

Job 22-27044 (communication from Panama regarding implementation of the International Convention for the Prevention of Acts of Nuclear Terrorism – fair copy)

Translated from Spanish

Secretary General's Office
Office of the Attorney General

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To:
Ms. Carmen I. Avila O.
Director General for International Organizations and Conferences
Ministry of Foreign Affairs
E.S.D.

Madam,

I am writing to you with regard to note DGOCI-MIRE-2022-037448 of 17 May 2022, in which you requested information on national legislation relating to the International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT) since UNODC is requesting the States Parties to provide that information for publication on the Office's web page. Accordingly, I would like to draw attention to the following legal points.

The International Convention for the Suppression of Acts of Nuclear Terrorism was approved in the Republic of Panama through Act No. 57 of 26 December 2006 and entered into force on 7 July 2007, in line with the country's commitment to the maintenance of peace, international security and the promotion of cooperation among States.

In that regard, firstly, States have the right to develop and use nuclear energy for peaceful purposes and have a legitimate interest in the benefits that may be reaped from the use of that form of energy. However, given that such use could give rise to acts of nuclear terrorism, which would have extremely serious consequences and threaten international security and peace, it has become necessary to approve and implement supranational instruments that help to create legal tools mitigating those risks.

Accordingly, Panama updated its criminal legislation through Act No. 10 of 31 March 2015 amending and supplementing certain provisions of the Criminal Code, which comprehensively establishes specific acts taking into account the provisions of the International Convention for the Suppression of Acts of Nuclear Terrorism and similar instruments relating to terrorism.

The criminalization of forms of conduct linked to organized crime has thus made it possible to fulfil the country's commitment to, and further its interest in, consolidating efforts to combat organized crime, which, owing to its transnational nature, has been evolving constantly, adapting to markets and creating new forms of crime that transcend borders.

The provisions of the Criminal Code, specifically those in Book Two, part IX, chapter 1, therefore reflect most of the provisions of the supranational legislation concerned and have served to adapt domestic law with a view to punishing such crime with heavier penalties. Thus, the offence of terrorism, established in article 293, includes among the acts constituting that offence "... an act of terrorism as defined in the United Nations conventions ratified by the Republic of Panama". That provision covers both acts committed by an individual and acts committed by a group. In addition, it establishes as the purpose of the offence the disturbance of civil order, the causing of panic, terror or fear or the endangerment of the population or a sector thereof. The means of achieving such ends are defined as the use of radioactive material, weapons,

fire, explosive, biological, bacteriological or toxic substances, cybernetic means or any means of mass destruction or element that has such power to harm living beings, things or public or private property. All of the foregoing demonstrates the clear application of the Convention under the country's substantive criminal law.

Furthermore, the aforementioned provisions are consistent with the provisions of article 2 of the International Convention for the Suppression of Acts of Nuclear Terrorism in that they establish as criminal conduct the use of the Internet to teach others how to build bombs or to recruit individuals to carry out acts for terrorist purposes, and the acts of supplying, providing or making available false information concerning the existence of radioactive material, weapons, fire, explosives, biological or toxic substances endangering living beings, public servants, property or things.

Likewise, the requirements of the Convention against Nuclear Terrorism are considered to have been implemented under article 294 of the Criminal Code, which punishes acts committed directly and criminal acts of terrorism committed through omission.

Article 116 of the Code of Criminal Procedure supports the objectives of the Convention and related aims by establishing that the statute of limitations does not apply to terrorism offences.

Another aspect of interest is that, in order to ensure asset recovery, procedural law allows the authorities of the Public Prosecution Service to temporarily seize instruments, movable and immovable property, securities and proceeds derived from or related to terrorism offences, as indicated in article 252 of the Code of Criminal Procedure; such assets are placed at the disposition of the Directorate for Seized Assets of the Ministry of Economic Affairs and Finance until a competent court decides the case.

In addition, during a criminal investigation, provisional measures preventing the disposal of assets and economic resources related to the proceedings may be applied, such as the temporary seizure of assets, criminal confiscation and non-designated preservation measures, provided for in article 270 of the Code of Criminal Procedure, which may be ordered by the judge – subject to reasonable justification – for the duration of the proceedings at the request of a party, provided that there is sufficient evidence, as a safeguard against the effects of the offence.

With respect to cases concerning terrorism, which could be carried out through the use of nuclear energy, Act No. 121 of 31 December 2013 establishes longer periods for investigation than those that would ordinarily apply under the Code of Criminal Procedure owing to the fact that such offences involve a form of organized crime and to the nature of the investigations concerned (organized crime). Furthermore, under article 311 of the Code of Criminal Procedure, the prosecutor may request a due process judge to order the interception of electronic communications, satellite tracking, electronic surveillance or the monitoring of telephone communications. Similarly, article 315 of the Code provides that the prosecutor may use undercover operations such as controlled purchase, controlled delivery, analysis and infiltration of a criminal organization and the surveillance and monitoring of persons. Those provisions are complemented by chapter 111 of Act No. 121 of 31 December 2013.

Under this regulatory umbrella, Panama has developed, in compliance with the counter-terrorism conventions, specific institutional measures to combat organized crime effectively. In the case of the Public Prosecution Service, investigative activities are handled by specialized investigative agencies. The First Office of the Special Prosecutor for Organized Crime has the power to investigate acts of terrorism according to the remit set out in resolution No. 18 of 13 July 2020. The Public Prosecution Service also has units for the exchange of information and the creation of interdisciplinary teams with a view to the appropriate handling of complex cases of organized crime. The Crime Analysis Unit is the body responsible for analysing serious cases involving organized crime, while the Money-Laundering and Terrorist Financing Unit collaborates with preliminary investigation offices in conducting financial analyses as part of complex investigations.

As the information above indicates, the Public Prosecution Service has allocated a significant proportion of its budget to support complex investigations related to organized crime, providing the prosecutor's offices and specialized units with suitable staff supported by national or international training organized in order to enhance knowledge. Thus, there continues to be firm institutional commitment to maximizing available resources in order to combat and mitigate the risks of terrorism through specialized investigations with the aim of achieving effective results in the processing of cases on the basis of a multidisciplinary and technical approach, in compliance with the requirements of the Convention.

Panama also has a committee for the prevention of terrorism and terrorist financing, established by Executive Decree No. 324 of 19 June 2016 as a body responsible for terrorism-related analysis, consultation and advice, that has evaluated requests on the basis of relevant United Nations Security Council resolutions and requests handled by the Counter-Terrorism Department of the National Security Council, the functions of which include the forecasting of threats affecting national security.

The foregoing demonstrates the firm commitment of Panama to addressing and combating terrorism in strict compliance with human rights norms and principles, international humanitarian law, the Charter of the United Nations, the Charter of the Organization of American States and of course the International Convention for the Suppression of Acts of Nuclear Terrorism.

Yours sincerely,

José Antonio Candanedo Chiam
Secretary-General
Office of the Attorney General