

A Comparative View of Terrorist Acts and Legislative Measures Countering this Phenomenon in Albania and the United States of America

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Abstract

Terrorist acts have been a worrisome phenomenon for all nations. Paradoxically, although states have been conscious about the danger of this phenomenon, there is no definition of terrorist acts so far. States have been skeptical and they have not agreed that the judgment of these criminal offences be performed by international jurisdictions, thus opting for the domestic jurisdiction. Nevertheless, states have lacked the willingness to establish joint criminal policies and find efficacious means to combat these terrorist acts. One of these efficacious means has been the seizure and confiscation of licit and illicit assets possessed by terrorist groups. This is the focus of this short study, which will be inclusive by viewing this topic under the general framework of international acts, our domestic legislation, as well as the American one. This paper aims at presenting the legislative measures taken by the Albanian state to meet international requirements. It endeavors to provide arguments why all licit and illicit assets associated with terrorist acts are seized and confiscated. Special attention is paid to the way these assets are administered. Moreover, this study tries to analyze the achievements and problems in Albania, as well as provide conclusions and recommendations.

Keywords: seizure; confiscation; ministry of Finance; anti-mafia law; USA patriot act

Introduction

Discussions on terrorist acts have been more frequent after 11 September 2001. However, terrorist acts have unfortunately been very present for Europeans. We can mention the many years' conflicts or the terrorist acts carried out by IRA, ETA¹, in Ireland and Spain respectively, or the terrorist group named 17 November in Greece. As regards America, unlike Europe, it was a "relatively newer" phenomenon, but much more brutal and dangerous after the terrorist attacks of 11 September 2001. Beyond the debate whether terrorism is to be considered a modern phenomenon or not, terrorist acts nowadays are being increasingly carried out to achieve political interests, with the main aim of creating panic and public insecurity among people. Nations all over the world, Europe and America in particular, conscious about the danger of this phenomenon, have increasingly enhanced their cooperation and the measures

¹ ETA has announced its permanent truce on 24 March 2006.

to combat this “modern” time phenomenon in order to implement a joint criminal policy through unifying measures. The 11 September events showed that the world had failed in the fight against terrorism, as a highly complex phenomenon, and that this fight required the cooperation of all resources, human capacities and countries. Nevertheless, that date also marked the beginning of a new phase, thus transforming into a long-term battle against terrorism, because it proved that terrorism was not against a specific enemy but against all.² It is painful to admit it, but nowadays *terrorism is the biggest strategic threat of the new century*. But what are terrorist acts?

What are terrorist acts? Efforts for a definition

It must be pointed out at the very beginning that few terms in international criminal law have proved to be as difficult as the definition of terrorist acts. Etymologically speaking, the concept of terror from the linguistic perspective derives from Latin “*terreur*”, implying fear, terror, sadness, fury, panic.

The Albanian Dictionary³ does not provide a definition for terrorist acts but only for the word terror⁴. Regarding the word terrorism, it does not correspond to the current meaning due to the political interpretation in this dictionary⁵. Until the adoption of the UN Convention against terrorism⁶, the member countries had not reached consensus on defining terrorism despite the fact that this phenomenon has been very worrisome. Terrorist acts were officially discussed for the first time in the UN Convention against terrorism in 1999⁷. This convention does not provide a definition for the notion of terrorism but it focuses on terrorist acts in general, stating that: “*any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act*”. Moreover, Article 2/1/4 of this Convention sets forth the criminal offences, which under several conventions attached to the annex, constitute a criminally punishable crime⁸.

The Criminal Code of the Republic of Albania contains a chapter, namely chapter VII, which considers terrorist acts as criminal offences against the public order and security.

² Paper by Enri Hide, International terrorism and European security, published in Journal “Security matters, no.14, December 2009 by the Institute for Democracy and Mediation, pg. 8.

³ See “Fjalori i Gjuhës së Sotme Shqipe”, published by the Academy of Sciences of Albania, Tirana 1980.

⁴ It refers to the cruel and merciless violence exerted by a suppressive regime or a reactionary organization against its own people or political adversaries in order to eliminate them.

