decide its validity and may declare it a nullity.

Art. 177 [62] Search of Domicile

2. In the cases of art. 174.4.a) searches conducted in a residence or private dwelling may also be ordered by the *Ministerio Publico* or carried out by criminal police under the same conditions established under art. 174.5.

Art. 187 [63] Wiretapping

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[58] *Id.* art. 1 ¶2.a).

[59] *Id.* art. 1 ¶2.b).

[60] *Id.* art. 143.4.

[61] *Id.* art. 174.

[62] *Id.* art. 177.2.

[63] *Id.* art. 187 ¶2 a).

1. Interception and recording of telephone conversations or communications may only be authorized by the court if it is believed that it will assist in finding the truth or gathering evidence in the following criminal cases:
a) a crime punishable with imprisonment of more than three years;…

2. The court order may be requested from the judge with jurisdiction in the place where the conversation or communication might take place or in the headquarters of the entity with competence to carry out the criminal investigation when the following crimes are involved:
a) terrorism, acts of violence or highly organized crime;…
g) crimes based on conventions on the safety of air or maritime travel.

3. It is forbidden to intercept or record conversations or communications between the accused and his or her defender, except when the judge has grounds to believe they are object or part of the crime.

Article 189[64] Nullity

Failure to meet all requirements and conditions for wiretapping set under art. 187 and 188 will result in the nullification of the action.

Article 190[65] Extended Applicability

Articles 187 to 189 are also applicable to conversations or communications performed through technical means other than the telephone, especially electronic mail or any other way of electronic transmission of data as well as interception of communications between people in their presence.

Wiretapping rules apply also to interception of correspondence.[66]

It is worth noting that the legislation is more strict with wiretapping than with searches, since when wiretapping, even in terrorism-related cases, may not be performed by any authority other than the judge with prior judicial authorization. Whereas searches in dwellings may be carried out by the *Ministerio Publico* or judicial police.[67]

From the analysis of the provisions of the CCP transcribed above, it may be concluded that the constitutional civil liberties restrictions in force comply with all constitutional requisites, since: the possibility of its restriction is expressly provided for under the Constitution (arts. 18, para 2; 34 para 2, and 4 NC); restrictions are established to protect other legal interests of great constitutional relevance, such as life, physical integrity, and freedom (arts. 24, 25 para 1, 27 para 1, and 18 para 2 NC); and restrictions are not disproportionate with its purpose considering the type of violent criminality that it is

[64] *Id.* art. 189.

[65] *Id.* art. 190.

[66] *Id* . art. 179 and *Supra* note 49 at 107.

[67] *Supra* 49 at 102.

intended to fight against, such as terrorism (art. 18 para 2 and 3 NC).[68]

Other Criminal Procedure Statutes

Law 101/2001[69] on the Legal Regime of Undercover Operations for the Prevention and Investigation of Crimes provides the rules for conducting these type of operations by the Judicial Police.[70] Undercover operations are allowed in cases involving certain crimes, among them– terrorism and terrorist organizations.[71] The Judicial Police has to inform the competent court about the operation within 48 hours after the operation takes place.[72] Undercover agents may be granted false identity for this purpose and may be granted special protection for their identity in case they have to testify before the courts.[73]

Law 144/99[74] as amended by the Law of International Judicial Assistance in Criminal Matters applies to extradition, transfer of proceedings in criminal matters, enforcement of criminal judgements, transfer of persons sentenced to any punishment or measure involving deprivation of freedom, supervision of conditionally sentenced or conditionally released persons, and mutual judicial assistance in criminal matters.[75] The 2001 amendment to this Law empowered the Ministry of Justice to authorize the participation of foreign judicial authorities and foreign criminal police in criminal proceedings that take place on Portuguese territory, especially within the framework of joint criminal investigation teams of both national and foreign members.[76] This type of participation will only be authorized if reciprocity applies, and its purpose is to assist a Portuguese or foreign judicial authority or Portuguese or foreign criminal police under the authority and in the presence of Portuguese authorities. Portuguese criminal procedure laws will apply and all must be recorded in writing.[77] Requests for assistance will be refused if the assistance sought implies measures that are banned under Portuguese law or might carry penal or disciplinary sanctions.[78]

3. Legislation Enacted After September 11, 2001

Since the September 11 attacks, Portugal has undertaken a number of actions at the legislative and

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[68] *Supra* 49 at 120-121.

[69] LAW 101/1001 ON UNDERCOVER OPERATIONS FOR THE PREVENTION AND INVESTIGATION OF CRIMES of Aug. 11, 2001. in D.R.. Aug. 25, 2001.

[70] *Id.* art. 1.

[71] *Id.* art. 2 ¶e).

[72] *Id.* art. 3 ¶6.

[73] *Id.* arts. 4 and 5.

[74] LAW 144/99 ON THE LAW ON INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS of Aug. 31, 1999, in D.R.Aug. 31, 1999, as amended by LAW 104/2001 of Aug. 25, 2001, in D.R. Aug. 25, 2001.

[75] *Id.* art. 1.

[76] *Id.* art. 145 ¶5.

[77] *Id.* art. 145 ¶7.

[78] *Id.* art. 146 ¶3.

administrative level to prevent any activities that might support or promote terrorism. Most of these measures are domestic implementation of EU directives.[79]

Law 11/2002,[80] Penalties for Noncompliance with Sanctions to be Imposed Under EU Regulations, criminalizes the noncompliance with financial or commercial sanctions imposed by UN Security Council resolutions or EU regulations that carry out restrictions to the setting up or keeping of financial or commercial relationships with certain States or entities of individuals specifically identified.[81] It is expressly punished with imprisonment of three to five years.[82]

Although the International Convention for the Repression of the Financing of Terrorism was signed in New York on December 9, 1999, it was ratified by Decree 31/2002 of August 2, 2002, in D.R. August 2, 2002.

Law 10/2002[83] of January 25, 2002, amends Decree-Law 325/95 on Money Laundering to include among the crimes that might be the object of money laundering the trafficking of nuclear material.[84] It also includes corporate accountants and auditors as well as those transporting funds, public notaries, registrars, or any other entity involved in the trade of real estate and financial management companies to identify their clients when dealing with funds over €12,469,947; preservation of supporting documentation for ten years; and notification to the competent courts of any operation that might be suspected of money laundering, either because of the amount, frequency, or the economic-financial status of the parties involved.[85] Transactions made from overseas exceeding the above-mentioned amount are subject to the same control.[86]

Law 5/2002[87] on Measures to Fight Organized Crime provides for a special regime of evidence gathering for several types of organized crimes, among which terrorism is included.[88] Derogation of tax and bank secrecy[89] and voice and image recording[90] are allowed to render investigations on this type of crimes more operational. The violation of the obligation to lift professional secrecy by banking and other

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[79] Report of the Counter-Terrorism Committee pursuant to ¶6 of Security Council 1373 (2001) of Sept. 28, 2001.

[80] LAW 11/2002 ON PENALTIES FOR NONCOMPLIANCE WITH SANCTIONS TO BE IMPOSED UNDER EU REGULATIONS of Dec. 20, 2001, in D.R. Feb. 16, 2002.

[81] *Id.* art. 1.

[82] *Id.* art. 2.

[83] LAW 10/2002 of Jan. 25, 2002, ON MONEY LAUNDERING in D.R. Feb. 11, 2002.

[84] *Id.* art. 1.

[85] *Id.* arts. 8-A and 8-B.

[86] *Id.* art. 8-C.

[87] LAW 5/2002 ON MEASURES TO FIGHT ORGANIZED CRIME of Dec. 19, 2001, in D.R. Jan. 11, 2002.

[88] *Id.* art. 1.

[89] *Id.* art. 2.

[90] *Id.* art. 6.

financial institutions is subject to a fine of a up to €750,000. [91]

Constitutional Law 1/2001[92] introduced a new constitutional provision authorizing the implementation into domestic law of the European Arrest Warrant which establishes an expedited mechanism of delivery of arrested citizens.[93] Nevertheless, the extradition remains inadmissible when, in the demanding State, the crime of terrorism or the crime of participation in terrorist groups or organizations is punishable by the death sentence or other punishment that may entail irreversible damage to the physical integrity of the person.[94]

Resolution of the Council of Ministries No. 153/2001[95] provided temporary relief to airline companies whose insurance contracts were, after the September 11 attacks, unilaterally cancelling the coverage for damages to third parties due to acts of war or terrorism. Therefore, under this emergency measure the government of Portugal provided for temporary and exceptional coverage for damages caused by the war on terrorism to airlines based in Portugal, airport managing companies, and other companies rendering airport support services, in order for these companies to continue providing service. This exceptional coverage started on September 24, 2001, and continued for the period of one month. During this period, the affected companies had to re-negotiate the pertinent insurance contracts and secure commercial insurance coverage.[96] As a follow-up of this preliminary measure, Decree-law No 7/2002[97] empowers the *Instituto de Seguros de Portugal* (ISP) (Portuguese Insurance Institute) to manage the guarantee that the government will provide to Portuguese civil aviation companies for the damages to third parties caused by acts of war or terrorism. This guarantee was valid until January 31, 2002, and may be extended temporarily by the Ministry of Finance if the circumstances so require.[98]

Portugal's Parliament passed a new law[99] on July 11, 2002, that will allow the Government to amend, within 60 days, the Immigration law enacted by Decree 244/98 as amended and set annual limits on immigration from outside the EU and allow for the forced repatriation of some illegal immigrants. This law authorizes the Government, under article 161D) of the National Constitution (NC),[100] to approve legislation under the express assignment of the Parliament.

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[91] *Id.* art. 14.

[92] CONSTITUTIONAL LAW 1/2001 of Dec. 12, 2001, in D.R. Dec. 12, 2001.

[93] *Id.* art. 5.

[94] *Supra* note 79 at 6.

[95] RESOLUTION OF THE COUNCIL OF MINISTRIES NO 153/2001 of Sept. 27, 2001, on the TEMPORARY COVERAGE OF RISKS OF TERRORISM OR WAR BY THE PORTUGUESE GOVERNMENT, in D.R. Oct. 18, 2001.

[96] *Id.* arts. 1 to 3.

[97] DECREE-LAW 7/2002 ON THE GUARANTEE OF THE GOVERNMENT OF PORTUGAL TO PROTECT CIVIL AVIATION COMPANIES FOR THE RISKS OF WAR AND TERRORISM of Dec. 28, 2001, in D.R. Jan. 9, 2002.

[98] *Id.* art. 3.

[99] LAW 22/2002 of Aug. 21, 2002, in D.R. Aug. 21, 2002, amending the LAW ON ENTRY, STAY AND EXIT OF FOREIGNERS Decree-Law 244/98 of Aug. 8, 1998, in D.R. Aug. 8, 1998, as amended by Decree-Law 4/2001 of Jan. 10, 2001, in D.R. Jan. 10, 2001.

[100] *Supra* note 50, art. 161 ¶d).

Under the terms of the law drawn up by the center-right Social Democrat led government, Portugal will set annual quotas, starting in 2003, on immigration from non-EU countries. The quotas will be based on labor market studies and will be updated every two years.[101]

Foreigners wishing to come to Portugal, under the new law, must apply to immigrate from their home countries. Employment positions in Portugal will be advertised abroad, and only those who are hired for one of those jobs will be allowed to enter the country.[102]

The Law also allows for the forced repatriation of illegal immigrants who arrived in the country after November 30, 2001, between 30,000 and 60,000 people according to estimates.[103]

Companies found to employ clandestine immigrants can be fined heavily and be forced to pay for their repatriation.[104]

Permanent residence permits will only be delivered after eight years of legal residence in Portugal, reduced to five years for immigrants from Brazil and Portuguese-speaking countries in Africa.[105]

With the passage of this law on July 11, 2002, Portugal became one of the latest EU countries to tackle the controversial issue of immigration.[106]

Draft Legislation

The process of accession to the Convention for the Marking of Plastic Explosives for the Purpose of Detection is being pursued at the domestic level.[107]

The arrest of terrorists across Spain in September 2001, with some made near Portugal's unguarded border, posed the question of whether the country's intelligence services were capable of tracing possible terrorists.[108] In this regard, the government of Portugal has been considering the restructuring of the country's intelligence services, defense, and police force[109] and has recently unveiled a new defense plan that calls on the country's armed forces to make the struggle against drug and terrorism a priority.[110] This plan proposes an increase in defense spending from 1.3 to 1.9 percent of the gross

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[101] *Supra* note 99, art. 2 ¶f).

[102] *Supra* note 99, art. 2 ¶g).

[103] *Supra* note 1.

[104] *Supra* note 99, art. 2 ¶r).

[105] *Supra* note 99, art. 2 ¶¶g) to m).

[106] *Id.*

[107] *Supra* note 79, at 8.

[108] *Id.*

[109] *Id.* at 3.

[110] *Terrorism and Drugs Top Portugal's New Defense Agenda*, AGENCE FRANCE PRESS, Lisbon, Aug. 7, 2002.

domestic product, which is the average spent by NATO's European members, as well as the installation of a rapid-response system to terrorist threats and increasing active collaboration with the global fight against terrorism.[111] The defense agenda also calls for Portugal to increase its involvement in its former colonies, calling for a redefinition of "borders" to where the Portuguese language is spoken.[112] The project also proposes that Portuguese troops participate in rescue operations, fire prevention, and emergency response while aligning the country's strategic interests with fighting against biochemical weapons. This plan officially named *Bases do Conceito Estrategico de Defesa Nacional* is pending Parliament's approval which may happen in November 2003.[113] The assignment to the Armed Forces with the fight against terrorism has been challenged as unconstitutional, since according to the Constitution the Armed Forces are in charge of the protection of the State against a foreign attack while the Security Forces, such as the police, do so internally.[114]

4. Limits on Counter-Terrorist Activity

Even though Portugal did not need to deploy men to the front line, nor has it been officially identified as a venue from where terrorists operate or where they might have had financial dealings, as is the case of neighboring Spain, Portugal is not distant from the current conflict. After the September 11 attacks, Portugal has reinforced international security measures, with airports serving as the prime example,[115] and has also ordered the Bank of Portugal to "thoroughly inspect" all bank accounts both on the mainland and in Madeira.[116]

On September 29, 2001 Portugal authorized the United States to use Lajes Air Base and Portugal's national airspace for operations in the fight against terrorism, based on a 1995 Defense Agreement between Portugal and the U.S. and also due to military solidarity among fellow NATO members.[117]

As chair country of the Organization for Security and Cooperation in Europe (OSCE) for 2002, Portugal has taken a number of initiatives to improve cooperation among member countries in the fight against terrorism. In this context, Portugal organized the Summit on the Prevention of and Fight against Terrorism in Lisbon on June 12, 2002, for all members of the OSCE. This conference drafted a Declaration of the OSCE against terrorism which emphasizes the need to improve sharing of information and expertise to tackle effectively the problems which terrorism may utilize, such as trafficking in arms, drugs, and human beings, and organized crime.[118] Police, border controls, judicial infrastructure, and law enforcement capacities were identified as areas where international cooperation should be further

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[111] *Id.*

[112] *Id.*

[113] E. Mascarenas, *Defesa: Droga é Ameaça Nacional* in DIÁRIO DE NOTICIAS, of Aug. 20, 2002.

[114] *Ataque ao Conceito de Defesa*, of Aug. 7, 2002 in CORRÉIO DA MANHA .

[115] *Portugal one of Europe's Safest Places*, of Oct. 13, 2001, in FRONT PAGE ON LINE, *at* WWW://THE-NEWS.NET at 1.

[116] *Guterres ready for War,* of Sept. 29, 2001, in FRONT PAGE ON LINE, *at* WWW://THE -NEWS.NET at 1.

[117] *Portugal Approves Use of Lajes Base and Airspace by U.S.,* of Sept. 29, 2001, *at* www://The-News.net at 1.

[118] *High-Level Officials agree to Coordinate Fight Against Terrorism* of June 13, 2002, in OSCE latest news *at* www.osce.org/news.

developed.[119]

The Ministry of Defense has recently approved a program on bio-terrorism for the research on bacteria, virus, and toxins that might eventually be used in a terrorist attack. It includes the creation of a laboratory that will specialize in these type of organisms. This laboratory will work in coordination with the Laboratory on Food Hygiene and Safety.[120]

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[119] *Id.*

[120] E. Mascarenas, *Defesa: marinha Investiga Programa para Proteccao de Navios,* of Aug. 20, 2002, in DIARIO DE NOTICIAS.

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SLOVAK REPUBLIC

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Slovak Republic has a special law on terrorism and is also a party to the European Convention on the Suppression of Terrorism, and to other conventions dealing for the suppression terrorist acts. It is not a member of the European Union nor of NATO, but is preparing itself for membership in these organizations. It hopes to acquire membership in the foreseeable future.

Introduction

The Slovak Republic is a small land-locked country in the center of Europe. It has only about five million inhabitants. It is not a heavily industrialized country but has a prospering agricultural economy. By agreement with the neighboring Czech Republic, these two entities dissolved te existing federation of Czechoslovakia as of January 1, 1993. There are many immigrants and asylum seekers from eastern countries but they generally try to reach Germany and the other countries of Western Europe, rather than staying in Slovakia. Slovakia has, up to now, no incidence or terrorist activities.

1. Legislation Prior to September 11, 2001

Asylum

Asylum is regulated by the Law on Refugees.[1] An asylum seeker can make a request for asylum, orally or in writing, to the police at the border or at the police station within 24 hours of his/her entry. Also, the asylum seeker must make a written request for asylum to the Ministry of the Interior, which will grant asylum if it is found that the person is being persecuted for political reasons in his/her state of residence or is fearful of persecution because of race, religion, nationality, membership in a particular social group, or adherence to certain political views. Asylum can also be granted for family reunification or humanitarian reasons. The asylum seeker is entitled to free accommodation, food, health care, and other services. A successful applicant is granted permanent residence.

Asylum will not be granted if the applicant does not establish the grounds mentioned above, if he/she committed a crime against peace or humanity, comes from a safe country, or was convicted of an intentional serious crime or of acts in breach of the principles of the Charter of United Nations. An asylum application will be denied within 30 days for apparent untrustworthiness if the applicant's claims are clearly untrustworthy, if he/she destroys or conceals travel documents or uses a false identity. Otherwise, the Minister of Interior will make a decision within 90 days. An appeal against a denial of asylum may be filed with the Minister of Interior who will decide within 30 days. A further appeal may be filed with the court.

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[1] Law of Nov. 14, 1995, on Refugees, No. 283, COLLECTION OF LAWS, as amended by Law of Sept. 2000, No. 309, COLLECTION OF LAWS.

Foreigners

Foreigners must hold a passport.[2] . Visas cannot be obtained at the border, but only at Slovak embassies and consulates abroad. Both short-term and long-term visas are issued for conducting business, employment, study, and other purposes and may be extended. A permit for temporary stay for a fixed number of years may be issued for the same purposes and may be extended. Foreigners who are guilty of offenses may be expelled but not to a country where their lives would be endangered because of their nationality, race, religion, membership in a particular social group, or adherence to certain political views.

Tracking of Immigrants/Visitors

There is no provision that aliens should check-in with the authorities within a certain time.

Acquisition of Citizenship

By birth:[3] Citizenship is acquired by birth if at least one of the parents is a Slovak citizen, or if the parents are stateless, or if the parents are foreigners and the child does not acquire the citizenship of either by birth.

By finding:[4] A child born in the Republic or found there acquires Slovak citizenship unless it is shown that he/she acquired another citizenship by birth.

By naturalization:[5] Citizenship may be acquired by an applicant who has permanently resided in the Republic for at least five years, has knowledge of the Slovak language, and was not convicted of an intentional crime in the last five years. Citizenship may be granted to an applicant without his/her complying with the above requirements if he/she marries a Slovak citizen, or if he/she significantly contributed to the economic, scientific, cultural, or technical development in the Republic.

