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NATIONAL POLICY

Portugal considers the fight against terrorism as a priority of the utmost importance.

Portugal deals with terrorism primarily from a criminal perspective and mainly through its judicial institutions, taking into account the contributions of all the institutions involved in the prevention of terrorism. This perspective implies the recognition that an effective response to terrorism entails a comprehensive approach, which includes, among others, integration and conflict reduction policies.

Terrorism is a global problem and combating it requires a comprehensive approach and an unprecedented level of international co-operation. In this context, Portugal actively participates in international counter-terrorism activities within the framework of the UN, the EU, NATO, the OSCE and other international organisations.

LEGAL FRAMEWORK

The fight against terrorism is based essentially on the principles of a democratic state and on respect for the fundamental rights, freedoms and guarantees which are laid down in the Portuguese Constitution. As a result, all the values which terrorist activities seek to destroy enjoy special protection under substantive laws, in line with the most recent international framework.

Penal law

Portuguese Criminal Law has a general framework – the 1982 Penal Code – which has been modified a number of times, and most recently in 2004. This Code establishes the general principles of criminal law and its applicability, namely with regard to crime forms, perpetration and participation in crime, as well as to defences and circumstances affecting criminal responsibility. It also lays down the rules concerning the scope of temporal and territorial jurisdiction of the Penal Code.

The Penal Code is the main instrument of the Portuguese legal structure concerning crime policy, although with respect to terrorism and terrorist association crimes the code was partly revoked by

Law 52/2003 – the Terrorism Law - which transposed Framework Decision 475/JAI/2002 into the Portuguese juridical order. The added value of this new law relates to the inclusion of the responsibility of legal persons and the criminalisation of the so-called instrumental crimes, enlarging its scope to any kind of terrorist manifestation, regardless of where it occurs.

Moreover, this Law - that revoked Article 300 (terrorist organisations) and Article 301 (terrorism) of the Penal Code - aims to punish the activities of groups, terrorist organisations and terrorist associations. Apart from a provision on domestic terrorism (Article 4), there is a provision in this Law expressly typifying the offence of international terrorism (Article 5). The Act also encompasses the punishment of individual acts of terrorism.

In terms of its application, this Law contains some exceptions to the principle of territoriality, where Portuguese penal law is applied, unless otherwise stated in an international treaty or convention, to acts having occurred outside Portuguese territory, when they constitute offences committed by terrorist organisations (Article 2), terrorism offences (Article 4), offences committed by other terrorist organisations (Article 3) and international terrorism (Article 5), provided that the offender is found on Portuguese territory and cannot be extradited or surrendered to the requesting EU member state under the execution of a European arrest warrant.

Another innovative aspect of this Law is that it envisages the criminal liability of legal persons or their equivalent (corporate and mere *de facto* associations) for offences under Articles 2 and 5 when carried out on their behalf and in the interest of their organs or representatives, and that such liability does not exclude their respective individual liability. The provisions foresee sanctions such as fines and dissolution; the fines are measured in days, ranging from a minimum of 100 to a maximum of 1000 and amount to from 5 to 5,000 Euros per day. Whenever the fine is applied to an entity without legal personality, the common estate of the entity is directly responsible, and in cases of lack or inadequacy of the estate, each of the associates in the estate is jointly liable.

Also with respect to terrorist crimes and connected crimes, Law 11/2004 – the Law on the Prevention

and Repression of Money Laundering - was recently published, which establishes penalties for the laundering of assets of illicit origin. This law also establishes control mechanisms in order to prevent other crimes including terrorism.

Law 11/2002 – the Sanctions Regime for the Failure to Fulfil the Community Regulations – establishes penalties for the entities in charge of the application of those regulations, including the ones concerning the freezing of assets in any way connected to terrorism.

Procedural rules

The 1987 Penal Code stipulates the procedural rules and basic instruments which allow the verification of the existence of a crime and the identification of its perpetrators. Regarding terrorist crimes, however, some exceptions are foreseen.