⁵ It refers to the exertion of cruel and merciless violence by a suppressive regime or a reactionary organization against its own people or political adversaries.

⁶ UN Convention, dated 09.12.1999 “International Convention for the Suppression of the Financing of Terrorism”.

⁷ See Article 2/1/b of the UN Convention, dated 09.12.1999 “International Convention for the Suppression of the Financing of Terrorism”.

⁸ See annex 1 of the Convention dated 09.12.1999 “International Convention for the Suppression of the Financing of Terrorism”.

Article 230 of this chapter provides the following definition for terrorist acts: *“violent acts against life and health of the people, personal freedom through the crimes of kidnapping or massive disruption of the public means of transport etc that have the intention of destruction of the public order, instigation of panic and insecurity in the population”*, (the following expression is missing *“or to compel a government or an international organization to do or to abstain from doing any act”*). In addition to the definition of terrorism, this chapter also encompasses other criminal offences such as terrorism financing, or other offences relating to terrorist acts. However, not all actions or inactions considered in the annex to the UN Convention⁹ as criminal offences are included in our Criminal Code. This lack of coherence in defining terrorist acts in the Criminal Code of Albania is explained by the fact that our Criminal Code was approved in 1995, prior to the approval of the above-mentioned Convention in 1999. In spite of the lack of the definition on terrorism or related issues, several characteristics can be set forth: terrorism can be described as *“a special type of violence”* by these organizations, which have *a dangerous modus operandi* with explosions, thus causing damage, lethal attacks with well-defined targets, against governmental forces, with the intention of instigating panic in the population.

Even though terrorist acts violate not only the national peace and security, countries are skeptical and they lack the will to consider terrorism a criminal offence of international nature, thus not including these acts in the universal jurisdiction of the International Criminal Court¹⁰. The judgment of terrorist acts will be made in accordance with the national jurisdictions of the member countries. Nevertheless, the countries have had the will to take joint legal measures against this phenomenon. Below we elaborate on the international acts approved by the countries combating terrorism.

International acts and terrorism

The United Nations has approved a number of acts, including the International Convention on the fight against the financing of terrorism in 1999, the Resolution no.1373 of 2001 *“On threats from terrorist acts”*. This convention clearly expresses the worry and engagement of the member countries to prevent terrorist acts by suppressing their sources of financing through identification, investigation and seizure of every fund used or intended to be used for terrorist acts. The states are legally bound, in compliance with their domestic legislation, to take all necessary measures to suppress the financing of terrorism. These measures consist in identifying bank clients and the ways they use for transactions, opening bank accounts, the cooperation between countries to extradite the persons wanted for terrorist acts. But the measures

⁹ See annex of the UN Convention against financing of terrorism of 1999, under which a terrorist act is taking hostage of diplomats, unlawful actions against the safety of fixed platforms, located on the Continental Shelf, against ocean sailing safety, against the safety of Civil Aviation, terrorist bombings, protection from nuclear material, etc.

¹⁰ See, Jola Xhafo, International Criminal Law, pg.84, last paragraph, “Geer” publishing house, 2009 and Law no. 8984, dated 23.12.2002 *“On the ratification of the Rome statute on the International Criminal Law”*.

in this convention are multi-dimensional. This convention pays special attention to the international cooperation in the criminal field, extradition in particular, which are also accompanied by the request for seizure and confiscation of the property associated with terrorist acts¹¹. *Moreover non extradition cannot be justified by considering it a criminal offence of political nature*¹². The measures taken by the UN until September 2001 proved to be insufficient, and as a consequence, many countries such as the United States and the member countries of the Council of Europe intensified and improved the legal framework and measures to combat terrorism.