Mutual Legal Assistance Treaties

The Slovak Republic is a party to the European Convention on Mutual Assistance in Criminal Matters.[6]

Identity Cards

Every person 15 years and older permanently residing in the Republic must have an identity card. The card is machine readable and lists the following: name, surname, surname at birth, personal number, date, place and district of birth, sex, permanent residence, number and series of identity card, date of issue, issuing office, and expiration date. Optional data are: indication of serious illness, blood group,

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[2] Law of Dec. 13, 2001, on Foreigners, No. 48 of 2002, COLLECTION OF LAWS. See below, section 3, for discussion of provisions enacted after Sept. 11, 2001.

[3] Law of Jan. 19, 1993, on Citizenship, No. 40, COLLECTION OF LAWS, art. 5.

[4] *Id*.

[5] *Id*. art. 7.

[6] European Convention on Mutual Assistance in Criminal Matters of Apr. 20 1959, in force June 12, 1962. Slovak Republic signed it Feb. 13, 1992, ratified it Apr. 15, 1992, and it entered into force for the Slovak Republic on Jan. 1, 1993. Council of Europe, Treaty No. 30, Chart of Signatures and Ratifications, July 22, 2002.

and university degree. Identity cards are issued by the district offices of public administration.[7] They are valid for 10 years, but those issued to persons over age 60 are valid indefinitely.

Physical Surveillance and Wiretapping

Physical surveillance and wiretapping may be ordered by the court in investigations of serious crimes, like homicide, robbery, abduction of minors, and the taking of hostages.[8]

Financial Reporting

Financial institutions such as banks, including foreign banks, insurance companies, stock exchanges, casinos, lotteries, money changers, realtors, postal services, auditors, tax advisers, etc., must be alert to unusual commercial transactions that may result in money laundering and obtain full identification of a physical or legal person making a transaction exceeding 15,000 Euros at once or in installments, within 12 consecutive months. A person entering a casino must be identified. Financial institutions must prepare their own plans for combating money laundering, keep all records of transactions and identification of clients for 10 years, and refuse to carry out an unusual commercial transaction or delay it for 48 hours and immediately inform the financial police. Any loss accruing to the parties due to the delay of transactions found harmless will be paid by the State. Neither the financial institutions nor their employees may disclose information on dealings, except to the police and the courts. Unauthorized disclosure is punishable by a fine of up to 100,000 Crowns (US$l equals about 45 Crowns). The financial police supervise compliance with the provisions of applicable laws, keep all information confidential, have access to all documents held by the obligated persons, and may impose fines of up to two million Crowns for breaches of the Money Laundering Law.[9]

Money laundering is punishable by provisions of the Criminal Code. It punishes with imprisonment of up to three years or by a fine anyone guilty of the concealment of property acquired by criminal activity, or the concealment of the source of such property. The punishment is imprisonment from 1 to 5 years if considerable profit is realized; from 5 to 8 years if the act is committed by a member of an organized group; and from 5 to 12 years if committed by a public officer or a member of a group active in several countries.[10]

A person who does not disclose that another person may have committed acts of money laundering, or does not disclose suspicious financial operations is punishable by imprisonment from two to eight years or a fine.[11]

Prohibited Organizations

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[7] Law of July 6, 1993, on Identity cards, No. 162, COLLECTION OF LAWS, as amended by Laws No.13 and No. 222/1996, COLLECTION OF LAWS.

[8] Code of Criminal Procedure, Law of Nov. 29, 1961, No. 14l, COLLECTION OF LAWS, Consolidated Text of Apr. 5, 2001, No. 120, COLLECTION OF LAWS, art. 88.

[9] Law of Oct. 5, 2000, on Money Laundering, No. 367, COLLECTION OF LAWS, as amended by Law of July 2, 2002, No. 445, COLLECTION OF LAWS.

[10] Criminal Code, Law of Nov. 29, 1961, No. 140, COLLECTION OF LAWS, Consolidated Text of Mar. 18, 2000, No. 85, COLLECTION OF LAWS, as amended, art. 252.

[11] *Id*. art. 252a.

The Slovak Constitution guarantees the right of association. This right may be limited only by law if it is necessary for the security of state, public security and public order, the prevention of crime, or the protection of the rights and freedoms of others.[12] Association is prohibited for the purpose of limiting the rights of persons because of their nationality, race, sex, origin, political or other views, religion, or the promotion of intolerance and hatred.[13] An association for the purpose of committing criminal acts against persons or property is prohibited and is punishable by imprisonment from 3 to 10 years or the confiscation of property. It is defined as an association of at least three persons with an internal structure and division of activity aimed at profit by engaging in a systematic exercise of criminal activity.[14]

Use of Internet

The Slovak Republic does not have a law or regulation dealing specifically with the Internet. There is no law or regulation to restrict the content of Internet communications which would provide "how to" information.

All provisions protecting secrecy, e.g., provisions of articles 106 and 107 of the Criminal Code, which prohibit the disclosure of classified information by any means, are also applicable to disclosure via the Internet.[15]

International Conventions on Terrorism

The Slovak Republic is a party to the following international conventions:

- European Convention on the Suppression of Terrorism[16]
- Convention for the Suppression of Unlawful Seizure of Aircraft[17]
- International Convention Against the Taking of Hostages[18]
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction[19]

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[12] Slovak Constitution of Sept. 1, 1992, No. 460, COLLECTION OF LAWS, Consolidated Text of Apr. 13, 2001, No. 135, COLLECTION OF LAWS, art. 29.

[13] Law of Mar. 27, 1990, on Association, No. 83, COLLECTION OF LAWS, as amended by Law of Feb. 18, 1993, No. 62, COLLECTION OF LAWS.

[14] Criminal Code, *supra* note 10, arts. 89(27) and 185a.

[15] *Id.* arts. 106 and 107.

[16] European Convention on the Suppression of Terrorism of Jan. 27, 1977. It entered into force on Aug. 4, 1978. The Slovak Republic signed the Convention on Feb. 13, 1992 and ratified it on Apr. 15, 1992; it entered into force for the Slovak Republic on Jan. 1, 1993, Council of Europe, Treaty No. 90, Chart of Signatures and Ratifications, July 22, 2002.

[17] Convention for the Suppression of Unlawful Seizure of Aircraft (Highjacking), done at The Hague Dec. 16, 1970; entered into force Oct. 14, 1971, 22 UST 1641; TIAS 7192; 1973 UNTS 106.

[18] International Convention against the Taking of Hostages, done at New York Dec. 17, 1979; entered into force June 3, 1983. TIAS 11081.

[19] Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London, and Moscow Apr. 10, 1972; entered into force Mar. 26, 1975; 26 UST 583; TIAS 8062; 1015 UNTS 163.

- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes[20]

The Republic also signed the Convention for the Suppression of Terrorist Bombings[21] and the Convention for the Suppression of Financing of Terrorism.[22]

2. Legal Enforcement Against Terrorism

The Criminal Code provides for the punishment of individual crimes likely to be committed by terrorists. Homicide and violence against persons are punishable by imprisonment up to life;[23] kidnapping and the taking of hostages are punishable by imprisonment from three years up to life;[24] the exposure of persons to the danger of death or severe injury or the exposure of property to destruction by fire, flood, explosives, gas, electricity, or other means is punishable by imprisonment up to life.[25]

The association of persons for the purpose of commission of crimes is punishable by imprisonment from 3 to 10 years or the confiscation of property. Accessories and persons supplying the group with weapons, ammunition, lodging, etc. are equally punishable.[26]

The making of threats on the life of persons or their property is punishable by imprisonment of up to two years.[27] Criminal proceedings instituted against an accused are subject to due process of law.[28]

3. Legislation Enacted After September 11, 2001

Immediately after the terrorist attacks of September 11, the Slovak Government approved a number of institutional and organizational, legislative, and special preventive measures aimed at combating terrorism. On September 21, 2001, the Counter-Terrorism Crisis Management Unit was established at the Ministry of Interior to coordinate the action of the Police Force in case of a crisis caused by terrorist acts. Furthermore, the Crisis Management Staff established at the Ministry of Defense is to monitor current developments in the world and situations in the territory of Slovakia and within the defense sector in order to adopt further adequate preventive measures.

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[20] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, with annexes, done at Paris Jan. 13, 1993; entered into force Apr. 29, 1997; [Senate] Treaty Doc. 103-21, 32 I.L.M. 800 (1993).

[21] Convention for the Suppression of Terrorist Bombings, UN Res. A/RES/54-164, Dec. 15, 1997, opened for signature at New York, Jan. 12, 1998.

[22] Convention for the Suppression of Financing of Terrorism, UN Res. A/RES/54-109, Dec. 9, 1999, opened for signature at New York, Jan. 10, 2002.

[23] *Id*. arts. 219-222.

[24] *Id*. arts. 93a, 232, and 234a.

[25] *Id*. art. 179.

[26] *Id*. arts. 89 (27) and 185a.

[27] *Id*. arts. 154, 156, 196, and 197a.

[28] Slovak Constitution, *supra* note 12, art. 17.

Law Against Terrorism

The Slovak Republic enacted a law against terrorism by creating a new article in the Criminal Code.[29] It punishes any person who threatens to commit or commits a serious crime against the life or health of persons or against property with the intent to terrify the population, destabilize, or destroy the constitutional, political, economic, or social order of the country or force the government or an international organization to do, or abstain from doing, something. The punishment is imprisonment from 12 to 15 years or imprisonment for life and confiscation of property. If the act is committed by a member of a terrorist group or in an especially cruel way; if it causes serious injury or death of several persons; or if it is committed against public officers, internationally protected persons, the armed forces, or the police the punishment is imprisonment for life. A terrorist group is defined as a group of at least three persons set up for a time to commit acts of terror or terrorism.[30]

Asylum

The Law on Asylum was enacted on June 20, 2002.[31] It consolidated the previous Law of November 14, 1995, on Refugees, No. 283, Collection of Laws, with the Law of September 2000, on Refugees, No. 309, Collection of Laws under the new title of Law on Asylum. It provided for definition of the terms used in the Law, expanded the details concerning procedure and provided for the cooperation of the Slovak authorities with the Office of the High Commissioner for Refugees of the United Nations.

Foreigners

The Law on Foreigners was enacted by the Law of December 13, 2001, No. 48, Collection of Laws. By intergovernmental agreement with certain countries, a visa is now not required for a stay up to 30 days. Foreigners seeking entry have to carry proof of medical insurance for the payment of all costs of hospitalization and medical care. They have to show evidence of funds to pay for his/her stay in the amount of US$50 per person per day in any convertible currency. A short-term visa may be issued for stays up to 90 days, and long-term visa for stays exceeding 90 days. A permit for permanent residence is issued first for three years, and then extended for unlimited time. The permit is stamped into the passport or issued separately as an identification card.

Financial Reporting

The Law on Money Laundering was amended by the Law of July 2, 2002, No. 445, Collection of Laws, and the Law on the Office of Supervision of the Financial Market, which created that Office, was enacted on February 5, 2002, No. 96, Collection of Laws.[32] The amendment Law of July 2, 2002, No. 445, Collection of laws deals with the identification of clients of financial institutions. It introduced, for the first time, an amount expressed in euros, although the euro is not legal tender in Slovakia. The financial institutions must obtain full identification of a physical or legal person making a transaction exceeding 15 thousand euros at one or in installments, within 12 consecutive months. Also a person entering a casino must be identified.

The Office supervises dealings of financial institutions such as stock brokers, investment agents,

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[29] Law of June 19, 2002, amending the Criminal Code, No. 421, COLLECTION OF LAWS, art. 94.

[30] Criminal Code, *supra* note 10, arts. 89 (28), 93, and 94.

[31] Law of June 20, 2002, on Asylum, No. 480, Collection of Laws.

[32] Law of Feb. 5, 2002, on the Office of Supervision of the Financial Market, No. 96, COLLECTION OF LAWS.

financial exchanges (e.g., stock exchanges), mutual funds, insurance companies, and branches of foreign institutions operating in Slovakia. It closely cooperates with the Ministry of Finance and may exchange information with foreign offices of financial supervision. It has legal personality. Its executive organ is the council of five members appointed by the government for a term of five years. They may be reappointed for another consecutive term. The head of the office administration is the director-general appointed by the government at the proposal of the minister of finance for a four-year term. He/she may be reappointed for another consecutive term. A supervisory board of five members supervises the functioning of the Office. It has five members appointed by the government for a six-year term. They may be reappointed for another consecutive term. The Office may impose fines of up to 500,000 Crowns for a breach of the law governing the institutions and their dealings. The Office submits an annual report on its activities to the government by June 30, for the preceding year.

4. Limits on Counter-Terrorist Activity

In reaction to the terrorist attacks in the United States, the Slovak government decided to increase protection in airports, railways, and posts.[33] Protection of civilian air transport will be completed legislatively so that it complies with EU standards. Monitoring devices will be installed at these railway junctions: Bratislava, Zilina, Zvolen, Kosice, Cierna, Tisou, and Kuty. Currently, the Slovak postal system has only one special protection department that can detect explosives. Other special equipment, i.e., electronics, metal detector, was loaned free of charge to the Post Office.

On September 18, 2001, Slovakia notified the United States that it would grant blanket overflight and basing rights to all NATO coalition partners. It dispatched a liaison officer to Central Command HQ on March 10, 2002. It will deploy an engineering unit into Afghanistan. Additionally, Slovakia has offered a Special Forces regiment, NBC reconnaissance units, and mobile field hospital to help the U.S. anti-terrorist effort in Afghanistan.[34]

The UN Security Council Resolution 1373 (2001) on threats to the international peace and security caused by terrorist acts requested Member States to take firm action against terrorism in all its aspects. In its Report to the UN Security Council Counter-Terrorism Committee Pursuant to Security Council Resolution 1373 (2001), the Slovak Republic stated that it joins UN Member States in their commitment to take all necessary measures to protect values targeted by terrorism. The Slovak Republic welcomed and fully supported the Resolution 1373, unanimously adopted on September 28, 2001, as well as the establishment of the Counter-Terrorism Committee for the monitoring of the implementation of this resolution.[35]

The Slovak Republic actively participates in the international legal framework concerning the fight against terrorism and takes measures to implement, within its domestic legislation, all obligations under anti-terrorist treaties, as well as other measures to prevent and suppress terrorism.

The legislative framework for the prevention and suppression of international terrorism and regulating the detection and punishment of perpetrators of terrorist acts includes applicable instruments of international law, to which the Slovak Republic is a party, as well as the Slovak domestic legislation. It is described in the report by the Slovak Republic to the UN Security Council Counter-Terrorism Committee and in this report. Laws are enforced by the police. No act of terrorism has occurred to date in the Slovak Republic.

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[33] Global News Wire-Asia Africa Intelligence Wire, 2002 BBC Monitoring/BBC, May 9, 2002, via LEXIS/NEXIS.

[34] The U.S. Mission to NATO, NATO and other allied contributions to the War Against Terrorism, defense link 06/14/2002.

[35] UN Doc. S/2001/1225 and S/2002/730.

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SPAIN

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Before the September 11, 2001, attacks, Spain, which has for many years faced the threat of domestic terrorism, had laws designed to remove some of the legal encumbrances facing counter-terrorism investigators. Spanish anti-terrorism initiatives were primarily geared towards fighting the Basque separatist group ETA rather than international terrorism. After the September 11 attacks, Spain made major arrests and provided important documents revealing the movements of al-Qaeda members. During its presidency of the EU, Spain promoted a number of terrorism-related initiatives such as the European Arrest Warrant and the freezing of terrorist assets.

1. Legislation Prior to September 11, 2001

Immigration

It was the 1978 Constitution of Spain[1] which first recognized the constitutional rights of foreigners providing that aliens in Spain may enjoy the public freedoms guaranteed to Spanish nationals, except for the right to vote in non-municipal elections. The national Constitution also provides that extradition will be granted only in compliance with a treaty or the law, in keeping with the principle of reciprocity. Excluded from extradition are political crimes. The Constitution expressly provides that acts of terrorism are not considered political crimes.[2]

Since then, both the present Law on the Rights and Obligations of Foreigners (passed in January 2000 and amended in December 2000[3] and the earlier 1985 Law[4] dealt with the issue of immigration from a police standpoint, dealing with punishment for violations of the immigration rules rather than addressing the management of waves of immigration and the entrance of many foreigners into the Spanish labor market. For example, under the immigration law in effect prior to the 2000 statute on immigration, the government could only notify the illegal alien of the need to leave the country while imposing a fine.[5]

The new Law on Foreigners (LOEXIS)[6] entered into effect on January 23, 2001, in spite of strong opposition from the opposition party and non-government organizations, because of its restrictive

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[1] CONSTITUCIÓN ESPAÑOLA, in *Boletin Oficial del Estado* (B.O.E.) Dec. 29, 1978.

[2] *Id.* art. 13.

[3] LAW ON FOREIGNERS, Organic Law 4/2000 of Jan. 11, 2000, on the Rights and Obligations of Foreigners in Spain and their Social Insertion (LOEXIS), as amended by Organic Law 8/2000 of Dec. 22, 2000, in B.O.E. of Jan. 12 and Dec. 23, 2000, respectively.

[4] Law 7/1985 on Foreigners.

[5] E. Martin, LA LEY DE EXTRANJERÍA, UN AÑIO DESPUÉS, in *Elpais.es-temas*, Jan. 23, 2002.

[6] *Supra* note 3.

character which makes it very difficult for an alien to obtain legal status in Spain.[7] Since it became effective, the number of deportations have increased because the government is empowered, under the new law, to expel those in illegal immigration status.

On August 1, 2001, the Regulation of the Law on Foreigners[8] became effective, providing for a stricter border control and improvements in the coordination of government agencies involved in immigration. It also provides for a simplification of the administrative procedure to grant residence and labor permits and regulate the application of sanctions for violations thereof.[9]

Asylum

The Law on the Right of Asylum and Refugees, Law 5/1984 as amended by Law 9/1994,[10] abolished the status of *asilado* (asylee). Under the former law *de facto* refugees and other persons deserving asylum for humanitarian reasons were classified as *asilados*. Under the new law only persons coming within the definition of "refugee" in the Geneva Convention are entitled to asylum and an identity card, travel documents, and work permits. The law also takes away the right to apply for asylum from persons whose claims are manifestly unfounded, when another State is responsible for the examination of the claim, or when there is a third host country. Persons whose applications for asylum have been rejected or whose claims are considered inadmissible must leave Spanish territory, whereas previously they had a visa exemption and could apply for residence and work permits. There is an exception for persons fleeing from violence based on ethnic, religious, or political reasons.[11]

Visitors

The LOEXIS and its regulations provide that any alien entering Spain must do so through any of the authorized ports of entry and must provide a valid passport or travel document that proves his/her identity under the terms of international agreements signed by Spain.[12]

The visitor must also provide evidence of the reason for and conditions under which the foreigner is entering Spain, as well as evidence of having financial support for the time of stay in the country or the ability to get such funds legally.[13]

All visitors need to secure a valid visa to enter Spain, except in those cases where international

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[7] D. Lopez-Garrido, LA BATALLA LEGAL in *ElPais.es*, June 16, 2002.

[8] REGULATION OF LAW ON FOREIGNERS, Royal-Decree 864/2001 of July 20, 2001 in B.O.E., July 21, 2001.

[9] *Supra* note 7 at 2.

[10] LAW 5/1984 on the RIGHT OF ASYLUM AND THE REFUGEE STATUS, of Mar. 26, 1984, as amended by LAW 9/1994 of May 19, 1994, in B.O.E., Feb. 27, 1984, and May 23, 1994, respectively. "Spain Weighting Tougher Immigration Laws" *Agence France Press* (Madrid), June 5, 2002 at http://www.unhcr.ch/cgi-bin/texis/vtx/home/.