The mandatory judicial authorisation for searches is derogated whenever well-founded evidence exists that the envisaged activity endangers a person's life or physical integrity. The so-called special investigation techniques are foreseen both in the Penal Code – interception of phone calls and other communication methods – and in separate legislation that is applied to terrorist crimes, among others, environment interceptions – Law 5/2002 – Special regime of proof collecting and breach of professional silence regarding serious crimes; infiltrated agent – Law 101/2001 – Juridical regime of undercover actions regarding prevention and criminal investigation; and controlled deliveries – Law 104/2001 – updating the Law of International Co-operation in Criminal Matters.

In addition, other instruments contain preventive and repressive provisions against terrorist crimes:

- Law 144/99 – International Co-operation in Criminal matters
- Law 93/99 – Witness Protection in Criminal procedures
- Decree Law 190/2003 – Witness Protection Regulation
- Law 10/2002 – Monitoring mechanisms of money laundering and financing of terrorism.

Law 52/2003 criminalizes as a terrorist act all acts that aim to facilitate, either directly or indirectly, any act committed for terrorism purposes. In this context, it tries to set down all possible connections between instrumental offences and terrorist acts *stricto sensu*, namely through the centralization of criminal information.

As far as the protection of possible terrorist targets is concerned, it was possible during the preparation of the European Football Championship - Euro 2004 -

to identify places and strategic facilities, to define protection strategies and to create and apply security procedures. Simultaneously, co-ordination models and communication channels between all the forces and services involved in the prevention of terrorist threats were tested.

The elaboration of threat assessments increased in terms of periodicity and diversity as a result of Portugal's participation in several international *fora*, namely at the level of the EU and the FATF. Furthermore, the co-ordination experience between all intelligence and security forces and services greatly contributed to the consolidation of threat assessment documents, and recent experiences have enabled threat assessments to evolve into risk assessments.

As far as the prevention of arm sales to terrorists is concerned, it is important to mention that Portugal is a member of several international organisations which aim to combat the proliferation and criminal use of weapons.

The Portuguese state therefore complies with its international commitments, accepted in different *fora*, including the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR), the Australia Group (Chemical and Bacteriological Weapons) and the Wassenaar Arrangement (Dual-use items other than those included in the preceding Groups) and complies with EU law, namely the Council Regulation (EC) No. 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology.

It is also important to mention, within the framework of reducing the effects of crime, the population protection legislation – Decree law 423/2003 – Juridical Regime of Violent Crimes Victim's Protection.

INSTITUTIONAL FRAMEWORK

As a logical sequence to approaching terrorism from a criminal law perspective, Portugal gives prevalence to the judicial institutions in the combat against terrorism. According to the existing judicial organisation and given the role of the *Ministério Público* (Public Prosecuting Office), terrorism investigations are centralised in the Central Department of Criminal Investigation and Penal Action.

This centralisation and specialisation logic is also applied by the police. The Judiciary Police and its Central Department for the Banditry Combat (DCCB), which has the exclusive competence to investigate terrorism crimes and connected crimes – Decree Law 275 A/2000 – Judiciary Police's Organisation Law – Law 21/2000.

A Financial Information Unit (FIU) was created in 2002, within the Judiciary Police, to optimise the combat against crime, including terrorism and its financing, and following the FATF recommendations – Decree Law 304/2002. The FIU is responsible for receiving, analysing and sending to the competent judiciary authority any information about suspicious transactions, reporting of money laundering and terrorism financing, as well as working with other entities with the capacity to control financial flows and other financial transactions, namely the supervision authorities of the financial sector: the Directorate General of Customs and Special Taxes on Consumption (DGAIEC)/the Portuguese Board of Customs, the Directorate General for Taxation (DGCI), the Security Market Commission and several banking institutions operating in Portugal. In this context, they are developing efforts to raise the awareness of these entities in relation to the specificities and mechanisms of the financing of terrorism.

This Unit has been trying to incorporate all the recent information obtained at an international level, either on concrete cases or on trends, with annual typologies exercises on money laundering and on terrorism financing accomplished by the FATF.

Border surveillance between authorised crossing points is incumbent upon the Serviço de Estrangeiros e Fronteiras (SEF)/Borders and Foreigners Service-Ministry of Interior, along with the Direcção-Geral de Autoridade Marítima (DGAM)/Directorate General of Maritime Authority/Ministry of Defence as for the sea border.