At regional level, organizations like the Council of Europe have taken a series of concrete measures against this phenomenon, such as the European Convention on the Suppression of Terrorism, dated 27.01.1977, the Convention of the Council of Europe on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime¹³. In order to strengthen this fight, the Council of Europe approved the Warsaw Convention on 16 May 2005¹⁴. In these conventions countries agree to combat terrorism by establishing a joint criminal policy and finding the most efficacious means. The European Convention on the Suppression of Terrorism¹⁵ also provides for the permission for reciprocal extradition of persons committing terrorist acts, as these acts shall not be considered political or politically motivated crimes and will not be protected by non extradition, but on the contrary, they will be reciprocally extradited for such criminal offences. But extradition alone cannot prove to be efficacious in this fight, as terrorist groups continue their existence due to their financial capacities and their ability to attract persons of considerable wealth, who finance these terrorist acts and their groups. In this respect, there is no doubt that the suppression of financing, freezing, seizure and confiscation would be very efficacious means in the fight against terrorists and their activities. This is also set forth in the Warsaw Convention of 16 May 2005¹⁶: *“Each Party shall ensure that it is able to search, trace, identify, freeze, seize and confiscate property, of a licit or illicit origin, used or allocated to be used by any means, in whole or in part, for the financing of terrorism, or the proceeds of this offence.”*

¹¹ Extradition is a way of cooperation between countries whereby they agree on reciprocal extradition of persons when they are suspected of having committed a terrorist act or an offence of this nature and they are therefore requested to be criminally proceeded in the requesting country, when a safety measure has been assigned to these persons or there is a penal verdict declaring him guilty on the part of the requesting country about offences related to terrorist acts.

¹² All multilateral or bilateral conventions prohibit extradition for political reasons. Even the Code of Criminal Procedure of the Republic of Albania prohibits it; see the last chapter, Articles 489, 490 up to the end of the Code.

¹³ Council of Europe Convention “On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime”, dated 08.11.1990.

¹⁴ Even prior to the adoption of this convention, CoE had adopted other acts, such as the European Convention for the suppression of terrorism, 1977, or the convention for the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990. But this convention is more comprehensive and is also compliant with the UN Conventions against terrorism.

¹⁵ The European Convention for the suppression of terrorism, dated.27.01.1977, see Article 1, 2 etc. of this Convention.

¹⁶ See Article 2 titled Implementation of the Convention for the Financing of Terrorism.

Therefore, the convention provides for the freezing or confiscation of any kind of licit or illicit proceeds used to finance terrorism. This can be otherwise considered as *a broad confiscation as it is directed at any kind of proceeds, both licit and illicit. The provision for such a confiscation has its logical explanation as the final goal of terrorist acts is not the creation of illicit material goods but harming of life, health and instigation of panic in the population.* The confiscation of any kind of licit or illicit proceeds of those who finance terrorism would undoubtedly be a very efficacious means to combat terrorism. Taking into consideration the fact the freezing or confiscation violate the right to property, the limitation of this right is exercised only for the persons who are part of the UN Security Council list as financiers of terrorism. Just like all other acts of this nature, the Convention does not set forth concrete measures on its implementation by the countries but gives this responsibility to the countries themselves, which, in conformity with this Convention, decide about the seizure, freeze and confiscation, in compliance with their domestic legislation. It is worth noting that the legal regulatory framework of the Council of Europe, which was also prepared to implement UN acts, is more comprehensive than that of the acts approved by the United Nations.

Whenever we think of terrorist acts, they automatically remind of the United States of America, which, following 11 September 2001, intensified the measures to combat terrorist acts. This study refers to this country as it is a positive model which made an immediate reaction against terrorist acts, but also because Albania is an important part of the cooperation between the two countries in the fight against terrorism. The measures taken by the USA will be elaborated below.

Measures taken by the United States of America

The policy and measures taken by the United States until 11 September proved to be unsuccessful, as they could not prevent the tragic consequences brought about by the terrorist attacks of 11 September. The USA, conscious about the dangerous existence of this phenomenon, took comprehensive measures, including diplomacy, government, justice, the executive branch, with the strategic aim of *prevention, alertness and reaction to attacks, by reducing the access of terrorists to economic and financial resources.*¹⁷ This short paper, which mostly discusses seizure and confiscation as a means against terrorism, also focuses on the patriotic act of the USA, also known as USA PATRIOT ACT¹⁸.