[11] *Id.*

[12] *Supra* note 3, art. 25.1 and *Supra* note 8, arts. 4 and 11.

[13] *Supra* note 3 art. 25.1.

agreements allow otherwise, when the foreigner is a resident,[14] or when the foreigner applies as a refugee upon entering Spain, which is governed by a different set of rules[15] as discussed in the "Asylum" section. A visitor's visa may be issued for short stays up to three months in a six-month period.[16] Overstaying will immediately cancel the validity of the visa.[17]

Foreigners who do not qualify to enter the country under the conditions outlined above, may still be allowed to do so for humanitarian reasons, public interest, or under commitments undertaken by Spain. In these cases, the foreigner will be given the pertinent documents as provided for in the applicable regulations.[18]

Identification of Immigrants

Foreigners with legal status in Spain are assigned a *Numero de Identidad de Extranjeros-NIE* (identification number)[19] which is personal, unique, and exclusive. This personal number, issued by the *Direccion General de la Policia* (National Police) must be recorded in all documents issued to that person including any record in his/her passport or analogous document.[20]

Foreigners with legal status will also be issued a *Tarjeta de Extranjero* (foreigner identification card) that will state the type of permit that person has been given. The foreigner is required to carry such ID all the time and to show it to any pertinent authority upon request.[21]

Undocumented aliens may also request in person or in writing an identification document from the *Comisaria General de Extrajeria y Documentacion de la Direccion General de la Policia* by submitting all available personal documents, even those expired, that will prove his/her identity and nationality. After reviewing the case, if the applicant does not fall under any of the grounds to be denied his/her entry into Spain or expelled therefrom, a *documento de identificacion provisional* (provisional identification document) will be issued. Such ID and related information will be entered in a special section of the Registry of Foreigners with a record ID. Once this ID is issued, the applicant may file for residence. If such ID is denied, the applicant must leave the country or be expelled from Spain.[22]

The *Registro Central de Extranjeros* (Central Registry of Foreigners) within the jurisdiction of the Directorate of Police will record the following information about aliens:

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[14] *Supra* note 3, art. 25.2.

[15] *Supra* note 3, art. 25.3

[16] *Supra* note 8, art. 7a.

[17] *Id.*

[18] *Supra* note 3, art. 25.4

[19] *Supra* note 8, art. 58

[20] *Supra.* Note 8, art. 58.2

[21] *Supra* note 8, art. 59.

[22] *Supra* note 8, art. 56.

- notice of entry
- travel documents
- extensions of stays
- exceptions for visas
- registration card
- residence permits,
- work permits and authorizations
- rejected petitions
- approved and rejected petitions of statelessness
- change in civil status or domicile that may affect the alien's immigration status in the country
- stay limits
- violations and sanctions under the immigration laws
- rejected petitions of entry and prohibitions from entry into Spain
- prohibitions of exit
- administrative and judicial expulsions
- deportations
- forced exits
- authorizations for re-entry
- certifications of a foreigner's identification number
- authorizations for entry and stay[23]

Restrictions to the Rights of Foreigners

Although foreigners in general enjoy the right to freely move within Spain and to choose a place of residence,[24] some restrictions may be imposed under special circumstances, such as a state of siege or any other exceptional situation of public security. These restrictions are intended to be for a limited period of time, based on a well-founded decision by the Ministry of Interior, and proportionate with the circumstances.[25]

The restrictive measures cannot exceed the time required by the situation and must last only the minimum time while the circumstances under which such measure was taken continues. The measures may include the requirement for the person to appear periodically before competent authorities or establish a restricted distance from the border or population areas as specifically defined.[26]

Spanish Citizenship

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[23] *Supra* note 8, art. 60.

[24] *Supra* note 8, art. 5.

[25] *Supra* note 8, art. 5.2.

[26] *Id.*

An alien may gain Spanish citizenship through:

- naturalization granted at the discretion of the pertinent authorities through a Royal decree under extraordinary circumstances[27]
- residence of 10 years, 5 years for refugees and 2 years for nationals of Latin-America, Andorra, The Philippines, Equatorial Guinea, or Portugal[28]
- residence of one year for those born in Spain; those who have been married to a Spanish national for one year and are not separated; widows or widowers of a Spanish national if at the time of death they were not separated; one born abroad of a Spanish mother or father who were originally Spaniards[29]

In all these cases, the residence must have been legal, permanent, and immediately before the petition is filed. The petitioner will also have to prove good civic character and an acceptable degree of integration into Spanish society.[30]

Financial Reporting

The Law on Money Laundering[31] aims to prevent and hinder the laundering of funds derived from illegal activities such as those related to armed bands or terrorist groups or organizations.[32] Even though the law is primarily addressed at assigning administrative duties of information, collaboration, and reporting to financial institutions, it will also be applicable to other professional and business organizations that might be used for money laundering purposes, such as insurance companies, pension funds, credit cards companies, currency exchanges, casinos, real estate, etc.[33]

These institutions are required to request identification of clients, closely examine suspicious transactions without regard to the amount, store for at least five years supporting documentation to transactions, and submit the information to a Commission for the Prevention of Money Laundering and Monetary Infractions, created by the law within the jurisdiction of the Secretary of Economy.[34] This Law also provides a detailed and comprehensive set of sanctions against the institutions involved for omissions or violations thereto.[35]

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[27] CÓDIGO CIVIL, La Ley, Madrid, 2000, art. 21.1.

[28] *Id.* art. 22.1.

[29] *Id.* art. 22.2.

[30] *Id.* art. 22.3.

[31] LAW 19/ 1993 of Dec. 28, 1993 ON MONEY LAUNDERING (*Blanqueo de Capitales)* in B.O.E., Dec. 29, 1993.

[32] *Id.* art. 1.b

[33] *Id.* arts. 2.1 and 2.2

[34] *Id.* art. 3.

[35] *Id.* arts. 5 to 12.

Use of Internet

Although there is no specific provision regulating illegal content on the Internet, the dissemination of illicit contents through the Internet may fall under a number of provisions of the Criminal Code such as encouragement to racial violence through the Web (art. 510), the organization through the Internet of activities involving an armed group (art. 576), or the "apology of behavior that promotes criminality or praises its author, thus inciting others to commit crimes (art. 18.1, para. 2).[36] The Internet has become a useful instrument for the commission of such crimes, which is of concern to Spanish law enforcement authorities.

International Conventions on Terrorism

Spain is a party to the following terrorism-related international instruments:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed in Tokyo on September 14, 1963, and ratified by Spain on December 30, 1969
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed in Montreal on September 23, 1971, and ratified by Spain on October 30, 1972
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed in The Hague on December 16, ,1970 and ratified by Spain on October 30, 1972
- European Convention for the Repression of Terrorism, entered into force on August 4, 1978, and ratified by Spain on May 20, 1980[37]
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on February 24, 1988, and ratified by Spain on June 7, 1991
- Convention on the Physical Protection of Nuclear Material signed in Vienna and New York on March 3, 1980, and ratified by Spain on September 6, 1991
- Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed in Montreal on March 1, 1991, and ratified by Spain on May 31, 1994
- European Convention on International Judicial Assistance in Criminal Matters, signed in Brussels on May 25, 2000, and ratified by Spain on October 16, 2001
- International Convention for the Repression of the Financing of Terrorism signed in New York on December 9, 1999, ratified by Spain on April 1, 2002[38]

2. Legal Enforcement Against Terrorism

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[36] J. Creamdes, M.A. Fernandez-Ordoñez and R. Illescas, RÉGIMEN JURÍDICO DE INTERNET, La Ley, Madrid, 2002, at 299-300.

[37] B.O.E., October 8, 1980.

[38] B.O.E., May 23, 2002.

Criminal Code

Terrorism-related crimes have been part of the Spanish criminal legal system since the 1944 version of the Criminal Code.[39] However, the current Criminal Code[40] adopted in 1995 has defined the crime of terrorism to expressly include the armed groups, terrorist organizations, or groups or individual terrorists not belonging to such groups that pursue the "subversion of the constitutional order or seriously alter public order." This is a change from the previous law and makes it clear that the crime of terrorism may not be considered a "political crime," therefore making participants subject to extradition under the National Constitution.[41]

The current Criminal Code has penalized terrorism in a two-part format: (1) as the "crime of terrorism" itself, which applies aggravated sanctions for common crimes when perpetrated by terrorists and the punishment for those who assist terrorists, and (2) as the "crime of illicit associations" for armed groups or terrorist organizations.

Under the title of "**Crimes of Terrorism**," the Criminal Code provides that:

> **Art. 571** Anyone belonging to, acting on behalf of or assisting armed bands, organizations or groups whose goal is to subvert the constitutional order or seriously alter public peace, perpetrate the crime of *estragos* (major damage or destruction) or arson, will be punished with imprisonment of fifteen to twenty years, in addition to any other applicable sanction in case of injuries to peoples life, physical integrity or health.[42]
>
> **Art. 572**
>
> **1.** Anyone belonging to, acting on behalf of or assisting armed bands, terrorist organizations or groups described in the previous article, who attempt attacks against individuals will be punished with:
>
> 1) Imprisonment of twenty to thirty years if they caused the death of a person;
>
> 2) Imprisonment of fifteen to twenty years if they caused injuries followed by the loss of organs or senses or if there is kidnaping;
>
> 3) Imprisonment of ten to fifteen years if they cause any other injury or illegally detain, threaten or coerce a person.
>
> **2.** If any of these actions are perpetrated against any Member of the Government, Council of Government of Autonomous Communities, Congress of Deputies, Senate or Legislative Assemblies of the Autonomous Communities, Local Corporations (municipalities), General Council of the Judiciary or Magistrate of the Constitutional Court, members of the Armed Forces, Forces or Bodies of National Security, Autonomous Communities Police,

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[39] J. E. Nsefum, EL DELITO DE TERRORISMO-SU CONCEPTO, Editorial Montecorvo, Madrid, 1985 at 78.

[40] CÓDIGO PENAL DE 1995, Tirant Lo Blanch, 5th Edition, Valencia, 2001.

[41] F.Muñoz Conde, DERECHO PENAL PARTE ESPECIAL, Tirant LoBlanch, Valencia, 1999, at 871, at 863.

[42] *Supra* note 40, art. 571.

or Local Entities, the punishment will be the upper half of the one provided under 1.[43]

Art. 573 The storage of arms or ammunitions or the holding or storage of explosive or inflammable substances or devices or parts thereto as well as their manufacturing, trafficking, transportation, or provision in any way, will be punished with imprisonment of six to ten years when those acts are perpetrated by individuals belonging to, in the service of, or to assisting armed bands, terrorist organizations or groups described in the above provisions.[44]

Art. 574 Anyone belonging to, acting on behalf of or assisting armed bands, or terrorist groups or organizations, who perpetrates any other infraction with the goal of subverting the constitutional order or seriously altering public peace, will be punished with the upper half of the sanction imposed to the pertinent crime.[45]

Art. 575 Anyone who, with the intention of providing funds to armed bands, terrorist groups or organizations mentioned in the above provisions, or encouraging their ends, commits a crime against the patrimony, will be punished with the most serious sanction applicable to the pertinent offense, in addition to any other applicable sanction under the following provision for collaborating thereto.[46]

Art. 576

1. Anyone who carries out, collects or facilitates any collaboration with activities or purposes of an armed band or terrorist group or organization will be punished with imprisonment of five to ten years and a fine.[47]

2. Collaboration is: information or surveillance of people, assets or facilities; building, arrangement, transference or use of lodging or storage; the concealment or training of people linked to armed bands or terrorist groups or organizations; the organization of training practices or assistance thereto; and in general, any other way of cooperation, assistance or mediation, economic or of any other kind, with the activities of said armed bands or terrorist groups or organizations.

When the information or surveillance of people mentioned in the above paragraph, puts lives, physical integrity, freedom or assets of those people at risk, the sanction of paragraph 1 applicable will be the upper half thereof. If the risk ends up occurring, the perpetrators will be punished as accomplices or co-authors.[48]

Art. 577 Those who, even when not belonging to an armed band or terrorist group or

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[43] *Supra* note 40, art. 572.

[44] *Supra* note 40,. art. 573.

[45] *Supra* note 40, art. 574.

[46] *Supra* note 40, art. 575.

[47] *Supra* note 40, art. 576.1.

[48] *Supra* note 40, art. 576.2.

organization and with the intention of subverting the constitutional order or seriously altering public peace or contributing towards those ends, frighten the population or members of a social, political or professional community, commit homicide, injuries, illegal detentions, kidnaping, threats or coercion of people, or carry out crimes of arson, serious damage, damages, possess, manufacture store, traffick, transport or provide arms, ammunition or explosive, inflammable, incendiary or suffocating substances or devices or parts thereof will be punished with the maximum of the sanction applicable to the corresponding crime.[49]

Art. 578 The praising or justification through any means of public expression or broadcast of the crimes provided under arts. 571 to 577 of the Criminal Code or of those involved in its perpetration, or the discredit, underestimation or humiliation of the victims of terrorist crimes or their family members will be punished with imprisonment of one to two years. In the decision, the judge may also prohibit the perpetrator from approaching or communicating with the victim or their family.[50]

Art. 579

1. The incitement, conspiracy and propositions to perpetrate the crimes provided under arts. 571 to 578 will be punished with a lower grade of the sanction applicable to the pertinent crimes.

2. Those responsible for the crimes provided for under this section, in addition to the sanctions applicable under the above provisions, will be punished with *"inhabilitacion absoluta"* (disqualification to hold honors, public employment or office even those elective)[51] for a period of time six to twenty years over the time of the imprisonment imposed, considering the seriousness of the crime, the number of crimes and circumstances of the criminal.

3. Judges and courts when deciding on the crimes under this section, may, on good grounds, reduce by one or two steps the applicable sanction when the criminal has voluntarily abandoned his or her criminal activity and confesses before the authorities the actions in which he or she has participated and has actively assisted to prevent the actual happening of a crime or effectively helped in the gathering of evidence decisive to the identification or capture of other responsible individuals or to prevent the action or development of armed bands or terrorist organizations or groups to which he or she belonged or with which he or she has collaborated.[52]

This provision provides for the so called *arrepentido* (repentant criminal) who is someone that has voluntarily abandoned criminal participation and decided to collaborate with the authorities in the investigation to obtain a reduction of his or her sanction. The current 1995 Criminal Code changed some aspects of this procedure. First, the criminal not only must voluntarily abandon the criminal activity but

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[49] *Supra* note 40, art. 577.

[50] *Supra* note 40, art. 578

[51] *Supra* note 40, art. 41.

[52] *Supra* note 40, art. 579.

also has either to collaborate actively with the authorities to prevent the perpetration of the crime or efficiently to assist in the collection of evidence decisive to the identification and capture of the criminals. The new Code does not allow for the total remission of the sanction. It may only be reduced on a well-reasoned basis in the court's decision.[53]

> **Art. 580** In all crimes related to armed bands or terrorist groups or organizations, a foreign court's decision on a terrorist crime will be considered as equal to a sentence by a national court to be computed as a precedent in the criminal record of the accused.[54]

The Constitutional Tribunal has interpreted this to mean that if the foreign court has violated the right to self defense and due process of law guaranteed to an individual under article 24 of the Spanish Constitution, the aggravated sanction could not be applied against that person in a later criminal case in Spain, because it would violate *principles of public order* guaranteed under article 12.3 of the Civil Code, which provides that foreign law will not be applicable in Spain if it violates principles of public order.[55]

The Criminal Code also provides for sanctions to **illegal associations**, as follows:

> **Art. 515** Punishable illegal associations are:
>
> **2.** Armed bands, terrorist organizations or groups…[56]
>
> **Art. 516** In the case of the associations provided for under art. 515.2, the applicable sanctions are as follows:
>
> **1.** To the promoters and directors of armed bands and terrorist organizations or groups and to the heads of such groups, imprisonment of eight to fourteen years and *inhabilitacion especial* (special disqualification) to hold public employment or office for eight to fifteen years.
>
> **2.** To the members of those organizations, imprisonment of six to twelve years and *inhabilitacion especial* (special disqualification) to hold public employment or office for six to fourteen years.[57]

Constitutional Provisions

The National Constitution[58] allows an organic law to determine the manner and the cases in which, on a case-by-case basis and with the necessary judicial intervention and adequate parliamentary control, some basic constitutional rights such as the right to a maximum time for preventive arrest and the inviolability of domicile and correspondence, etc. may be suspended for certain persons with respect to

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[53] *Supra* note 41 at 869.

[54] *Supra* note 40, art. 580.

[55] *Supra* note 27, art. 12.3.

[56] *Supra* note 40, art. 515.2

[57] *Supra* note 40, art. 516.

[58] *Supra* note 1, art. 55.2.

investigations having to do with the activities of armed bands or terrorist elements.[59]

This constitutional provision was applied in a number of statutes that amended the Code of Criminal Procedure to allow for certain departures from constitutional guarantees to be applicable to terrorists.[60]

Penitentiary Laws

Under the Penitentiary Regulation[61] in order for attorneys or legal representatives of a detainee or person arrested for a terrorist-related crime to communicate with his/her client the legal representative will have to show official proof of his/her professional standing and a written notice from the competent judge stating his/her standing as defender or legal representative of the detainee.[62]

The Law on Criminal Responsibility of Minors[63] also provides for a special treatment of minors under 18 years old imprisoned for terrorist related crimes, such as imprisonment in a closed institution for a time that may vary according with his/her age.[64]

Code of Criminal Procedure

The current Code of Criminal Procedure[65] which includes amendments introduced by Organic Law 4/1988,[66] implements and develops article 55.2 of the National Constitution[67] providing that anyone arrested as a suspect for participating in a crime related to terrorist groups or individuals will be brought before a competent court within 72 hours after his/her arrest. However, the detention may be extended for the time needed for the investigation up to a maximum of another 48 hours if such extension was well founded and requested within the first 48 hours of the detention and is authorized by the competent judge 24 hours later. Both the extension's authorization or its denial must be based upon a well-founded decision.[68]

Once a person is arrested under the circumstances described above, the competent judge may decide to keep him/her incommunicado upon request. This has to be decided within 24 hours in a well-founded decision. During the period of non-communication, the person arrested still has his/her right to

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[59] *Id.*

[60] *Supra* note 41, at 871.

[61] REGLAMENTO PENITENCIARIO, RoyalDecree 190/1996 of Feb. 9, 1996 ,in B.O.E., Feb. 15 ,1990.

[62] *Id.* art. 48.1.2.

[63] ORGANIC LAW 5/2000 of Jan. 12, 2000, in B.O.E.

[64] *Id. Disposiciones adicionales,* No.4.

[65] ENJUICIAMIENTO CRIMINAL, 20th Edition, Civitas, Madrid, 1999.

[66] ORGANIC LAW 4/1988 of May 25, 1988, in B.O.E., May 26, 1988.

[67] *Supra* note 58.

[68] *Supra* note 65, art. 520 *bis*.1.

his/her defense and related due process rights.[69] During the detention, the judge may at all times request information on the situation of the detainee.[70]

The police may on their own arrest suspects of terrorist-related crimes wherever they are found, either an open place or a dwelling, including the search and seizure of the place in relation to the arrest. The police may also seize any element or instrument found during such search that might be related to the crime in question. Once the detention and search and seizure is complete, the police have to report immediately their reasons and results to the competent judge with a special reference to the arrests, including the intervening officers and any related incident that may have occurred during the process.[71]

A judge may order in a well-founded decision the oversight of correspondence and wiretapping of communications of a suspect.[72] However, under urgent circumstances and in criminal investigations of the activity of armed bands and terrorist elements or rebels, these actions may be decided by the Ministry of Interior or the Director of Security of the State, giving immediate notice to the competent judge, who must either confirm or reject such decision within a maximum of 72 hours after the oversight of correspondence and wiretapping has been ordered.[73]

Finally, anyone holding public employment or office who is indicted and provisionally arrested for a crime perpetrated by a person belonging or related to a terrorist group or rebels will be immediately suspended from office until the end of the arrest. [74]

Competence of Spanish Courts

The Organic Law on the Judiciary[75] provides that Spanish courts will have competence in criminal cases involving Spanish nationals or foreigners for actions carried out abroad if, according to Spanish law, such actions may be characterized as terrorism, among others.[76]

Extradition Treaty

An extradition treaty with the United States of America, was signed in Madrid on May 29, 1970, and ratified in Washington on June 16, 1971.[77] There are three supplementary agreements thereto.[78]

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[69] *Supra* note 65,. art. 520 *bis*.2.