For the land border, several co-operation agreements concluded with the Kingdom of Spain are in force. These agreements allow permanent joint work, namely Joint Offices placed along the common border control line – including the feasibility for initiating pursuit and/or surveillance operations – and information exchange. It is important to state that such agreements aim, in the first place, at preventing cross border crime, and are the most significant instrument in the fight against illegal immigration. However, they are also important at other levels, namely in the fight against terrorism.

The surveillance of the border, in places where the Customs are not physically represented, is under the responsibility of GNR/BF (National Republican Guard/Fiscal Brigade).

Airport security matters are incumbent upon a structure specifically created for such a purpose at national and local level (in each international airport), with the involvement of the following organisations: Instituto Nacional de Aeronáutica Civil (INAC)/National Institute of Civil Aviation; Polícia de Segurança Pública (PSP)/Public Security Police, Guarda Nacional Republicana (GNR)/National

Republican Guard; Administração Aeroportuária/Airport and Port Authority and Serviço de Estrangeiros e Fronteiras (SEF)/Borders and Foreigners Service.

Security matters at seaports are within the framework of the ISPS Code, which has been in force since 1 July 2004, and specific legislation is currently being prepared. The Borders and Foreigners Service/SEF has instruments to detect false and falsified documents in all border posts.

Concerning prevention and considering the control of the institutions involved in the fight against terrorism, the Prime Minister created, by Decision in February 2003, the Anti-Terrorism Co-ordination Unit. Besides the Judiciary Police, this Unit joins up the Security Information Service, the Strategic Information Service and Defence, the Aliens and Borders Service, the Public Security Police, the National Republican Guard and the Directorate General of Maritime Authority.

This structure intends to co-ordinate the performance of the different services, benefiting from the information that each one is able to provide and orientate the research effort, especially considering the terrorism phenomena.

INTERNATIONAL CO-OPERATION

Portugal has availed itself of its contacts with third countries, both at multilateral and bilateral levels, to systematically raise awareness as to the need to step up international co-operation in the fight against terrorism.

This issue was on the agenda of some bilateral visits, and the adoption in December 2002, on a multilateral level during the Portuguese Chairmanship of the OSCE, of the Charter for the Prevention and Fight against Terrorism is worth mentioning. This document, which was proposed by Portugal, provides the political basis for the OSCE's initiatives and activities in the anti-terrorism field. Concretely, the OSCE can expand its role on the terrorist financing front, on the implementation of UN Conventions, on legislative reform, on facilitating information exchange through a contact network, on the trafficking issues, on border security etc.

The importance of signing, ratifying and implementing the international conventions on terrorism, as well as the added value of the Global Convention once adopted, were stressed during the said contacts following 11 September. Portugal has availed itself of its special relationship with the Portuguese-speaking countries, including in the more institutional framework of the Community of Portuguese-speaking countries (CPLP), to make an appeal in that sense. The Declaration of the CPLP on

Combating International Terrorism of 31/10/01 illustrates such commitment.

According to Article 8 of the Portuguese Constitution, the rules and principles of general international law are an integral part of Portuguese law. Rules provided for in international conventions that have been duly ratified or approved, shall apply in national law, following their official publication, so long as they remain internationally binding with respect to the Portuguese State. Rules made by the competent organs of international organisations to which Portugal belongs apply directly in national law to the extent that the constitutive treaty provides. Rules provided for in European Union treaties and rules issued by its institutions, in the exercise of their competences, are applied in the internal judicial order in the exact terms defined by the Union's law, respecting the fundamental principles of the Democratic State.

Regarding multilateral agreements, Portugal has signed several juridical instruments concerning the prevention and repression of terrorism.

Within the scope of the United Nations, Portugal has ratified twelve conventions and protocols against terrorism and signed, during the Millennium Summit, the recent International Convention for the Suppression of Acts of Nuclear Terrorism. Portugal is therefore bound to the international legal instruments which serve as a reference to the international community in its combat against terrorism.

In May 2005, Portugal signed the recent Council of Europe Convention on the Prevention on Terrorism. Portugal has also signed the other relevant Council of Europe legal instruments against terrorism.

Portugal has signed several bilateral agreements regarding judicial co-operation in criminal matters or regarding police co-operation, including terrorism.