Approved at record time¹⁹, of a highly comprehensive character, it aimed at enhancing national security through adopting a number of measures to combat terrorism via

¹⁷ "New EU Measures Against Terrorism", 29.10.2004.<http://www.europaworld.org/week198/neweu291004.htm>

¹⁸ USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

¹⁹ On 24 October the act against terrorism was passed by the House of Representatives; on 25 October it was passed by the Senate and President Bush approved it on 26 October 2001.

supervision and examination of money laundering by non American persons and non American banks. Even though USA PATRIOT ACT consists of 10 parts in this study, we will elaborate on 3 important points: a. the provisions about money laundering, b. extension of the US jurisdiction, and c. the provisions regarding seizure and confiscation of all assets. Although they seem to be like separate measures, the final goal is the seizure and confiscation of all assets associated with terrorist acts.

The main aim of this act is to enable law enforcement agencies, such as the General Prosecutor, the Treasury Secretary General, to obtain information from American banks connected with non-American banks and persons. It makes it obligatory for American banks to establish a filter by installing programs against money laundering through the identification of persons opening bank accounts or carrying out transactions via non-American banks, with the intention of filtering by American banks.

Furthermore, this act aims at extending the US jurisdiction to seize and confiscate assets or funds deposited in US accounts by non-American persons, in case the funds are deposited for a non-American bank and this bank has obtained illicit proceeds or its activities and accounts are outside the United States. In particular, this section stipulates the following: *“For the purpose of a forfeiture under this section, if funds are deposited into an account at a foreign bank and that foreign bank has an interbank account in the United States with a covered financial institution, the funds shall be deemed to have been deposited into the interbank account in the United States, and these funds will be subject to confiscation and arrest²⁰, up to the value of funds deposited at the account in the foreign bank.”*²¹

Finally, with regard to confiscation of assets, this act extends the previous confiscation by allowing the government to confiscate all assets, either foreign or domestic, belonging to any entity or organization, involved in planning or performing a domestic or international terrorist act against the United States of America, its citizens or residents, or the proceeds obtained with the intention of supporting, planning or committing a terrorist act, or resulting from, included in or intended to be used in such acts.

Previous laws had allowed confiscation solely of proceeds for murder and arson, as part of terrorist acts, but not for all terrorist acts. The new law also implies that terrorist acts, different from other criminal offences, do not provide “proceeds”, and as a result confiscation can be carried out prior to the commission of the acts, thus suppressing their economic power to commit terrorist acts.

²⁰ Arrest, seizure and confiscation in rem-in res (thing) is the kind of confiscation performed against any means that has served to commit a prohibited action or it is its benefit. This kind of confiscation is very popular in the USA. For more information see the books written by the American authors Henry Hide, Stefan De Casella on seizure and confiscation in the USA.

²¹ See section 806 of the USA PATRIOT ACT.

Albania, as one of the countries which pledged to combat terrorism, took a number of legal measures. The reforms made by Albania are discussed below.

Legislative measures taken by the albanian state to combat terrorism

In accordance with international acts and the commitments undertaken by Albania in the fight against terrorism, the Albanian government made a number of institutional and legal reforms. For example, the Albanian Parliament passed the law against the financing of terrorism²². This law was part of the legal reform in pursuance of the UN Convention and the Security Council Resolution, which aimed at preventing and fighting not only terrorist entities but those who support and finance terrorism as well. This would be implemented through such measures against assets as blocking²³, freeze, seizure²⁴ and confiscation of any kind of assets, licit or illicit fund, of persons considered terrorists or financiers under the resolutions of the UN²⁵ or other international acts.²⁶

These measures are directed solely against persons listed²⁷ for terrorism acts or their financing by the resolution of the UN Security Council or other international agreements to which Albania is a party, following inclusion on the list on the part of the Council of Ministers.²⁸ An important role is played by the Directorate General for the Prevention of Money Laundering, which is in charge of collecting, processing, systemizing, analyzing, exchanging and presenting data on the implementation of the measures against terrorism, as the authority in charge of executing the law on preventing money laundering and financing of terrorism.²⁹ Another aim of this law is the fight against terrorism financing³⁰ through verification by financial institutions and supervisory authorities of all suspicious financial transactions. This information is relayed to the Minister of Finance by the Financial Unit of the Albanian Intelligence Service.