[70] *Supra note 65,* art. 520 *bis*.3.

[71] *Supra* note 65, art. 553.

[72] *Supra* note 65, art. 579.3.

[73] *Supra* note 65, art. 579.4.

[74] *Supra* note 65, art. 384 *bis.*

[75] LEY ORGÁNICA DEL PODER JUDICIAL (LOPJ) Law 6/1985 as amended of July 1, 1985, in B.O.E., July 2, 1985.

[76] *Id.* art. 23.4.b.

[77] B.O.E., Sept. 14, 1971.

[78] B.O.E., June 27, 1978; B.O.E., May 20, 1988, and B.O.E., July 8, 1999.

A provision of the extradition treaty that is relevant to terrorism allows the parties to deny the extradition in cases where the crime for which the extradition is requested may be subject to death penalty, unless the requested country offers sufficient guarantees upon the requester country's satisfaction that the death penalty will not be imposed or, if imposed, it will not be executed.[79]

3. Legislation Enacted After September 11, 2001

After September 11, 2001, the focus shifted from illegal immigration (blamed earlier for an increase in crime) to a focus on terrorism, which became the most important issue for the EU, including Spain.[80] It appears that the fight against terrorism is in some way providing additional reasons for restricting immigration, even more than before September 11. Spain is considering legislation toughening its immigration laws even further.

As president of the EU for the first six months of 2002, Spain promoted a common EU approach to immigration policies and the international fight against terrorism. During the same period, the fight against terrorism shifted from a one-nation problem against which each individual country must fight, to a fight of all EU countries together.[81]

Pending Bills

Draft Law on the Prevention and Freezing of Financing of Terrorism:[82] This bill furthers the objectives of the international treaty on the subject, ratified by Spain in April 2002, as well as the domestic laws already in effect against money laundering (*see* section 1). Under this bill, the *Comision de Vigilancia de Actividades de Financiacion del Terrorismo* (Commission of Surveillance of Activities Financing Terrorism) would be granted the authority, as a precautionary measure, to freeze funds of individuals suspected of being involved in terrorism. This will be a preventive measure and therefore limited in time (six months). After a court order is issued, the freeze may be extended in duration.[83]

The constitutionality of this Bill has been debated since it has been argued that it grants extraordinary powers to an administrative agency to freeze funds and bank accounts *in audita parte* (without any notice to the affected individual) and without any prior judicial authorization.[84]

Draft Law on the Regulation of Joint Teams for Criminal Investigation within the European Union:[85] This bill will implement a team of investigators that will be empowered to act in two or more

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[79] *Supra* note 77, art. 7.

[80] C. Yarnoz, EL GRAN DESAFÍO DEL SIGLO, in *Elpais.es-temas.*

[81] R.Rincón, PIQUÉ Y RAJOY DESTACAN LOS LOGROS EN MATERIA DE INMIGRACIÓN, in Elpaís.es, June 30, 2002.

[82] PREVENCIÓN Y BLOQUEO DE LA FINANCIACIÓN DEL TERRORISMO, Bill No. 121/000072 Congreso de los Diputados in *Boletín Oficial de las Cortes Generales (BOCG)* of Mar. 25, 2002 at 1.

[83] *Id.* at 2.

[84] Maria Peral, *La Ley para Bloquear Fondos Terroristas Plantea Serias Dudas de Constitucionalidad,* EL MUNDO, *at* www.Elmundo.es/2002/02/03, Feb. 2, 2002.

[85] REGULADORA DE LOS EQUIPOS CONJUNTOS DE INVESTIGACIÓN PENAL EN EL ÁMBITO DE LA UNIÓN EUROPEA, Bill No. 121/000094, Congreso de los Diputados, May 17, 2002, at 1.

countries to carry out coordinated operations with other EU member countries. Even though this team is proposed to be for all crimes where a number of countries are involved, terrorism has been one of the main reasons for the creation of the joint team.[86]

Extradition Treaty India-Spain

India and Spain signed on June 20, 2002, a major treaty to extradite criminals and terrorists, stepping up international cooperation with European nations in the global fight against terrorism. Discussions on an agreement on Mutual Legal Assistance in Criminal Matters was also initiated.[87]

Recently Approved Legislation

The Law on Political Parties[88] was amended to allow the government or a plurality in either House of the Legislature to ask the government to outlaw a political party that encourages or supports in an express or tacit way terrorism, which promotes hatred, violence, and civil confrontation. It will also be illegal to challenge Spain's existing democratic institutions. The final decision to outlaw a party has to be made by the Supreme Tribunal.[89] It also allows for banning a party that regroups under a different name. This law targets the party considered the political wing of the Basque group ETA, *Batasuna*. At present, the Spanish Supreme Court is considering a case which may result in ETA's political wing, *Batasuna*, being outlawed if the Court decision, based on the new Law on Political Parties (addressed below) declares Batasuna illegal for its support of terrorism.[90] In the interim a Spanish high court judge recently ordered Batusana closed down for at least three years for its support of ETA.[91]

The Law on the National Center on Intelligence[92] (CNI) creates this Center under the jurisdiction of the Ministry of Defense but with budgetary autonomy,[93] replacing the former Superior Center of Information for Defense to provide the government with an intelligence agency better adjusted to the present national and international environment. It is assigned the task of informing the Government of any threat or risk of an attack or aggression against Spain and its institutions.[94] It is also responsible for promoting cooperation and assistance with foreign intelligence services to better serve its goals.[95]

The CNI will have to abide by the law and will carry out its activities within the legal framework

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[86] *Id.* at 2.

[87] *India Signs Extradition Treaty with Spain,* THE HINDU, MADRAS, June 20, 2002.

[88] ORGANIC LAW 6/2002 POLITICAL PARTIES, of June 27, 2002, in B.O.E., June 28, 2002.

[89] *Id.* art. 11.

[90] Batusana: "Proceso de Ilegalización" of August 14, 2002 at www.elmundo.es/especiales/2002/08.

[91] *The Washington Post*, August 27, 2002, at A-11.

[92] LAW 11/2002 ON THE NATIONAL CENTER OF INTELLIGENCE, May 6, 2002, in B.O.E., May 7, 2002 .

[93] *Id.* art. 7.

[94] *Id.* art. 1

[95] *Id.* art. 4.c.

of Law 11/2002 creating it and Organic Law 2/2002[96] providing the rules and procedure for the CNI to obtain judicial authorization to perform certain activities that will affect constitutional guarantees such as the inviolability of the domicile and the privacy of communications as provided by articles 18.2 [97]and 18.3 [98]of the National Constitution. According to the new law, the Director of the CNI has to request to the competent Magistrate of the Supreme Tribunal authorization to take measures that may affect the constitutional guarantees above mentioned, if such measures are needed to perform its duties.[99] The CNI is also subject to Parliamentary control since it will have to submit to the Congress of Deputies information regarding its activities and operations. These sessions will be secret.[100]

Royal Decree on the Reinsurance by the State for War and Terrorism Risks That May Affect Air Transportation [101]

This is a measure taken after the September 11 attacks to cover risks of war and terrorism to the air transportation companies. Insurance companies drastically changed the applicable criteria in the coverage of those risks, and, therefore, air transportation companies were left only partially covered under the standard insurance contractual terms effective at that time. In order to avoid such lack of coverage, it was decided by the ECOFIN, within the EU, to allow each member State to issue such insurance at least on a temporary basis.[102]

In Spain, the *Consorcio de Compensacion de Seguros* (CCS) is a state insurance facility that guarantees cover for "extraordinary risks" such as terrorism. This coverage is part of policies issued by private insurance companies that collect premiums on behalf of CCS.[103]

4. Limits on Counter-Terrorism Activity

Spain has been one of the major allies of the United States in the fight against terrorism. Spanish authorities have charged eight suspected members of the al-Qaeda network, one of whom was a naturalized Spaniard by marriage to a native Spaniard[104] with involvement in the September 11 attacks. This follows the previous arrest of 13 suspects between November 2001 and January 2002. Investigative Judge Baltasar Garzon (well known for his involvement in high-profile cases involving political corruption, human rights

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[96] LAW 2/2002 ON THE JUDICIAL CONTROL OF THE CENTER OF INTELLIGENCE, of May 6, 2002, in B.O.E., May 7, 2002.

[97] "…The home is inviolable. No entry or search may be made without legal authority except with the express consent of the owners or in the case of a flagrant crime…"

[98] "…Secrecy of communications, particularly postal, telegraphic and telephone communications is guaranteed, except by judicial order."

[99] *Supra* note 96, arts. 1 and 2.

[100] *Supra* note 92, art. 11.1.

[101] ROYAL DECREE 14/2001 of Sept. 28, 2001, in B.O.E., Sept. 29, 2001.

[102] *Id.* arts. 1 and 3.

[103]Andrew Bolger, *Insurers of Last Resort Get First Look: Terrorism Outside the U.S.,* FINANCIAL TIMES, London, May 24, 2002.

[104] *La Celula Espanola de Al Qaeda recibia Ordenes desde un Campo Terrorista en Afganistan, at* WWW.ELPAIS.ES, of Dec. 23, 2001.

violations, drug lords and arms dealers) has charged the suspects with membership in a terrorist organization, along with falsification of documents, robbery, and possession of weapons.[105] Police seized computer equipment, counterfeit documents, and several weapons. Also found were videos of Islamic guerilla activities and a large amount of money. The judge stated that the charges against the suspects were based on telephone conversations intercepted by police before the September 11 attacks. The group was also recruiting people for terrorist training and provided cover for Islamic militants in Spain. In addition, the group collected funds, mainly through stolen credit cards and robberies as well as money laundering. Among them, one native Spaniard was arrested who is also linked to ETA.[106]

In this regard, Spain will not extradite the eight men to the U.S. unless the United States agrees that they would be tried by a civilian court and not by the military tribunals envisioned by President Bush. However, Spanish officials were willing to share information about the arrested,[107] including CNI intelligence information on the activities in Spain of some of the September 11 hijackers, which was requested through a letter rogatory submitted by American courts to Spanish courts through the American Consulate in Madrid.[108] However, Spain's police report, despite its insights, may be excluded from the United States case against the so-called 20th hijacker, Zacarias Moussaoui. Spanish law, like that of most EU countries, prevents any information gathered by its law enforcement agencies to be used in a death penalty case, such as Moussaoui's.[109]

Spain has also provided humanitarian and logistical support to the United States military operations in Afghanistan which also includes surveillance airplanes and medical units. Spanish forces are also present as part of the International Force of Support for Security (ISAF) created to support the interim government in Afghanistan, with a team in charge of engineers, deactivation of explosives, etc.[110]

In January 2002, a team of computer experts from the FBI traveled to Spain to assist the Spanish police in the de-encrypting of computers seized from members of ETA arrested in a number of recent police operatives in Spain. This is clear evidence of the qualitative changes in the relationship between Spain and the United States since the September 11 attacks. This assistance is based on a prior Bilateral Technological Cooperation Agreement between the two countries.[111]

After decades of independence and secretiveness among investigative agencies in Europe and the United States, Spain has adapted a new post-September 11 spirit of cooperation in international law enforcement. At present, striking a balance between democratic values and constitutional guarantees of civil liberties and security has become critically important in Spain, as in other countries. However, because Spain already had a legal framework in place for dealing with terrorism, it was able to respond

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[105] *Al-Qaida Cell in Spain Charged with Aiding September 11 Attacks, at* www.ict.org.il, Nov. 19, 2001.

[106] *Id.*

[107] *Spain Won't Send 8 to Terror Tribunals; U.S. Must Agree to Civilian Courts,* CHICAGO TRIBUNE, Nov. 24, 2001.

[108] *EEUU pide al Servicio Secreto Español sus Informes sobre la cumbre de Atta en la costa, at* www.elpais.es, July 7, 2002.

[109] *Exposing Al Qaeda's European Network,* BOSTON GLOBE, Aug. 4, 2002.

[110] *España amplía su Participación en la Operación Libertad Duradera*, *at* www.elmundo.es/2002/02/23, Feb. 23, 2002.

[111] TECHNOLOGICAL AND SCIENTIFIC COOPERATION AGREEMENT between Spain and United States, June 10, 1994, in B.O.E., Sept. 21, 1995.

quickly and actively against international terrorist activities within its borders.

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SWITZERLAND

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Switzerland has not been directly linked to the events of September 11, 2001, yet there is concern that the Swiss banks may have been used to deposit terrorist funds. Bank secrecy is an important Swiss legal principle and, though it can be lifted for mutual assistance in criminal matters, this process is often cumbersome and the observation of proper procedures varies from canton to canton. For reasons of national or international security, bank secrecy may also be lifted by a federal regulation, as was done after September 11, 2001. In addition, money laundering legislation required the Swiss banks to identify suspicious accounts; this led to the freezing of US$12 million in 24 Swiss bank accounts by the end of October 2001.

A bill is pending in the Swiss national legislature that calls for the ratification of the 1997 UN agreements on terrorist bombing attacks and the 1999 UN agreement on terrorist funding. This bill also proposes that Swiss criminal provisions on the crime of terrorism and on terrorist funding be tried before the Swiss Federal Court. If enacted, these instruments would make it easier for terrorist funds to be seized and for foreign governments to obtain information on implicated bank accounts.

The Swiss measures, however, will not change the essential nature of Swiss bank secrecy. Although the Swiss have been cooperative in the post-September 11 investigations, and in all likelihood will continue to do so, they insist on doing it within the existing legal framework. The Swiss generally do not permit foreign governments to investigate on Swiss soil, and no legislation is contemplated that would allow the Swiss authorities electronic access to bank accounts. Instead, the banks are required to report suspicious accounts and transactions.

1. Legislation Prior to September 11, 2001

Immigration, Asylum, Visitors, and the Tracking of Aliens

For the past 50 years, Switzerland has been a desirable country of immigration because of a high standard of living and ample employment opportunities. For these reasons, refugees have also sought asylum in Switzerland. Currently, 19 percent of the Swiss population are aliens. To counteract this trend, Swiss immigration[1] and asylum law[2] has become more restrictive, and this is in keeping with overall European developments.[3] Generally, visas are required for the entry of aliens, unless this is waived for

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[1] Bundesgesetz über Aufenthalt und Niederalssung der Ausländer [ANAG], June 26, 1998, SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS [SR] 142.2, as amended.

[2] Asylgesetz, June 26, 1998, SR 142.31.

[3] M. Spechsa, HANDBUCH ZUM AUSLÄNDERRECHT at 23 *et seq.,* (Bern, 1999).

visitors by bilateral agreements.[4] For aliens who work in Switzerland, permanent residency usually is granted only after five years of temporary residence permits. Asylum petitioners are discouraged to the extent reconcilable with international humanitarian concepts.

It appears that the Swiss have a reasonably well-functioning system of police cooperation to keep track of the aliens visiting or residing in their country. Residence permits have to be approved first by the canton of residence, which also makes the labor market decision on whether an alien is needed.[5] The cantonal decision is then referred to the Federal Office on Aliens. Asylum decisions, however, are made solely by a federal agency. Each of the cantons has a police force in charge of observing aliens that cooperate with the federal offices.

Switzerland maintains two registers on aliens, one of which is computerized.[6] These registers are operated cooperatively between the cantonal and federal authorities. It appears, however, that these registers are in need of reform to make the data more compatible and to make it easier to search the registers.[7]

Wiretapping and Surveillance

Until September 11, wiretapping and electronic surveillance were governed by several constitutional and federal statutory provisions that were further developed through judicial interpretations.[8] Judge-made law also permitted the use of various technical instruments for video or audio surveillance to combat terrorism and serious crimes. These judicial pronouncements also set the framework for the cantonal activity in this area, and they granted an ample degree of discretion to the law enforcement agencies, which in turn led to a call for reform so as to increase privacy protections.[9]

Financial Reporting and the Forfeiture of Assets

For the past 70 years, the Swiss concept of bank secrecy has been a sizeable deterrent to obtaining financial information and recovering assets. In the past two decades, however, Switzerland has made an effort to allow to a greater extent the disclosure of banking information relating to serious criminal activity, including organized crime, while upholding bank secrecy against requests from foreign fiscal authorities.

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[4] Verordnung über Einreise und Anmeldung von Ausländerinnen und Ausländern, Jan. 14, 1998, SR 142.211.

[5] Spechsa, *supra* note 3 at 51.

[6] ANAG, arts. 22d and 22f.

[7] TAGES-ANZEIGER at 10 (May 30, 2002).

[8] Botschaft, July 1, 1998, BUNDESBLATT [BBl] 1998 at 4241.

[9] R. Hauser, SCHWEIZERISCHES STRAFPROZESSRECHT at 306 (Basel, 1999).

The unauthorized disclosure of banking information was made a criminal offense in 1934, in order to protect the assets of those persecuted by the Hitler regime in Germany.[10] For a foreign government to obtain information on Swiss bank accounts, the mechanism of a mutual assistance treaty has to be used, or, in the absence of such a treaty, Switzerland may unilaterally grant assistance under the conditions specified in the Swiss Legal Assistance Act of 1981.[11] Once a request is made, the Swiss authorities will freeze the assets involved as a precautionary measure.

The difficulty of obtaining information through mutual assistance channels lies in the traditional requirements of mutual assistance law, in particular the requirements of double criminality, speciality, and probable cause. Another difficulty stems from the Swiss administration of justice that gives the cantons the power to try many offenses according to cantonal procedures, while only a few of the most egregious offenses are tried in the Federal Court. Under this system, the canton where the assets are located will decide under cantonal law whether the offense for which assistance is sought is also punishable in Switzerland, is a type of offense for which Switzerland offers assistance, and whether, in accordance with Swiss evidentiary criteria, there is probable cause that an offense has been committed. In addition, a promise may have to be made to the Swiss authorities that the obtained information will only be used for the special purpose for which it was requested. In practice, it has been difficult and cumbersome to obtain information about Swiss bank accounts, though not impossible, if the criteria were met.

The capability of hiding criminally tainted funds in Swiss bank accounts was further reduced throughout the 1990s, through regulations, agreements, and practices to counteract money laundering. The legislative highlights of this process were the enactment of a criminal provision on money laundering in 1990[12] and the enactment of the Money Laundering Act in 1997.[13] The latter is further implemented by regulations and a bankers' agreements. The Swiss money laundering legislation addresses not only banks, but also a widely drawn circle of other financial intermediaries. It requires these persons and institutions to exercise due diligence in the identification of their customers, including beneficial ownership, and to report suspicious accounts and transactions to designated authorities, which in turn initiate further investigations or inform other authorities.

Prohibited Organizations

Criminal organizations are prohibited (*see* below, section 2). In addition, the federal government, through the Federal Police, gathers information on extremist groups and potentially law-breaking groups, including terrorists and organized crime.[14] The Federal Police publishes annual reports on the state of domestic security and shares this information with cantonal and federal law enforcement agencies, as appropriate.

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[10] Bankengesetz, Nov. 8, 1934, SR 952, as amended, §47.

[11] Rechtshilfegesetz, Mar. 20, 1981, SR 351.1, as amended.