Law 144/99 of 31 August applies to co-operation in criminal matters – Law of International Judicial Co-operation in Criminal Matters -, as well as the European Arrest Warrant regimen (Law 65/2003 of 23 August), which is only applicable between European Union countries. Law 144/99 is applicable to extradition, transfer of proceedings in criminal matters, enforcement of criminal judgements, transfer of persons sentenced to any punishment or measure involving deprivation of liberty, supervision of conditionally sentenced or conditionally released persons and mutual legal assistance in criminal matters. The European Arrest Warrant is an important co-operation tool between European Union countries and it is applicable to terrorism acts.

Technical assistance

Pursuant to the "Memorandum of Understanding" between Portugal and the UNODC - United Nations Office of Drugs and Crime, technical assistance has been provided to Portuguese-speaking countries - Angola, Mozambique, Sao Tome and Principe, Cape Verde, Guinea-Bissau and East-Timor - in the framework of the assistance for the ratification and implementation of United Nations legal instruments, namely the Convention against Transnational Organized Crime and the respective Additional Protocols; the Convention against Corruption, the 12 Conventions against Terrorism, including UNSC Resolutions such as Resolution 1373 (2001). Some of those States have found in the Portuguese experience an example to use in drawing up their reports to submit to the UN and, on the domestic level, in the preparation of measures applicable in the fight against international terrorism.

It is important to underline that this technical assistance has involved the translation of these legal instruments into Portuguese. In this context, a second meeting with representatives of those countries took place in Lisbon on 2-5 November 2004, with the participation of the UNODC. In this meeting the internal situation of the above-mentioned countries was examined with a view to the follow-up to the technical assistance in the implementation of these United Nations legal instruments.

As far as the activity of assistance to other states developed by the Bank of Portugal is concerned, it has been limited to isolate actions, such as responding to embassies' consultations – e.g. the embassies of South Korea and the Czech Republic - on rules and legal proceedings on freezing of banking accounts.

As for the Directorate General of European Affairs and International Relations of the Ministry of Finance and Public Administration, a joint meeting with Romanian government representatives was organised in the framework of the EU programme *Technical Assistance Information Exchange Office – TAIEX* (on the legal framework of national measures for the fight against the financing of terrorism).

As regards technical assistance provided by the Bank of Portugal on the prevention of money laundering and the financing of terrorism, the Bank of Portugal provided assistance in 2004 through the organisation of workshops and seminars in Lisbon; for technical staff of the Central Banks of Angola, Cape-Verde, Mozambique, Sao Tome and Principe; for the members of the Banking and Payments Authority of East-Timor and also for the national management of the BCEAO in Guinea-Bissau.

A financial expert was appointed by the Bank of Portugal to integrate the evaluation team of the FATF. This team performed the second mutual evaluation of the Brazilian anti-money laundering and financing of terrorism system, which took place at the end of 2003 and the beginning of 2004.

In the EUROMED framework, Portugal has also supported the inclusion of Maghreb countries in EU technical assistance programmes in the fight against all forms of terrorism.

Portugal is also involved in providing counter-terrorism technical assistance in the context of the European Common Foreign and Security Policy (CFSP). Various national experts have been identified and made available to participate in EU-led technical assistance projects in the fields of radicalisation and recruitment, false documentation and airport and maritime security.

Relevant Council of Europe conventions - Portugal	Signed	Ratified
European Convention on the Suppression of Terrorism (ETS 90)	27/01/1977	14/12/1981
Amending Protocol (ETS 190)	15/05/2003	-
European Convention on Extradition (ETS 24)	27/04/1977	25/01/1990
First Additional Protocol (ETS 86)	27/04/1977	25/01/1990
Second Additional Protocol (ETS 98)	27/04/1978	25/01/1990
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	10/05/1979	27/09/1994
First Additional Protocol (ETS 99)	12/08/1980	27/01/1995
Second Additional Protocol (ETS 182)	08/11/2001	-
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	10/05/1979	-
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	06/03/1997	13/08/2001
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	08/11/1990	19/10/1998
Convention on Cybercrime (ETS 185)	23/11/2001	-
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	17/03/2003	-
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	16/05/2005	-
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)	16/05/2005	-