[12] Schweizerisches Strafgesetzbuch, [StGB], Dec. 21, 1937, SR 311, as amended, arts. 305*bis* and 305*ter*.

[13] Bundesgesetz zur Bekämpfung der Geldwäscherei im Finanzsektor [GwG], Oct. 10, 1997, as amended, SR 955.

[14] Bundesgesetz über Massnahmen zur Wahrung der inneren Sicherheit, Mar. 21, 1997, as amended, SR 120.

International Organizations

Prior to September 11, 2001, Switzerland had become a member of 10 of the 12 United Nations agreements and protocols for the suppression of terrorism.[15] Switzerland is also a member of the European Terrorism Convention.[16] However, it appears that the Swiss sought to ratify the two latest UN Conventions on terrorism, the 1997 Convention on Terrorist Bombing and the 1999 Convention on Terrorist Funding, only after September 11, 2001.[17]

Terrorist Incidents and Infiltration

Switzerland does not have any domestic terrorism. However, the Swiss Federal Police have reported that Switzerland had in the past been used by violent extremist groups as a financial center and as a place to conduct logistical operations.[18] Switzerland's most likely connection with the al-Qaeda terrorists allegedly responsible for the September 11 attacks appears to have been the use of Swiss banks by related groups and individuals.[19]

2. Legal Enforcement Against Terrorism

Criminal Laws, Specific Terrorism Laws, and Conspiracy Laws

The only provisions currently in effect that could be viewed as specific terrorism laws are articles 260*bis* and 260*ter* of the Swiss Criminal Code. Article 260*bis* was enacted in 1982, and it penalizes planned preparatory acts for the commission of a list of violent crimes that include murder, arson, aggravated battery, robbery, kidnaping, and genocide. This is a conspiracy provision that ensures that any plans for commission of such offenses are punishable. In the absence of such a specific provision, the preparatory acts might remain unpunished, particularly if the planned acts had not been perpetrated.

Article 260*ter* was enacted in 1994, and it combats organized crime by penalizing the participation in a secret organization that pursues the goal of committing violent crimes or of obtaining a profit from criminal conduct. Aside from these two provisions, terrorist acts have been punishable according to the generally applicable provisions of the Criminal Code for the particular act of violence that was committed.

Legal Restraints

It appears that Swiss law does not unduly hamper intelligence gathering or criminal investigations by excessive privacy legislation except, possibly, through the concept of banking confidentiality. It is the Swiss contention that banking secrecy does not stand in the way of effective law enforcement efforts, due to the administrative sanctions imposed on banks that fail to notify the authorities of suspicious accounts

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[15] Listed in Botschaft, June 26, 2002, BBl 2002 at 5390 (5394).

[16] Signed at Strasbourg, Jan. 27, 1977, SR 0353.3.

[17] *Infra* notes 29 and 30, and accompanying text.

[18] *Gesperrt bis 12:00 Uhr,* AP WORLDSTREAM – GERMAN (July 10, 2002) [LEXIS/NEWS].

[19] *Gesperrt bis zwölf Uhr,* AP WORLDSTREAM GERMAN (Jul. 10, 2002 [LEXIS/NEWS].

or transactions and due to the availability of mutual assistance.[20] It might be argued, however, that other countries go further in lifting bank secrecy, for instance Germany, which recently enacted legislation that permits authorities to access electronic information on bank accounts.[21]

3. Legislation Enacted After September 11, 2001

In General

The only pertinent federal legislation that was enacted since September 11, 2001, was the Act on the Surveillance of the Mail and of Telecommunications.[22] In addition, some regulations of security content have become effective, among them, the Regulation on a Domestic Intelligence Information System.[23] These enactments, however, had been planned prior to September 11.

There is legislation pending that responds to the events of September 11. It is described below within this section and it calls for the ratification of international agreements and the enactment of criminal provisions. The enactment of this package, however, is not entirely assured and may take some time. Moreover, the effective date of this legislative package might delayed, due to the Swiss constitutional requirements for a popular referendum or, when no referendum is held, a sufficient waiting period that must lapse before legislation can be promulgated and become effective.[24]

Immigration

Improved tracking systems for aliens and citizens are being planned.[25] They are not specifically related to the September 11 events, but would have the effect of improving coordination between the various cantonal and federal registers and thereby would make it easier to obtain information on aliens as well as on citizens.

Wiretapping and Surveillance

A Federal Act on the Surveillance of the Mail and Postal Communications[26] was enacted. On the one hand, it imposes somewhat more stringent privacy restraints than the previously applicable legislation. On the other hand, it provides a predictable statutory framework for cantonal activities.

Criminal Laws and International Agreements

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[20] GwG, arts. 2, 36, and 37.

[21] Kreditwesengesetz, §24 c, as enacted by Viertes Finanzmarktförderungsgesetz, June 21, 2002, BUNDESGESETZBLATT [official law gazette of the Federal Republic of Germany] I at 2010, art. 6, no. 23.

[22] Bundesgesetz betreffend die Überwachung des Post- und Fernmeldeverkehrs , Oct. 6, 2000, SR 780.1, promulgated Dec. 18, 2001, effective date Jan. 1, 2002.

[23] Verordnung über das Staatsschutz-Informations-System, Nov. 30, 2001, AMTLICHE SAMMLUNG DES BUNDESRECHTS [AS] 2002 at 3173.

[24] Bundesverfassung [BV], Apr. 18, 1999, SR 10, arts. 140 *et seq.*

[25] *Die Maus hat einen Berg geboren,* NEUE ZÜRCHER ZEITUNG [NZZ] at 11 (Aug. 10, 2002).

[26] *Supra* note 22.

In June 2002, the Swiss Federal Cabinet submitted a bill[27] to Parliament that proposed the ratification of the UN Convention for the Suppression of Terrorist Bombings[28] and the UN Convention for the Suppression of the Financing of Terrorism.[29] To implement these conventions, the bill also proposes the enactment of two domestic criminal provisions that penalize terrorism, including foreign terrorism, and the financing of terrorism.

If enacted, article 260*quniquies* of the Criminal Code would prohibit terrorism, which is defined in keeping with the UN Convention for the Suppression of Financing of Terrorism, as the perpetration of one or more of several enumerated crimes of violence or public endangerment with an intent of intimidating the population or of coercing the government of a country or an international organization.

Article 260*sexies*, if enacted, would prohibit the collection or the making available of assets with the intent of having them used for the commission of terrorist acts. This provision would make it easier to penalize terrorist funding, in that the elements of the crime do not require that a terrorist act be actually perpetrated.

Financial Reporting and the Recovery of Assets

As proposed, the offenses according to the above described articles 260*quinquies* and 260*sexies*, would be prosecuted by the Federal Prosecutor and tried before the Federal Court. Federal jurisdiction over these crimes would be of great help for foreign mutual assistance requests, including those for banking information, because it could be expected that the federal practice would be more uniform and predictable than the varied cantonal responses.

Shortly after September 11, the Swiss banks cooperated with the supervisory agencies in an effort to identify terrorist accounts. By the end of October 2001, this led to the freezing of US$12 million in 24 bank accounts.[30] In addition, the Swiss Cabinet amended an existing regulation on measures against the Taliban, to further facilitate the freezing of the assets related to the September 11 terrorist activities.[31] The Swiss Constitution grants the federal government the power to enact such regulations to deal with serious threats against national security or foreign relations.[32]

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[27] *Supra* note 15.

[28] 37 INTERNATIONAL LEGAL MATERIALS [ILM] 249 (1998).

[29] Signed Dec. 9, 1999, 39 ILM 270 (2000).

[30] *Werbekampagne der Schweizer Banken im Ausland,* SDA – BASISDIENTS DEUTSCH (Nov. 12, 2001) [LEXIS/NEWS].

[31] Verordnung über Massnahmen gegenüber den Taliban, Oct. 2, 2000, SR 946.203, as amended by Verordnung, Nov. 30, 2001, AMTLICHE SAMMLUNG DES BUNDESRECHTS [AS] 2002 at 155, and as subsequently amended.

[32] BV, art. 185.

4. Limits on Counter-Terrorist Activity

The Swiss have responded to the requirements of the UN Security Council Resolution 1373 (2001).[33] The Swiss government has submitted bills to parliament that would adopt the UN's terrorism conventions of 1997 and 1999[34] and enact domestic provisions that would make it easier to locate terrorist funds with Swiss financial intermediaries and to freeze and seize such assets and ultimately to share them with victims in other countries. The Swiss have also given much thought to the matter of how to better protect Switzerland and its foreign visitors from terrorist attacks.[35]

A question that may still invite further analysis is banking confidentiality and whether the Swiss laws and regulations for the prevention of money laundering and the Swiss reliance on financial intermediaries for designating suspicious accounts or activities are sufficient to fully allow for preventive intelligence gathering as well as for criminal investigations, or whether computerized searches of banking records by the authorities should be allowed. It appears that until now, the Swiss have resisted further European demands for a lifting of bank secrecy.[36]

Another issue that in the past has hampered foreign investigations involving Switzerland has been the power of the Swiss cantons over procedural legislation, over the administration of justice, and over their own police forces. The Swiss reaction to September 11 has shown that the Swiss are quite capable of cooperation between the Federation and the cantons, if they so choose. Moreover, some legislation is in the process of being enacted that would strengthen the Swiss Federal role in the investigation of terrorist activities.

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[33] Report on Counter-Terrorism submitted by Switzerland to the Security Council Committee established pursuant to resolution 1373 (2001), *at* www.eda.admin.ch/terrorism.

[34] *Supra* notes 15, 29, and 30.

[35] B. Lezzi, *Kleinräumigkeit als Chance im Antiterrorkampf,* NZZ, at 45 (May 29, 2002).

[36] S. Hostettler, *Rasterfahndung gegen Geldwäscherei,* TAGES-ANZEIGER AT 33 (Oct. 12, 2001).

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UNITED KINGDOM

EUROPEAN LEGAL COOPERATION AGAINST TERRORISM

Britain was profoundly affected by the tragic events of September 11, 2001. Prime Minister Tony Blair immediately expressed his sympathy and support to the U.S. declaring that "we…here in Britain, stand shoulder to shoulder with our American friends in this hour of tragedy and we, like them, will not rest until this evil is driven from our world." Despite the enactment in 2000 of a new law against terrorism, the United Kingdom immediately passed further comprehensive emergency legislation to enable it to respond effectively to the heightened threat from terrorists, and has actively implemented it. The anti-terror legislation has been subject to intense criticism in the UK due to its breadth and fears over the abuse of power that it might bring.

1. Legislation Prior to September 11, 2001

Introduction

British anti-terrorism laws have their genesis in the troubled relationship between Great Britain and Ireland over the partition of Northern Ireland in May 1921. The break-up was accompanied by the enactment of "special powers" legislation conferring wide powers of arrest, questioning, detention, and internment of persons involved in Northern Ireland in what the British viewed as acts of terrorism. Later, a civil rights movement in the 1960s saw the arrival of British "peace keeping" troops in Northern Ireland followed by increased guerilla attacks by the Irish Republican Army (IRA). The escalation in violence led to the introduction of internment without trial, direct rule from London, and further emergency legislation. The legislation was criticized by those who considered that the criminal law in the country was sufficient to combat the problems of terrorism and that the laws were draconian in depriving individuals of their basic human rights.

The Northen Ireland (Emergency Provisions) Act 1973 and the Prevention of Terrorism (Emergency Provisions) Act 1974 were enacted in reaction to IRA attacks. The 1974 Act introduced, for the first time, increased powers to deal with terrorist attacks on the mainland. Due to the wide powers given to the police and the risk of abuse that such power brings, the government decided that the Act should not be permanent and should be subject to annual renewal. The then Home Secretary stated, "I do not think that anyone would wish these exceptional powers to remain in force a moment longer than is necessary."[1] To ensure this was the case, the legislation contained a "sunset clause" requiring that it be renewed each year after a review of its necessity was carried out.

A review of counter-terrorist legislation was conducted in 1996 which concluded that terrorism was no longer solely related to the "Irish problem" and that even with a lasting peace in Northern Ireland, splinter groups and factions would continue to pose a threat.[2] The government saw the need to modernize the legislation to apply to England, Scotland, and Wales as well as Northern Ireland and address all forms

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[1] 882 PARL. DEB., H. C. (5th ser.), 642 (1974) (statement of M.P. Roy Jenkins).

[2] INQUIRY INTO LEGISLATION AGAINST TERRORISM, 1996, Cm. 3420.

of terrorism with an "appropriate and effective range of measures, which are [sufficiently flexible and] proportionate to the reality of the threats that we face and are of practical operational benefit…[and] enable the UK to cooperate more fully in the international fight against terrorism."[3] As a result of these considerations, the Terrorism Act 2000[4] (TA) was enacted.

Immigration

In recent years there has been a dramatic increase in numbers of economic migrants, refugees, and asylum seekers entering the UK. Abuses of the immigration system and the failure to deport the majority of rejected asylum seekers has made the UK population increasingly wary of the influx and caused them to demand more stringent immigration laws and tighter border controls. The government, believing that such action would have the opposite effect and encourage more illegal entries, initiated various studies to examine other possibilities to help with the illegal immigration problem.[5] Based on the White Paper entitled *Fairer, Faster And Firmer – a Modern Approach to Immigration and Asylum*[6] the government enacted the Immigration and Asylum Act 1999 (1999 Act)[7] The aim of the 1999 Act was to "develop a more flexible and streamlined system of immigration control capable of providing an improved quality of service to British citizens and those who qualify to enter or remain in the United Kingdom, as well as strengthening the necessary controls on those who do not."[8]

Border Controls

The UK opted out of the European Union's Schengen agreement over concern that the external borders of the EU were not adequately secured. The Home Secretary stated that the introduction of such an agreement would inevitably require tighter internal controls and a system of compulsory identification cards, an idea that always has been met with considerable opposition.[9] Currently, emphasis regarding immigration controls in the UK is at its borders. This approach has made it impossible to determine how many visitors, students, or failed refugee seekers have left the country. It has been estimated that there are "20,000 enforcement cases and over 9,000 port cases of people liable for removal."[10] Once an illegal immigrant enters the country he/she can remain without discovery fairly easily as there is no requirement for proof of identity documents for services such as health and education.[11] Employment in the public sector rarely involves identity checks, and many employers have been taking advantage of the opportunity of cheap labor that illegal immigrants are providing. This is facilitated further by the lack of a system of

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[3] *Head to Head: New Terrorism Act*, *at* http://news.bbc.co.uk/1/hi/uk_politics/talking_politics/1178705.stm.

[4] Ch. 11, *Supra* note 4, §§62-64 enabled the UK to ratify two UN Conventions dealing with terrorism: the Convention for the Suppression of Terrorist Bombings and the Convention for the Suppression of the Financing of Terrorism.

[5] House of Commons, Home Affairs Committee, BORDER CONTROLS, First Report 2000-1, HC 163-I at 16.

[6] Home Office, FAIRER, FASTER AND FIRMER - A MODERN APPROACH TO IMMIGRATION AND ASYLUM, 1998, Cm. 4018.

[7] Ch. 33.

[8] Immigration and Asylum Act 1999, Explanatory Notes, at 3.

[9] *Supra* note 5, at 77.

[10] *Supra* note 6, at 1.15.

[11] *Id.* at 76.

departure checks, as the government considers that "experience has shown that the use of intelligence and denunciatory information is the most effective tool against illegal immigration."[12]

To combat this problem provisions have been introduced to make it more difficult to obtain employment in England without official permission. Section 8 of the Asylum and Immigration Act 1996 (1996 Act) makes it an offense for employers to knowingly or negligently employ persons who are not permitted to work.[13] The penalty under the 1996 Act is £5,000 per person. With less than 30 convictions in the year 2000, the section has not appeared to be an effective deterrent or, at least, appears difficult to enforce.[14] The Secretary of State has issued a code of practice that informs employers of their obligations to check for illegal immigrants during their hiring processes without discriminating and the penalties that they face if they employ illegal immigrants.[15]

To enhance border security and serve as a deterrent to terrorists attempting to enter into the UK, the TA allows police, customs officials, and designated immigration officials to stop, question, and detain individuals for up to nine hours to determine whether they fall within the definition of a suspected terrorist.[16] Although the government believes that the powers have helped to disrupt terrorist organizations, they have been criticized as being unnecessarily restrictive and applied disproportionally to those traveling to and from the Republic of Ireland and Northern Ireland.[17]

Police, customs and immigration officials have the authority to seize cash in transit where there are reasonable grounds to suspect that it is intended to be used for terrorism, is terrorist property, or the resources of a proscribed organization.[18] Once seized, the cash can be withheld for 48 hours or up to 3 months if extended by a magistrates' court or the subject of a forfeiture order.[19]

To help prevent illegal immigrants from entering the country via airplanes and ferries, the government imposed a £2,000 fine on transport operators for each individual who arrives in the country without adequate documentation.[20] In a further attempt to increase checks at points of departure, the 1999 Act introduced a civil penalty that applies to people who transport clandestine entrants into the UK.[21] To ensure that penalties are recoverable, the vehicles, ships, or aircraft used can be detained as security.[22]

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[12] House of Commons Library, Jane Fiddick, IMMIGRATION AND ASYLUM, 1999, Research Paper 99/16.

[13] Asylum and Immigration Act 1996, Ch. 49, §8.

[14] ENTITLEMENT CARDS AND IDENTITY FRAUD, 2002, Cm. 5557 at 3.16.

[15] *Supra* note 13, §22.

[16] *Supra* note 4, sch. 7 and 8. §40(1)(b) defines "terrorist" for the purposes of Part V of the Act.

[17] *Supra* note 11, at 46.

[18] *Supra* note 4, §25.

[19] *Id.* §26-28. Forfeiture is permitted when on the balance of probabilities the magistrates' court is satisfied that the cash is terrorist cash as defined in §25(1)(a), (b) or (c).

[20] *Supra* note 7, at §§40-42.

[21] *Supra* note 7, at §32.

[22] *Id.* §32-37.

Emphasis has also moved to stricter controls at the point of embarkation, which has met with some success.[23] The Home Secretary argued that such legislation was necessary to prevent the clandestine entry of illegal immigrants and that emergency legislation may be necessary to ensure that entry ports to the UK are secure.[24]

Section 32 of the 1999 Act was frozen after a group of 50 truck drivers challenged the mandatory £2,000 fine that was imposed on them for, in many cases unknowingly, carrying illegal immigrants into Britain in their trucks. The Court of Appeal held that the fine is "absurd and unfair" and breached the Human Rights Act as the drivers could not challenge the fine or prove that they were unaware of the illegal immigrants in their trucks. The decision is still not final as the Court of Appeal has granted permission for appeal to the House of Lords.[25]

Current border controls for immigration into the UK have been criticized as being "bitty and disjointed" with responsibility shared between immigration and customs officers and Special Branch (police) working to prevent terrorism.[26] This has resulted in the lack of access to a nationwide database, separate budgets leading to inadequate funding for large projects, and a lack of efficient intelligence sharing.[27] While not addressing all the issues of concern, the 1999 Act aims to "facilitate inter-agency cooperation in tackling abuse of…immigration control, racketeering and other immigration-related offences …[and] enable resources to be deployed more effectively."[28]

Powers to share and disclose information relating to persons entering the country have been strengthened. When requested, passenger carriers are required to inform immigration officers about passenger information.[29] The Secretary of State is permitted to obtain information for immigration purposes from the police, criminal intelligence service, national crime squad, and customs and excise[30] and can also create an Order requiring other bodies to supply the same information to him.

The power of immigration and police officers to arrest and detain people for immigration offenses is extensive. An immigration officer can examine persons arriving in the UK, even those granted leave to enter before arrival, and detain any person pending their examination or prior to a decision to grant (or

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[23] *Supra* note 5, at 49 gives the example of privately conducted embarkation checks on P&O Stenna Line Ferries that, in its first month, discovered more than 300 potential illegal immigrants on board lorries and a further 200 foot passengers were denied boarding because of inadequate documentation.

[24] Alan Travis, *Migrant Ruling Angers Blunkett: Judge rejects Stowaway Fines on Lorry Drivers as "overkill"*, GUARDIAN, Dec. 6, 2001.

[25] Robert Verkaik, *Refugees Fines for Lorry Drivers are Declared Illegal*, THE INDEPENDENT, Feb. 23, 2002.

[26] The Immigration (Leave to Enter and Remain) Order 2000, S.I. at 1161.

[27] *Supra* note 5, at 92.

[28] *Supra* note 8, at 8 and *supra* note 7, §18-21.

[29] *Supra* note at 7, §18. Relevant offenses include "knowingly entering the UK without leave or in breach of a deportation order, overstaying or breaching a condition of leave, overstaying leave to enter as a member of the crew of a ship or an aircraft, failing to attend a medical appointment required under Sch. 2 to the Immigration Act 1971, Ch. 77, failing to observe restrictions, disembarking from a ship or aircraft during removal, obtaining leave to enter or remain or avoiding enforcement action by deception or harboring an illegal entrant or over stayer." CURRENT LAW STATUTES, 1999, Vol. 3, at 33-141.

[30] *Supra* note 7, §§20-21.

refuse) leave to enter.[31] To help increase efficiency, the authority of immigration officers has been extended to allow them to act without police being present and to exercise broad powers for arrest, search, identification, and seizure in relation to (suspected) immigration offenses. Immigration and police officers have the power to arrest, without warrant, any individual who has committed or attempted to commit, or is reasonably believed to have committed or attempted to commit, various immigration offenses.[32]

After the arrest of a suspect under Part III of the Immigration Act 1971,[33] immigration or police officers[34] can search the suspect[35] and enter and search certain premises provided there are reasonable grounds that there is evidence relating to the offense in question.[36] Premises that can be searched under this provision include the location at which the arrest took place or where the suspect was immediately before the arrest.[37] In addition to this, Magistrates have a discretionary power to grant immigration or police officers the authority to enter, by reasonable force if necessary,[38] into premises, search for material relating to an immigration offense,[39] and arrest a person reasonably suspected of committing a relevant offense.[40] To stop human traffickers, immigration officers can enter and search any premises to arrest a person for security of facilitating the entry of an illegal entrant into the UK.[41]

To strengthen border controls and help monitor people granted entry into the UK, fingerprinting of people arriving is permitted in certain of circumstances including:

- where there is insufficient proof to a person's identity
- where there is reasonable suspicion that those granted temporary admission may break a condition of that admission
- people subject to deportation and removal orders
- people who have been arrested while waiting for a decision on their status

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[31] *Id.* §16, sch. 2.

[32] Such offenses include "entering the country illegally; overstaying; failing to observe a condition of leave;" and the new extended offense of deception created by §28 of *Supra* note 7.

[33] Ch. 77.

[34] Police powers stem from §§32(2)(b) and (6) of the Police and Criminal Evidence Act 1984, Ch. 60.

[35] *Supra* note 7, §134.

[36] *Id.* §132. Relevant evidence is defined in *supra* note 33, §25A(2).

[37] *Supra* note 7, §132. This power cannot be exercised if the suspect was arrested at a police station.

[38] This restriction applies only to immigration officers. Their actions are governed by §3 of the Criminal Law Act 1967, Ch. 58 and the common law.

[39] *Supra* note 7, §131. "Premises" under this section is not restricted to premises that the suspect occupies, has occupied, or controlled.

[40] *Id.* §129.

[41] *Id.* §130.

- any asylum seeker to stop them from creating multiple identities for repeated applications[42]

The fingerprints cannot be kept on file indefinitely and must be destroyed before the end of a specified period, or if the person fingerprinted falls within a number of criteria contained in the Act.[43]

The authority to issue deportation orders was strengthened by the 1999 Act which extended it to individuals who have "entered lawfully but failed to observe conditions attached to their leave, over stayers and [individuals] who [were granted] leave to remain by deception."[44] To reduce the number of appeals and cut down on "time wasters," the right to appeal removal orders was abolished, except in cases of individuals seeking asylum or under the European Convention on Human Rights or the Human Rights Act 1998, section 6(1).

When a person has been given notice that they are to be deported, or a deportation order has been issued against him/her, the Secretary of State can detain him/her pending the making of the order for his/her removal or departure from the UK.[45] Any person who could be detained, but is not, or is successful upon appeal for release from detention is subject to restrictions to residence and employment and required to report to police or immigration officers.[46] Any person subject to the restrictions can be arrested without warrant by a police or immigration officer where there are reasonable grounds that the restrictions have been, or are likely to be, contravened.[47]

Sham Marriages

In reaction to evidence that a large number of marriages of convenience were being conducted in the UK,[48] regulations controlling marriages by registrars were extended and a duty imposed on them to report marriages that they reasonably suspect are a "sham."[49] The 1999 Act places a requirement on registrars to obtain the nationality of the couple and gives them the authority to ask for proof of identity and nationality.[50] There were some concerns that this would cause discrimination as the power to request the information is discretionary and there are no regulations governing what items of evidence are sufficient. The burden of proof has been moved to the couple to show that there is no lawful impediment to their marriage and the registrars must be (subjectively) satisfied as to this before they issue a marriage certificate.[51]

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[42] *Id.* §141.

[43] *Id.* §143.

[44] *Supra* note 11, at 41.

[45] *Supra* note 33, §2, sch. 3.

[46] *Id.* §21, sch. 3.

[47] *Id.* §7, sch. 3 and *supra* note 5, at 93.

[48] *Supra* note 8, at 423.

[49] *Supra* note 7, §24.

[50] *Supra* note 7, §161-2.

[51] *Supra* note 7, §163.

Asylum

The UK considers that its problems with masses of refugees stem from the Schengen Agreement.[52] They believe that the agreement has resulted in

> no other country having the means of border control, or incentive, to check the flow of those who state the UK as their final destination. The pattern of past migration and the lack of internal borders has created a dynamic which leads people to the Red Cross warehouse at Sangatte near Calais.[53]

The UK has been critical of the refugee center at Sangatte, considering it to be "a base for [people to] make repeated attempts to enter the UK."[54]

The main basis for a claim of asylum in the Act is a "well founded fear of persecution" provided in the 1951 UN Refugee Convention. There is a huge backlog of asylum seekers in the UK, and the government's emphasis on reform has been to increase efficiency to remove the backlog. It believed that through reorganizing and computerizing the immigration process and creating a single right of appeal, most initial asylum decisions could be made within two months and appeals heard within an additional four months, creating a six-month period for the entire application process.[55] There are some exceptions to the appeal procedures as they do not apply to "national security" cases, which may be appealed to the Special Immigration Appeals Commission (SIAC), which was established to help speed up the process of appeals relating to immigration cases.[56] To ensure that people do not disappear before their case is fully considered the Secretary of State has the power to provide temporary accommodations for people granted temporary admission under Schedule 2 of the Immigration Act 1971.

Support for destitute asylum seekers is provided separately from the state benefit services[57] and is under the control of the National Asylum Support Service. The system includes housing on a "no choice" basis to 1 of 13 "cluster areas" throughout the UK in an attempt to relieve the burden in London and the South East where the majority of asylum seekers were staying. Benefits also include a voucher system of maintenance, plus £10 cash per week. The Secretary of State can provide support to those asylum seekers which he subjectively considers are destitute and can provide conditions under which the individual must comply with in order to receive such support.[58] The dispersal system has been criticized

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[52]The Schengen Agreement removed border controls of the majority of the Member States of Europes' Borders. As noted, the UK opted out of this agreement.

[53]*Supra* note 5, at 28.

[54]*Supra* note 5, at 156.

[55]*Supra* note 7, Part IV.

[56] The SIAC is a judicial body consisting of a panel of two judges and a security expert created by the Special Immigration Appeals Commission Act 1997, Ch. 68.

[57]*Id.* §116 states that people subject to immigration controls are not entitled to assistance under the National Assistance Act 1948.

[58]*Id.* §95.

as placing asylum seekers in run down housing areas and causing friction with current residents who have little experience with immigrants and may have contributed to the recent murder of a Kurd in Glasgow.[59]

Transfers of Asylum Seekers to Third Countries

The removal of asylum claimants to non-EU member states is governed by section 12 of the 1999 Act. The third country must be "safe," and the asylum seeker must not be a national of the third country. His/her life and liberty must not be threatened by virtue of race, religion, nationality, membership of a particular social group, or political opinion, and the government of the third country must not send him onto an additional country unless in accordance with the Refugee Convention.[60] If the country requires identification documents before they will admit an asylum seeker, the Secretary of State can provide it, but he cannot disclose whether the person concerned has made a claim for asylum. In addition to this, as the release of data under these circumstances is necessary in the public interest, it is not given protection under the principle 8 of Schedule 1 of the Data Protection Act which would have prohibited the transfer of these data to countries outside of the European Economic Area if the country has inadequate levels of data protection.[61]

Asylum seekers may not be transferred if there is an appeal outstanding in respect of a claim that the transfer would be in breach of the Human Rights Act 1998, or the period within which such an appeal should be lodged has not yet expired. In accordance with section 72, this requirement does not apply where the Secretary of State has certified that such a claim is manifestly unfounded.[62]

Detention

Any person arriving in the UK can be detained by an immigration officer pending his/her examination and the decision to grant leave to enter. The 1999 Act extended this power of detention to cases where there are reasonable grounds for believing that directions may be given to refuse leave to enter or remain or where removal orders have been given under the Immigration Act 1971 (1971 Act).[63]

Any person detained or awaiting deportation under the 1971 Act has a right to bail and can only continue to be detained if a number of circumstances are met.[64] In order to detain individuals, on the balance of probabilities, there must be a substantial likelihood that the individual will fail to comply or recognize bail conditions; commit an offense punishable with imprisonment; cause a danger to public health; be a serious threat to the maintenance of public order; knowingly entered the UK with others in breach of immigration law; or where directions for removal from the UK are in force; the individual is required to submit to an examination by an immigration officer under paragraph 2 or 2A, schedule 2 of the 1971 Act; or be in the interests of national security.

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[59] George Jones, *Refugees to be Housed in New Centers*, THE DAILY TELEGRAPH, Oct. 29, 2001.

[60] *Supra* note 7, §12.

[61] *Supra* note 7, §13(4).

[62] *Supra* note 8, at 64.

[63] *Supra* note 33, sch. 2, ¶19.

[64] *Supra* note 7, §46.

The first case taken before the SIAC resulted in the confirmation of a deportation order against Shafiq Ur Rehman because of his involvement with the organization Lashkar e Tayyaba.[65] Rehman had supported the organization by raising funds and training British citizens, and the court concluded that by doing so he was putting the UK's national security at risk by exposing it to a threat from Pakistan.[66]

An immigration or police officer has the power to arrest without warrant an individual released from detention on bail where there are reasonable grounds to believe that the person has broken, or is likely to break, a condition of bail.[67] To achieve this arrest, immigration and police officers can enter into premises, using reasonably force where necessary, without a warrant to conduct the search.

Despite being enacted to help reduce the backlog of asylum applicants and appeals[68] and streamline the immigration and asylum process, the 1999 Act has been considered ineffective and cumbersome, resulting in long delays for asylum seekers and abuses of the system.[69] The long delays in processing asylum applications have attracted many asylum seekers and economic migrants to the UK as they are provided with benefits during that period and because of the ease of slipping through the cracks of the system during the processing period.

Aliens

In England, the British Nationality Act 1981[70] permits the Secretary of State to naturalize a person with British citizenship if the individual is of sound mind, good character, has not been in breach of immigration rules, has sufficient knowledge of a language of the UK, and intends to have a home in the UK.[71] The individual must also have been resident in the UK for a five-year period without leaving it for more than 450 days, or a total of 90 days in a 12 month period. A person can apply for citizenship by virtue of being married to a British citizen, provided that he/she is of sound mind, good character, in the UK for a period of three years, while not residing outside the UK for more than 270 days, or in breach of immigration laws.[72]

Visitors

Those given leave to enter the UK may do so with certain restrictions that can be varied or revoked. Such conditions include restrictions on employment or occupations in the UK, requiring the

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[65] Proscribed by the Terrorism Act 2000 (Proscribed Organizations Amendment) Order S.I. No. 1261, 2001.

[66] Secretary of State for the Home Department v Rehman (2001), 3 WLR 877.

[67] *Supra* note 7, §50.

[68] In 1999 there was a backlog of 51,000 asylum applications, 23,000 cases in the appeals backlog and 19,000 cases in the removals backlog, *supra* note 11.

[69] One example of this abuse is from two American citizens who sought asylum under the 1999 Act claiming that the U.S. government had denied them the basic right to healthcare. For the duration of their application process they were permitted free treatment though the National Healthcare Service.

[70] Ch. 61.

[71] *Id.* §6.

[72] *Id.* Sch. 1.

visitor to refrain from recourse to public funds and requiring them to register with the police. Individuals can be deported if they are convicted of an offense punishable with imprisonment, and the court that the individual is convicted in recommends deportation.[73]

Immigration Regulations in the UK require that foreign nationals, aged 16 and over, who are given leave to enter the UK for more than six months, or three months if entering for employment purposes, register with the police in the area in which they are living.[74] The rules also permit the registration requirement in exceptional circumstances where the "immigration officer considers it as necessary to ensure that a foreign national complies with the terms of a limited leave to enter."[75]

Registration requirements also apply to foreign nationals who have not previously registered and are granted an extension of stay that has the effect of extending their total period of stay in the UK beyond a period of three months from the date of arrival in the case of those engaged in employment and six months for others.[76] For shorter periods of residency, certain aliens must also register with the police.

Identity Cards

Compulsory identification cards were abolished in England after World War II. When the issue of identity cards was considered again in 1996 due to the influx of illegal immigrants, it was concluded that "only an identity card which was either compulsory or which carried details of immigration status would have an impact on preventing illegal immigration"[77] and the proposal was not acted on. It was believed that civil liberties and human rights would be threatened by such a system. Even if it contributed to greater immigration control, the government considered that there was a risk that it would lead to increased racial harassment that would "cause setbacks in good race relations."[78]

Surveillance

Everyday surveillance in the UK has progressively become the norm, with closed circuit television cameras (CCTV) on most city and town center streets. The cameras permit the police to monitor the activities of individuals, subject to provisions in the Data Protection Act 1998[79] and the Regulation of Investigatory Powers Act 2000 (RIPA)[80] that govern procedures for the collection and storage of CCTV images and directed and intrusive surveillance. There has been criticism that the ready availability of

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[73] *Supra* note 33, §3.

[74] The Immigration Rules, H.C. 395, Part 10, ¶ 325.

[75] *Id.* ¶ 325(iv).

[76] *Id.* ¶ 326.

[77] Home Office, IDENTITY CARDS, Fourth Report, 1995-6, Cm 2879.

[78] *Supra* note 5, at 81.

[79] Ch. 29.

[80] Ch.23. Directed surveillance is defined as covert but not intrusive for the purposes of a specific investigation or operation and intrusive surveillance is defined as covert surveillance "taken in relation to anything taking place on any residential premises or in any private vehicle; and involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device." §26.

images from public area CCTV sources can be accessed and used by anyone, including the police, to circumvent the legal controls regarding surveillance. Despite recent reports[81] that CCTV are not as effective in deterring crime as originally believed, the government has not shown any sign that it will limit its spending on them in the future, citing their usefulness in crime detection as a justification for their continued use.

The RIPA mandates a number of circumstances that must be present before a warrant can be issued to conduct intrusive and directed surveillance. Warrants can be granted for directed[82] and covert surveillance when it is necessary and proportionate, falls within the requirements of section 28(3),[83] or the Secretary of State issues an order. Before a warrant can be granted for intrusive surveillance,[84] there must be a belief that the authorization is proportionate for the purposes that it is being issued and necessary for national security purposes, for preventing or detecting serious crime, or in the economic well-being of the UK.[85] The warrant requirements, particularly those of national security and economic well-being, have been criticized as being "vague and subjective."[86]

Wiretapping

The Human Rights Act 1998[87] had an impact on the use of secret surveillance, requiring that it be prescribed by law, necessary, and proportionate.[88] A 1996 judgment criticized the lack of a "legal framework regulating the installation and use by the police of listening devices [which] is in contrast to the use of such devices by the Security Services."[89] Part III of the Police Act 1997 responded to this criticism and regulates surveillance that involves entry or interference with property, including wiretapping. In order to conduct the above activities, authorization must be obtained from an officer[90] who believes that the measures are necessary "for the action specified to be taken on the ground that it

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[81] Brandon Welsh and David Farrington, *Crime Prevent ion Effects of Closed Circuit Television: A Systematic Review*, HOME OFFICE RESEARCH STUDY, 252, 2002.

[82] *Supra* note 77, §26(2).

[83] *Id.* §28(3) requires that the surveillance be "in the interests of national security; for the purpose of preventing or detecting crime or of preventing disorder; in the interests of public safety; for the purpose of protecting public health; for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department."

[84] *Supra* note 77 defines intrusive surveillance in §26(3).

[85] *Id.* §32.

[86] John Wadham of Liberty, *Op Cit, Regulation of Investigatory Powers Bill, Digital Detectives.* LAW SOCIETIES GUARDIAN GAZETTE, July 27, 2000.

[87] Ch. 42.

[88] *Kopp v. Switzerland* (1998) 27 EHRR 91.

[89] R. v Khan (Sultan) [1997] AC 558. The Security Services can intercept communications with a warrant issued by the Secretary of State when he considers that it is of substantial value to a case being investigated; assist the Security or Intelligence Service in carrying out its statutory functions; and the information cannot be obtained reasonably by other means. The Intelligence Act 1989, Ch.5. §1. The criteria have been criticized as being overly broad.

[90] The Police Act, 1997, Ch.50, §93 defines authorized officers as high ranking members of the police force, including a chief constable of a police force; a Commissioner, or an Assistant Commissioner, of Police of the Metropolis; the Director General of the National Criminal Intelligence Service; or the Director General of the National Crime Squad.

is likely to be of substantial value in the prevention or detection of serious crime,"[91] and such information "cannot be reasonably achieved by other means." While serving to place surveillance on a statutory basis, the Act was criticized for providing an independent Commission rather than a judicial body for review of surveillance authorizations. It also did not cover the emerging new technologies and left a void that was later filled by the RIPA.

The RIPA contains extensive provisions that regulate surveillance, including access to communications and encrypted data.[92] The RIPA permits the interception of communications without a warrant when the interception is conducted on a person who it is believed is outside of the UK; and under regulations made by the Secretary of State for interceptions in the course of lawful business practices, under prison rules, where high security psychiatric services are provided, and in hospital premises.[93]

The Secretary of State can authorize the interception of telecommunications by warrant, and to request or comply with an international mutual assistance agreement,[94] provided that there are no other means of obtaining the information and a number of criteria are met.[95] Communications that are unavoidably intercepted during the investigation are also authorized by the warrant.[96]

To ensure that the government can always access communication as technology evolves, the RIPA requires that communications providers maintain reasonable interception capabilities providing it with the potential to monitor vast amounts of communications.[97] Despite a provision for grants to provide interception capabilities, many critics believed that the high cost of maintaining such technologies would push the smaller communications providers out of business. Another highly criticized aspect of the RIPA, one that is currently not yet in force, is the power that police have to compel individuals to give them their encryption passwords so that encrypted materials can be accessed.[98] The burden of proof would be on the individual to show that they do not have the code, which is difficult to prove in cases where individuals have genuinely lost or forgotten it.

Obtaining and disclosing communications data is governed under section 22 of the RIPA. To obtain such information must be proportionate and necessary[99] for the purposes stated in note 117 as well as "for the purpose, in an emergency, of preventing death or injury or any damage to a person's physical

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[91] *Id.* §93 defines "serious crime."

[92] *Supra* note 77, §21 defines communications data as traffic data, referring to the particulars of how and when the information is transmitted, such as billing data, but not the actual substance of the communication.

[93] *Id.* §4.

[94] *Id.* §5. Warrants can be granted in response to a mutual assistance agreement when it is necessary to prevent or detect serious crime.

[95] Such criteria include the test of proportionality and as well as the requirements for a warrant for intrusive surveillance.

[96] *Supra* note 77, §5(6).

[97] *Id.* §12.

[98] *Id.* §49.

[99] *Supra* note 80 sets down certain requirements that are necessary for the issuance of warrants.

or mental health, or of mitigating any injury or damage to a person's physical or mental health."[100] Despite the vast amount of information that can be derived from communications data, the section is somewhat limited as providers can only retain the information for as long as necessary for business purposes.[101]

The government states that the RIPA contains safeguards above and beyond those required for human rights purposes, although it has been highly criticized for invading and eroding the right to privacy and for insufficient safeguards.[102] Although the RIPA gives authorities wider powers than some civil liberties groups would like, the government criticized the impact of it, stating that a stronger piece of legislation might have helped to prevent the September 11 attacks.[103]

Proscribed Organizations

The TA granted the Secretary of State the power to proscribe terrorist organizations concerned in international or domestic terrorism, as well as Irish terrorism. Organizations can be proscribed when the Secretary of State has a subjective belief that an organization is promoting, encouraging, preparing for, committing, participating in, or is otherwise concerned in acts of terrorism.[104]

One aim of prohibiting terrorist organizations is to prevent the UK from becoming a base for international terrorist financing by prohibiting the supply of materials to proscribed terrorist organizations and enabling authorities to seize their assets. The provisions also aim to address concerns that refugees would participate in activities related to terrorism while in the UK.[105] There has been criticism over this aim and the extension of proscription to foreign groups, due to concerns that the UK organizations fighting for democracy or trying to overthrow a despotic government could fall into the definition. Also, keeping the list of proscribed organizations accurate and up-to-date is also a considerable task.

Proscribing a terrorist organization has been described as a symbolic act of deterrence, that is also made practical as there a number of offenses in the TA that relate solely to proscribed organizations. The provisions essentially prohibit all activities related to membership within or support (including administrative, financial, and organizational) to a proscribed organization.[106] It also permits easier conviction of an individual who contributes resources to, or gains proceeds from a proscribed organization as it creates certainty regarding what is and is not a terrorist organization.[107]

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[100] *Supra* note 77, §22.

[101] Telecommunications (Data Protection and Privacy) Regulations 1999, S.I. 1999, No. 2093.

[102] Mark Ward, *Warning Over Wiretaps*, August 21, 2001, *at* http://news.bbc.co.uk/1/hi/sci/tech/1500889.stm.

[103] "Now, I hear people saying 'why were these terrorists here' - well, the answer is not because of any lapse by the intelligence or security services or the police, but because people have had a two-dimensional view of civil liberties." *Net Freedom Fairs "Hurt Terror Fight,"* Jack Straw, Sept. 28, 2001, *at* http://news.bbc.co.uk/1/hi/uk_politics/1568254.stm.

[104] *Supra* note 4, §3. Proscribed organizations are listed in Schedule 2 of the Act. The Terrorism Act 2000 (Proscribed Organizations) (Amendment) Order 2001, S.I. 2001, No. 1261 added a further 21 international organizations to Schedule 2, including Al-Qaeda.

[105] UN GA Res 51/210 on Measures to Eliminate International Terrorism, Dec. 17, 1998.

[106] *Supra* note 4. The offenses are listed in §§11-13, and offenses of financing terrorist organizations are listed in §§15-18.

[107] *Supra* note 2, at 6.12.

Liberty, a civil rights organization, criticized the widening of proscription and the offenses related to proscribed organizations as a restriction on freedom of expression and assembly and believed that only the actions of, rather than support and involvement in, organizations should be subject to criminal sanctions.[108] The government attempted to ensure that civil liberties were protected by establishing a procedure that permits any proscribed organization, or person affected by proscription, to apply to the Home Secretary for de-proscription. If the application is rejected, the organization or individual can appeal to the Proscribed Organizations Appeal Commission which will review the decision. There have currently been five applications for de-proscription, all of which were rejected.[109] Three of the rejected organizations have appealed to the tribunal and the cases are still ongoing.[110]

Terrorist Financing

In response to concerns that the UK may become a base for the financing of terrorism, the TA aims to "restrict or prevent the financing of acts of terrorism."[111] The Act replicates many of the provisions in the PTA and extends them to include international and domestic terrorism. Offenses under the TA include money laundering,[112] using property for terrorist purposes, fund raising for terrorist organizations, and becoming involved in funding agreements for the purposes of terrorism.[113] Terrorist property is defined broadly under the TA as money or property that is likely to be used for the purposes of terrorism or any proceeds of acts of terrorism.[114] The definition of terrorist property for proscribed organizations is even broader, including any resources of the organization.[115]

Any person convicted on indictment of an offense under the Act can be convicted to a maximum of 14 years' imprisonment and/or a fine, or on summary conviction, imprisonment for a term of up to 6 months and/or a fine.[116] For individuals convicted of fund raising or using, providing, or possessing money or property for terrorist purposes[117] the court can order the forfeiture of any money or property if it was under the control or possession of the convicted person at the time of the offense, provided it was

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[108] *Supra* note 3.

[109] R (PKK) v Secretary of State for the Home Office (2002), EWHC 644 (Admin).

[110] House of Commons, Select Committee on Defense, Minutes of Evidence, May 22, 2002, Question 1411, Supplementary memorandum submitted by the Home Office (June 10, 2002).

[111] House of Commons Library, THE TERRORISM BILL, Research Paper 99/101, at 31.

[112] *Supra* note 4, §18 prohibits people from entering into or "become concerned" in any arrangement that facilitates the retention or control of terrorist property by concealing it, transferring it to nominees or removing it from the UK's jurisdiction. The burden of proof is shifted to the defendant to prove that he did not know or had reasonable cause to suspect that the arrangement was related to terrorist property.

[113] *Id.* §15-18.

[114] *Id.* §14.

[115] *Id.* §18.

[116] *Id.* §22.

[117] *Id.* §15 defines fund raising as inviting another to provide money or other property that he knows or has reason to believe will be used for the purposes of terrorism or receive money intending, or having reasonable suspicion that it will be used in the funding or money laundering of terrorist property. Section 16 provides that a person commits an offense if they use money or other property for the purposes of terrorism, or possess money or other property that they intend or reasonably suspect may be used for terrorist purposes.

intended to be used for terrorist purposes; the individual had reasonable cause to believe that it would be used for the purposes of terrorism;[118] and money or any other property that is received as payment or other reward in connection with the offenses of money laundering, fund raising, using, possessing, or involvement therein.[119]

Banks and other businesses have an obligation to report any suspicious actions that they believe are related to laundering terrorist money or property or other offenses under sections 14-17. Unless the information was obtained in professionally privileged circumstances, or the individual has a reasonable excuse for not making the disclosure, or it was made in accordance with the procedures established by the business, it is an offense not to disclose the information within a practicable period.[120]

Restraint Orders

The High Court can issue restraint orders in a number of circumstances to prevent a person from dealing with or removing any property specified in the order from the UK. Restraint orders can be issued when proceedings are underway for offenses under sections 15-18 of the TA; when the prosecution applies for a restraint order; when a forfeiture order has been made, or if it looks likely that one will be made; and where the court is satisfied that a person will be charged with fund raising, using or possessing terrorist property, arranging terrorist funding, or money laundering.[121] To ensure cooperation when property is already in another jurisdiction, both the restraint and forfeiture orders have been extended to apply in the British Isles and certain other countries and territories. Reciprocally, the enforcement of external forfeiture orders has been extended to designated countries so that the UK can cooperate with other countries.[122]

Although the Terrorist Act provides fairly comprehensive money laundering and disclosure laws in respect of terrorist activities, additional provisions are provided under the UK's criminal laws. The laws permit the confiscation of the proceeds of a crime after conviction and permits restraint orders to be issued when proceedings have been initiated for certain offenses.[123] The laws also apply to an individual who assists people in retaining the benefit of criminal conduct;[124] or knowingly acquires, possesses, or uses the proceeds of criminal conduct;[125] conceals or transfers the proceeds of criminal conduct to avoid prosecution under the Act or to avoid the creation or enforcement of a confiscation order.[126]

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[118] *Id.* §23 applies in relation to the offenses of fund raising and the use and possession of terrorist property (§16(1-2) and §17).

[119] *Id.* §23(c).

[120] Id. §19.

[121] *Id.* sch. 4.

[122] *Id.* controls enforcement orders in the British Isles and the Terrorism Act 2000 (Enforcement of External Orders) Order 2001, S.I. 2001, No. 3927 enables the enforcement in the UK of designated countries' external forfeiture orders.

[123] Criminal Justice Act 1988 (CJA) § 71.

[124] *Id.* § 93A.

[125] *Id.* § 93B.

[126] *Id.* § 93C.

Disclosure

Secrecy laws are lifted for people who disclose information to police when they suspect that person's funds or investments are from or used in connection with criminal conduct.[127] A person commits an offense under the Act if he/she discloses any information that can prejudice a current or proposed investigation.[128] Where there are reasonable grounds to suspect that a person has benefitted from criminal conduct, a judge can issue a search warrant to police. Certain conditions must be met before a search warrant is granted under these provisions including the material being of substantial value to the investigation; it must be in the public interest that such material should be obtained or access to it granted and prejudicial to the investigation if the police cannot obtain immediate access to the material.[129] The provisions relating to confiscation orders in the Act can be applied to countries outside of the UK by an Order in Council.[130]

The Internet

The Terrorism Act makes it an offense for individuals to make information about weapons training readily available, such as on the Internet.[131] Other provisions relating to terrorist and criminal activities, for example providing instruction in the making of firearms or explosives, can be used to prosecute people who place such information online. One example of a person being prosecuted for their online activities under a terrorism law is that of Sulayman Zain-ul-abidin. Mr. Zain-ul-abidin was charged with weapons training and recruiting Islamic terrorists after advertising "the ultimate jihad" course on the Internet. He was recently cleared of all charges by a jury.[132] Liberty criticized this prosecution as affecting the integrity of the criminal justice system and the confidence of British Muslims.

Conventions

The UK is party to a number of international conventions regarding terrorism, including the:

- Convention on Offenses and Certain Other Acts Committed on Board Aircraft (December 4, 1969)
- Convention for the Suppression of Unlawful Seizure of Aircraft (December 22, 1971)
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (October 25, 1973)
- European Convention on the Suppression of Terrorism (October 25, 1978)

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[127] *Id* §§ 93A(3)(a) and 93B(5)(a)CJA

[128] *Id*. § 93D.

[129] *Id*. § 93I.

[130] *Id*. § 96.

[131] *Supra* at 4, § 4.

[132] Robert Verkaik, *Clared Man Says He Was Scapegoat for Terror Attack*, Aug. 10, 2002, *at* http://news.independent.co.uk/uk/legal/story.jsp?story= 323050.

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (May 2, 1979)
- International Convention Against the Taking of Hostages (December 22, 1982)
- Convention on the Physical Protection of Nuclear Material (October 6, 1991)
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (June 21, 1998)
- International Convention for the Suppression of the Financing of Terrorism (March 7, 2001)
- International Convention for the Suppression of Terrorist Bombings (March 7, 2001)

Terrorist Incidents and Infiltration

Despite extensive anti-terrorism laws, the UK has been home to a number of terrorists, including those associated with al-Qaeda. Foreign security experts claim this is due to poor immigration controls and civil liberty protections, as well as preoccupation with the Irish problem.[133] British Muslims have been targeted by Muslim extremist groups who openly attempt to recruit them and disperse them to military training camps throughout the Middle Eastern Region.[134] The groups use provocative statements to attract new recruits, such as "America declares war on 1.5 billion Muslims worldwide, what is your duty?" and have distributed videos of Islamic extremist activities around British Mosques. The funds raised from the sale of the videos are used for the Islamic "cause."[135] The groups have apparently been attracting a "significant number of sympathizers"[136] and some attribute it to the disaffection and general disillusionment amongst the British Muslim population. Two high profile individuals who have allegedly been influenced by extremist Muslim groups in the UK are Zacarias Moussaoui, reportedly the 20th September 11 hijacker who received Islamic education in the UK and Richard Reid, the alleged "shoe bomber."

2. Legal Enforcement Against Terrorism

Despite the desire to ensure that terrorist groups do not use the UK as a base for recruits, surveillance and monitoring in this area has been hampered by a lack of resources, concerns over allegations of racism, and preoccupation with the troubles in Ireland.[137]

One example of enforcement against terrorism is the case of Abu Qatada, a Muslim cleric and suspected high profile member of al-Qaeda from London. Mr. Qatada's assets were frozen and his passport confiscated. Although ordered confined to his house, he and his family have allegedly been

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[133] Lee Elliot Major, *Muslim Student Group Linked to Terrorist Attacks*, Sept. 19, 2001, *at* http://education.guardian.co.uk/Print/0,3858,4260687,00.html

[134] *Id.*

[135] Jason Burke, *Terror Video Used to Lure UK Muslims: Mosque Recruitment Film Shows Bin Laden Slayings*, Jan. 27, 2002, THE OBSERVER.

[136] *Supra* note 121.

[137] Jon Silverman, *Monitoring Radical Muslims in the UK*, Dec. 27, 2001, *at* http://news.bbc.co.uk/1/hi/uk/1730422.stm.

hidden by UK intelligence authorities in a safe house so that he could be arrested or extradited to Jordan where he is wanted for terror-related crimes.[138] Another case is that of Moinul Abedin who was successfully prosecuted for committing an act with intent to cause an explosion and was sentenced to 20 years. Using a "terrorist's handbook" Mr. Abedin had stockpiled homemade explosives and constructed detonators.[139]

Criminal Laws

The criminal laws in England are extensive, and many have related to terrorism since the 1886 Explosive Substances Act. The laws include offenses such as bomb hoaxes,[140] criminal damage, and threats to damage or destroy property.[141] The Criminal Justice (International Cooperation) Act 1990[142] provides a variety of provisions that enable the UK to cooperate in criminal investigations and proceedings overseas. The criminal laws also contain numerous offenses relating to activities conducted in public, including riot, unlawful assembly, and affray. In addition to addressing those offenses, the Public Order Act 1986[143] prohibits acts intended to cause racial hatred, to make people fear or provoke violence, to cause harassment, alarm, or distress; and to control public processions and assemblies.[144]

Terrorism Laws

The UK's terrorist laws have been reactive to terrorist activities and enacted as emergency temporary legislation that essentially became permanent through constant renewal. The Terrorism Act 2000 was the first piece of anti-terrorism legislation to be formally placed on a permanent basis. Despite being drafted when there was hope of a tentative peace in Northern Ireland, it contains an extensive set of powers applying solely to Northern Ireland. Such powers are subject to review and include powers to stop and question individuals, to arrest them, to enter premises, seize materials, and various other police and army powers.[145]

One area of controversy with the TA was the expansion of the definition of terrorism, as defined as the use or threat of serious violence and/or serious damage to property, regardless of location; endangering a person's life; creating a serious risk to public health or safety; interfering with or seriously disrupting an electronic system. Unless explosives are used, such activities must be designed to influence

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[138] Tom Kelly, *Al-Qaeda Suspect 'Protected by British Intelligence,'* PRESS ASSOCIATION, July 8, 2002.

[139] *Bomb Maker Jailed for 20 Years*, Feb. 20, 2002, *at* http://news.bbc.co.uk/1/hi/uk/england/1845218.stm.

[140] Criminal Law Act 1977, Ch. 45, §51.

[141] Criminal Damage Act 1971, Ch. 48.

[142] Ch. 5.

[143] Ch. 64.

[144] *Id.* §1-5 and §11-17.

[145] Supra note 4, §65-113.

the government or intimidate the public or advance a political, religious, or ideological cause.[146] By recognizing that terrorists may have a religious or ideological motivation, the TA expanded its application to domestic terrorism as well as international and Irish terrorism. The government argued that the evolution of terrorist threats necessitated this wider definition. Others argued that it was both too wide and too narrow, and criticized it for creating a "twin track criminal justice system" that discriminated on the basis of individuals' motives.[147] Including domestic terrorism in the definition caused concern among British citizens who considered that it would lead to thousands of people becoming terrorist suspects for merely participating in a democratic society and would encompass extremist environmental and animal rights activists, whose actions occasionally cause serious damage to property, and thus fall within the scope of the definition.

Arrest, Detention, and Search Powers

Police powers under the TA are wide ranging, and there has been concern that they will be subject to abuse. The TA permits investigation into the resources of proscribed organizations, and the commission, or preparation or instigation, of acts that are offenses under the TA. With a warrant, police can enter property, search and seize material in the course of a terrorist investigation, and may stop and search a person based on a reasonable suspicion that he/she is a terrorist.[148] Police can arrest individuals without a warrant based on upon the reasonable suspicion that they have been involved in the preparation, instigation, or commission of acts of terrorism, regardless of whether police believe the suspect is committing or has committed a crime. The government justified the "pre-emptive power of arrest" by stating that the delay caused to police by collecting sufficient information for an arrest warrant would, in some cases, be too late to prevent the crime.[149]

Under the PTA, the Secretary of State could authorize the detention of a person for up to seven days. In 1988 the European Court of Human Rights ruled that this was a breach of article 5(3) of the European Convention of Human Rights (ECHR) unless it was judicially authorized, resulting in the government derogating from that section for Irish terrorists.[150] After considerable debate on the alternate options of derogation, the TA provided that individuals could be detained for up to 48 hours after arrest[151] and that the responsibility for extending detainment should be with a Judicial Authority.[152] Critics of the Act regarded this provision as providing for "incommunicado detention" and unnecessary as in the past individuals detained under similar provisions were rarely charged with a terrorist offense.[153] Other areas

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[146] *Supra* note 4, §1.

[147] *Supra* note 108, at 21, citing John Wadham, Director of Liberty.

[148] *Supra* note 4, §42-46.

[149] *Supra* note 108, at 38.

[150] Brogan and others v United Kingdom, (1989) 11 EHRR 117.

[151] *Supra* note 4, §41.

[152] *Supra* note 4, sch. 8, Part III permits a judicial authority to extend detention for up to seven days.

[153] *Supra* note 3.

of controversy under the detention powers are that police superintendents can impose a delay on the detained person notifying others of his/her detention or consulting with a solicitor where there are reasonable grounds to believe that it would interfere with other investigations.[154]

Miscellaneous Offenses

Inciting terrorism overseas was included in the TA to prevent individuals from using the UK as a base to orchestrate or encourage others to commit terrorist attacks.[155] This provision caused concern that it would cover individuals who fight against tyrannical governments and concerns about how it would be implemented, due to the narrow distinction between opinion and incitement.

Providing, receiving, or inviting a person to receive weapons training or instruction is an offense, even if the invitation occurs outside of the UK.[156] Other offenses in the Act include directing a terrorist organization at any level, regardless of whether such direction is lawful, e.g., directing a surrender,[157] and possessing articles or collecting information for terrorist purposes.[158] The offense of possessing articles for terrorism has been controversial as there is no need to prove that a person charged under this offense had a terrorist purpose in mind; the offense is not restricted to members or supporters of proscribed organizations, and the burden of proof is on the defendant to show that the articles were not for the purposes of terrorism.

Conspiracy

The Criminal Law Act 1977[159] provides that it is an offense to agree with others to conduct activities that commit, or involve, an offense even if circumstances make it impossible to commit the conspired activity. The Act gives the UK jurisdiction over conspiracies if one party joined the conspiracy, did any act that related to the forming of the agreement, or performed any act or omitted anything in relation to the agreement.[160] The Computer Misuse Act 1990[161] also extends the offense of conspiracy to

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[154] *Supra* note 4, sch. 8 ¶8.

[155] *Supra* note 4, §59-61. The offenses under the definition of incitement of terrorism include murder, intentional wounding, poisoning, causing explosions or life-threatening damage to property.

[156] *Supra* note 4, §54. This provision was also discussed under the Internet section.

[157] The section does not require that the organization is proscribed under the Terrorism Act 2000.

[158] *Supra* note 4, §56-58.

[159] Ch. 45.

[160] *Supra* note 128, §1A

[161] Ch. 18.

computer offenses,[162] regardless of where the conspiracy was formed and regardless of "whether any act, omission or other event occurred in the home country concerned."[163]

Legal Restraints

The main legal restraint to the terrorist legislation in the UK is whether it will stand up to challenges in court based on the European Convention on Human Rights, incorporated into domestic legislation by the UK's Human Rights Act 1998. An adverse decision has already been made by the Special Immigration Appeals Commission regarding the case of nine suspected international terrorists detained under the new terrorism statute (considered below). The SIAC ruled that the provision in the emergency legislation that permitted detention without trial was contrary to human rights as it was "discriminatory and unlawful" as it only permitted the detention of foreign nationals.[164] It granted the government permission to appeal to a higher court. By implication, it appears that if the provision applied to UK nationals as well then it would be compatible with the Human Rights Act.

3. Legislation Enacted After September 11, 2001

The Anti-Terror Crime and Security Act

The September 11 attacks were not only devastating to the United States; they also had a large impact in the UK, and resulted in the loss of a substantial number of British citizens. Three months after the attacks, the UK passed emergency legislation in the form of the Anti-Terror, Crime and Security Act 2001 (ATCSA).[165] The ATCSA is emergency legislation and addresses all areas typically associated with terrorists. The government's intention was to strengthen the existing legislation to ensure that the UK has necessary powers to counter the increased threat of terrorism. There were many critics of the 2001 Act who considered that the UK was already the most "legally fortified country in Europe."[166] They believed that the government was introducing powers for wide ranging purposes that would not normally be passed but for the current climate[167] which made effective scrutiny of the Bill difficult.[168] Opposition was in part due to cynicism that emergency legislation in the past always managed to find a permanent place on the statute books and because a piece of supposedly comprehensive anti-terror legislation had been passed only one year earlier. Other concerns were in relation to the extensive powers that the ATCSA granted, which

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[162] Offenses under §1-3 of the Computer Misuse Act include unauthorized access to computer material, unauthorized access with intent to commit or facilitate commission of further offenses, and unauthorized modification of computer material.

[163] *Id.* §6.

[164] Robert Verkaik, *In the Name of Democracy*, THE INDEPENDENT, Aug. 6, 2002, *at* http://news.independent.co.uk/uk/legal/story.jsp?story= 321981.

[165] Ch. 24.

[166] Clive Walker, BLACKSTONE'S GUIDE TO THE ANTI-TERRORISM LEGISLATION, (2002).

[167] Sally Broadbridge, *The Anti-Terrorism Crime and Security Bill: Introduction and Summary*, Research Paper 01/101 at 26.

[168] Anti-Terrorism, Crime and Security Bill, First Report, 2001, H.C. 351.

have been perceived as depriving "terrorist suspects of basic human rights and undermines the values that it intends to protect."[169]

Immigration

The ATCSA introduced a large number of provisions aimed at preventing the UK from turning into a safe haven for terrorists. One of the most controversial aspects of the ATCSA has been the increase of powers of detention and deportation of terrorists. The Secretary of State can certify a suspected international terrorist[170] (SIT) or a person believed to be a threat to the UK's national security.[171] Detention of SITs is permitted when they are liable to examination, removal, or detained pending removal[172] and is subject to review every six months, which essentially amounts to indefinite detention. The SITs are free to leave the UK to a third country whenever they wish. The intention of this provision was to fill a void where certain SITs were being released in the UK as they could not lawfully be deported[173] or detained as extended detention is unlawful if a person is not going to be removed within a reasonable period of time. A person certified as a SIT may appeal the decision to the Special Immigration Appeals Commission within three months of receiving notification of the certification and has the right to further appeal to the Court of Appeal.[174]

The government concluded that this provision would not comply with the European Convention on Human Rights. To ensure the provision's inclusion in the ATCSA the UK derogated from article 5 of the European Convention on Human Rights using article 15.[175] The government argued that a state of public emergency existed due to the heightened sense of security after the September 11 attacks and because the presence of SITs in the UK threatens its national security to a sufficient extent to justify the derogation. The government also considered that sacrificing the right to a fair trial is warranted when it is to preserve a greater right– that of freedom from torture, capital punishment, or inhumane and degrading treatment.[176] Many civil liberties groups claim that the degree of public emergency is not sufficient to justify the derogation from basic human rights. They refer to the fact that the UK is the only European country to do so and cite a House of Commons Defense Select Committee that reported that although there was a continuing threat, there was "no immediate intelligence pointing to a specific threat

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[169] *Supra* note 3.

[170] The Secretary of State can certify a person he reasonably believes is a SIT or a threat to the UK's national security (*supra* note 155, §21). Terrorist is defined in the Act as a person: "concerned in the commission, preparation or instigation of acts of international terrorism; a member of or belongs to an international terrorist group; or [a person with] links [to] an international terrorist group." Links are defined as supporting or assisting a terrorist organization. (*Supra* note 155, §21(2)).

[171] *Id.* §26.

[172] *Supra* note 33, sch 2, ¶16, and sch. 3, ¶2.

[173] Article 5(1)(f) European Convention on Human Rights, as interpreted by the European Court of Human Rights, cited in Anti-terrorism Crime and Security Act, 2001, Explanatory Notes, at 74.

[174] *Supra* note 155, §25-26.

[175] Art. 15 permits derogation in times of public emergency, but only to the extend that is required by the emergency. *Supra* note 60, at 76 and the Human Rights Act (Designated Derogation) Order, S.I. No. 3644, 2001.

[176] (Joint committee on human rights second report, Nov. 16, ¶ 77).

in the UK."[177] The Shadow Home Secretary also expressed grave concern over this provision, stating that this precedent could lead to the erosion of due process and the presumption of innocence and invite reprisal attacks upon British citizens.

As noted, the indefinite detention of SITs was recently challenged before the SIAC by nine individuals detained under the provision. The Commission concluded that their detention was unlawful. However, as the government is challenging the decision, the nine suspects will not be released until the challenge has been completed.

New Immigration Laws

The government is currently considering a new bill that would radically reform Britain's immigration and asylum laws. The bill would send asylum seekers to accommodations while they go through a screening and briefing process. The bill provides for the establishment of reporting centers for asylum seekers to report to, and for the discontinuation of support for those who fail to do so. The government plans to phase out the voucher support system, and to provide basic services through accommodation centers. The capacity of removal centers would be further increased. The dispersal system would still be implemented but in a "stronger regional structure" to help prevent isolation of asylum seekers.[178] The Secretary of State would be granted the power to detain when he can grant or refuse leave to enter or give removal directions, and can remove children born in the UK if their parents entered unlawfully. The government is also considering the introduction of an American style "green card" system to help ease employment shortages in the UK. The Bill also includes provisions for citizenship ceremonies and requires certain knowledge of life in the UK before naturalization to help with the integration process. It also creates various criminal offenses such as assisting unlawful immigration.

Border controls have been further tightened and a police, immigration, or customs officer can stop, question, detain, and search people and goods when they are believed to be traveling on a flight or ship in Great Britain or Northern Ireland. More criminal offenses, such as assisting unlawful immigration, will be introduced if the Bill is passed.[179]

Refugees

To help speed up the process for individuals, in certain cases the Secretary of State can certify individuals are excluded from refugee status because they have acted contrary to the purposes and principles of the United Nations,[180] or are a danger to the security of the country, and their removal would be conducive to the public good.[181] Such individuals are also exempt from the protections of the principle

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[177]House of Commons, The Threat From Terrorism, Second Report, 2001, H.C. 348-I.

[178] David Blunkett, *Firm But Fair*, PROGRESS, Nov./Dec. 2001, at 18.

[179]*Supra* note155, §118.

[180]UN Convention on Refugees, art. 1(F).

[181]*Supra* note155, §33.

of *non-refoulement.*[182] The result of such certification is that the substantive claims of the asylum seeker are not heard. In addition, to prevent people from establishing multiple identities to obtain benefits and submit numerous applications, the destruction of fingerprints taken under the Immigration and Asylum Act has been halted. This provision applies retroactively to fingerprints already taken.[183]

Identity Cards

In July 2002, the Home Secretary published a consultation paper proposing the introduction of identity cards in the form of an entitlement card. The Home Secretary is arguing that it does not infringe on civil liberties as the UK is already a "card carrying society."[184] Information that the card would hold includes the name, address, photograph, and possibly biometric information of the cardholder Critics of the scheme have stated that it is pointless, as current proposals are that the card would be compulsory to have but voluntary to carry. The Home Secretary stated that the purpose of the card is not solely one of national security but also can serve to show entitlement to services, prevent identity theft and benefits fraud, help clamp down on illegal immigrants and workers, and bring different forms of identification together to make them more efficient. Civil liberties groups continue to oppose the proposal, stating that it turns everyday citizens into suspects.[185]

Criminal Laws

The Home Office has recently published new Codes of Practice regarding search and seizure, identification, and detention. The Code of Practice for Search and Seizure takes into account the new "seize and sift" provisions of the Criminal Justice and Police Act 2001.[186] The provision allows persons lawfully on premises to remove authorized materials for examination elsewhere, including those that are "inextricably linked" to the materials that they have permission to remove.[187] The provision aims to give a greater time allowance for thorough searches of computers.

Terrorist Financing

The UK recently enacted criminal laws relating to the confiscation of the proceeds of crime.[188] The act enables a court in England or Wales to order the mandatory confiscation of assets representing

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[182] *Id.*

[183] *Supra* note155, §36.

[184] *Supra note* 14, at 1.1.

[185] John Waldham, Liberty, *op. cit*. *Blunkett Backs ID Card Plan*, July 4, 2002, *at* http://news.bbc.co.uk/1/hi/uk_politics/2084860.stm.

[186] Ch. 16.

[187] §50-51 Criminal Justice and Police Act 2001.

[188] Proceeds of Crime Act 2002, Ch. 29.

a convicted defendant's criminal lifestyle, or benefits from his/her criminal conduct.[189] In addition, the act permits the assets belonging to a person subject to a criminal investigation who is believed to be benefitting from the proceeds of his/her crime be subject to a restraint order that prohibits the person from dealing in any realizable property belonging to him/her.

To help with the investigation of money laundering incidents, the Proceeds of Crime Act permits a judge to issue a customer information order that requires the specified individual's financial institutions to disclose any customer information that they may have on any individual subject to a money laundering investigation.[190] The ATCSA supplements the provisions in the Proceeds of Crime Act. It permits the police to obtain information from financial institutions for up to 90 days when it is desirable to trace terrorist property to enhance a terrorist investigation.[191]

The power to forfeit terrorist cash has been extended and can be taken whether or not proceedings have or have not been undertaken in respect to an offense related to the cash.[192] Where there are reasonable grounds for suspecting that cash is terrorist cash, an authorized officer can seize it for an initial period of 48 hours. This period can be extended for a further three months and up to a total of two years where there is reasonable suspicion that it belongs to a proscribed organization or is earmarked as terrorist property[193] and further detention is required to investigate or bring or continue proceedings against a person.[194]

To reduce the risk of terrorist property being sent overseas, freezing orders can be made at the start of an investigation. The power to freeze assets has also been extended to cases where there is a reasonable belief that overseas governments or residents are conducting action that threatens the UK's economy or life or property of UK nationals or residents.[195] The Orders are wide ranging and prohibit all UK residents, nationals and UK incorporated companies from providing funds or benefits to a named person or persons.[196]

Disclosure of Information

Circumstances when the disclosure of information by public authorities is lawful are extended in the ATCSA. The ATCSA permits the Inland Revenue or Customs and Excise to disclose information to

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[189] *Id.* §6.

[190] *Id.* §363.

[191] *Supra* note 155, Sch. 2.

[192] *Id.* §1.

[193] Earmarked as terrorist property refers to property, regardless of its location, that has been obtained from acts of terrorism. Earmarked terrorist property can be traced through different property, with profits accrued being treated as terrorist property, and the hands of any person who obtains the property with the exception of a bona fide purchaser for value without notice. *Id.* Sch. 1, Part 5.

[194] *Id.* Sch. 1, and the Magistrates Courts (Detention and Forfeiture of Terrorist Cash) (No. 2) Rules 2001, S.I. 2001, No. 4013.

[195] *Id.* §4.

[196] *Id.* §5.

the intelligence services to enable them to carry out their functions, for the purpose of any current criminal investigation or proceedings or the initiation thereof, provided that the disclosure meets the test of proportionality.[197] Public Authorities can disclose information that is considered proportionate for any criminal investigation or proceeding. While internal efforts to help the flow of information have been increased, restrictions on the amount of cooperation that can be provided overseas are contained in this section. The Secretary of State can prohibit, or condition, certain grounds for the disclosure of information overseas under the Act if he believes that it is more appropriate for the investigation or proceedings to be carried out by the courts or authorities of another jurisdiction or in the UK.[198] Although the test of proportionality should be used, the criteria for disclosing information has been criticized as being so wide that it "provides no limit to the information which can be disclosed."[199]

The ATCSA adds a new provision to the TA that results in individuals who do not disclose information they believe is of material assistance in preventing acts of terrorism, or securing individuals responsible in the preparation or instigation of terrorist acts to justice in the UK, being guilty of a criminal offense.[200] A similar provision in the PTA was criticized in *Inquiry into Terrorist Report* which considered that the obligation to report information to the police should remain a moral obligation rather than legal duty, and the provision, used mostly against family members, placed them in an impossible position of conflicting loyalties.[201] As a result of the conflict of interest within families, provisions in the TA only apply to information that has been brought to the attention of a person in the course of their work. However, the ATCSA has again extended this duty.

Police Powers

Police powers to obtain identification from individuals in police detention have been increased under the ATCSA. Police can now search individuals solely to obtain identification information without consent when the individuals have been convicted, charged, or cautioned with a recordable offense.[202] For individuals detained under terrorism provisions, fingerprints can be taken without consent where they would confirm or repudiate an individual's involvement in a criminal offense.[203] The taking of photographs without consent of an individual in detention is permitted and any item or substance worn on the individual's head may be removed with or without consent, by reasonable force if necessary. Photographs taken under these provisions can be retained and disclosed for purposes related to the prevention, detection, or investigation of crime in the UK or overseas.[204] Concerns over this part of the

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[197] *Id.* §§17 and 19.

[198] *Id.* §18.

[199] Peter Vaines, New Law Journal, May 24, 2002.

[200] *Supra* note 155, §117.

[201] *Supra* note 2, at 14.21.

[202] *Supra* note 155, §§89-90.

[203] *Id.* §§89 and 92.

[204] *Id.* §92.

ATCSA involved issues of proportionality in the use of these provision, particularly regarding the use of force, in relation to the seriousness of the offenses.[205] Worries were also raised over the forced removal of head garments causing conflict in parts of the population where they are worn for religious purposes.

The Internet

In order to bypass the regulations requiring communications service providers to erase or make anonymous communications data after the period they need it for business purposes, the ATCSA permits the data to be retained on the grounds of national security and crime prevention so that it can be accessed under the Regulation of Investigatory Powers Act (RIPA).[206] The ATCSA implements a structure where the Secretary of State can issue a voluntary Code of Practice "relating to the retention by communications providers of communications data (data that does not include the substance of the communication itself) obtained by or held by them."[207] The Code can be made mandatory if the Secretary of State believes that it is ineffective in ensuring the retention of certain types of data.[208] The provision, which can be applied to the entire UK population, has been criticized as giving police the ability to obtain a "complete dossier on private life."[209]

Terrorist Infiltration

After the September 11 attacks, the British police conducted an investigation to determine the "extent of the Al Qaeda network in the UK."[210] The results from the investigation indicated that there are "substantially more" than 100 Britons actively supporting al-Qaeda, and foreign law enforcement officials believe that the UK has been used as a "covert breeding ground for extremists and sympathizers of Osama Bin Laden" because of disaffection and disillusionment in the Muslim Community.[211] To help integrate the immigrant population into the UK, the Home Office introduced a proposal requiring immigrants take citizenship classes and English lessons before they could become British citizens, and are also reviewing the entire immigration and asylum procedures.[212]

4. Limits on Counter-Terrorism Activity

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[205] *Supra* note 163, at 61.

[206] *Supra* note 155, §102.

[207] *Id. §102*(1)

[208] *Id.* §104.

[209] *Britain's Al Qaeda Connections*, Jan. 29, 2002, *at* http://news.bbc.co.uk/1/hi/uk/1775683.stm, and *Supra* note 153, at 157.

[210] *Id.*

[211] *Id.* and *Supra* note 153 at 10.

[212] Paul Kelso, *Cautious welcome for citizen classes*, Oct. 27, 2001, *at* www.guardian.co.uk/racism/story/0,2763,581774,00.html, and the Nationality, Immigration and Asylum Bill 2002, HL Bill 89.

Recent concerns over alienating the British Muslim population with excessive implementation of the anti-terrorism laws have restrained the government. Most of those arrested were Muslims, who were subsequently released due to lack of evidence against them. This has caused considerable resentment about poor intelligence and investigations. In January 2002 there had been over 130 terrorist-related arrests in the UK.[213]

In response to requests from the U.S. Federal Bureau of Investigation, British authorities arrested an Algerian pilot accused of training the hijackers of the September 11 attacks and held him in prison for five months until the charges were forced to be dropped due to insufficient evidence. Six people have been arrested under suspicion of providing financial and logistical support to militant Muslim groups, two of whom have been charged with being members of al-Qaeda.[214] The UK has also arrested three men who had allegedly planned to attack the U.S. embassy in Paris.[215]

As a result of the active implementation UN Resolution 1373,[216] the UK froze all "bank accounts associated with the individuals and organizations named in the U.S. Treasury's suspects lists and … seized in total £180,000 held by those identified."[217] The UK has frozen 35 bank accounts that contain a total of more than £63 million.[218] In addition to this, the accounts of organizations and individuals listed by the U.S. Treasury Department were frozen, totaling a further £180,000. Customs and Excise in the 18 months prior to October 15 had made 89 arrests of people believed to have laundered over £590 million.

Leaks from the government have indicated that prosecution in the UK of the British al-Qaeda suspects currently held in Guantanamo Bay would fail. Government lawyers have said that evidence against the suspects derived from interviews during their captivity would be inadmissible in court.[219]

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[213] *Supra* note 197.

[214] *Id.*

[215] *Terror Suspect Held on UK Warrant*, Sept. 28, 2001, *at* news.bbc.co.uk/1/hi/uk/England/1562815.stm.

[216] The Terrorism (United Nations Measures) Order 2001, S.I. 2001, No. 3365; The Al-Qaeda and Taliban (United Nations Measures) Order 2002, S.I. 2001, No. 111.

[217] 372 PARL. DEB., H.C. 940 (2001).

[218] *Id.* and NATIONAL STATISTICS, UK 2002, at 240.

[219] Robert Veraik, TALIBAN SUSPECTS CANNOT BE TRIED IN UK, August 3rd, 2002, http://news.independent.co.uk/uk/legal/story.jsp?story= 320987.