The sole authority in charge of taking measures against assets is the Minister of Finance, who orders to take one of the measures stipulated by the law, such as

²² Law no. 9258, dated.15.07.2004 "On measures against financing terrorism".

²³ It is a temporary seizure of every transaction or movement of funds, under the procedures set forth by the relevant authorities; they remain under the ownership of persons who have rights over them at the moment of exercising the measure of seizure.

²⁴ Seizure is the termination of every transaction or alienation of funds or assets in accordance with the procedures set by the relevant authorities. Upon seizure, the relevant authorities exercise their right to control funds and assets.

²⁵ For more information on the UN Security Council Resolutions on listed persons see the official website of the Directorate General for the Prevention of Money Laundering, which shows the list of persons announced by the UN Security Council until 20.07.2012.

²⁶ See Articles 1, 2, 3 of the law on measures against the financing of terrorism.

²⁷ The listed person is any citizen or legal person who has been included on the list as a terrorist, terrorist subject, or terrorism financier, under UN or international organizations' resolutions.

²⁸ See Article 4, 5 of the Law on measures against the financing of terrorism.

²⁹ See Article 8 of the Law on measures against the financing of terrorism.

³⁰ See Article 1 of Law no.9917, dated.19.05.2008 "On Preventing Money Laundering and Financing of Terrorism", as amended.

seizure and freezing. The decision taken by the Minister of Finance can be subject to complaint to the court in conformity with the general complaint rules but the burden of proof in this civil seizure process rests on the listed person, whose assets have been subject to such as measures as seizure or freezing. He must certify that he has a legal right and that he has legally justified sources for his rights and interests, and that his funds and assets have no connection with terrorists, terrorist subjects or persons financing terrorism.³¹ The effects of this law are also applied to assets or funds which served for the financing and commission of terrorist acts prior to the entry into force of this law. The retroactive force of the law in this case is related to the aim for comprehensive seizure of all assets obtained even prior to the entry into force of this law, on the condition that these assets were used to commit terrorist acts or finance terrorist acts. However, this law does not provide for the confiscation of assets or funds of the listed persons.³² As part of the legal reforms, the law against organized crime³³ was passed a few months later. The aim of this law, amongst others, is the seizure and confiscation of assets owned by persons about whom *there is reasonable doubt based on proof* for participation in terrorist acts or for criminal offences with a terrorist intention, provided for by chapter VII of the Criminal Code³⁴. According to the provisions of this law *the court decides for the seizure and confiscation* following a request by the prosecutor, who must argue that the person is suspected of being accused of criminal offences related to terrorist acts and the origin of the assets is not legally justified.

Therefore, due to the involvement of the person in suspected terrorist activities, these assets are presumed illegal. According to the provisions of this law, the persons suspected of *involvement in terrorist activities will be subject to confiscation only of that part of assets which does not justify its legal origin, thus accepting a limited confiscation. The law on measures against the financing of terrorism provides for the seizure of any kind of licit or illicit assets, thus having an extended confiscation.* According to the law against organized crime, confiscation is applied only to that part of assets which does not justify its lawful origin, i.e. a limited confiscation. I consider the law against organized crime, Article 3 stipulating that persons who have committed terrorism-related criminal offences or are involved in terrorist organizations, as incomplete, not coherent and not in compliance with the law against measures for the financing of terrorism or with the Warsaw Convention. The law against the financing of terrorism, as we have stated above, stipulates seizure and freezing of licit or illicit assets or funds of persons on the condition that these persons are announced financiers or terrorists by the UN Security Council Resolution. On the other hand, the law against organized

³¹ See Article 17 of the Law on measures against the financing of terrorism.

³² Confiscation is a final measure against assets, performed in accordance with legal procedures and authorities, where the individual loses his right of ownership and the state becomes the owner, in accordance with confiscation laws.

³³ Law no. 9284, dt.30.09.2004, "On preventing and fighting organized crime".

³⁴ See Article 3 /1/a/b/c/ç, of the Law against organized crime.

crime with regard to persons suspected of terrorist acts or financing of terrorism stipulates seizure or confiscation only for assets without lawful origin.

As part of the legal and institutional reforms, the Albanian Parliament passed the Anti-mafia law.³⁵ This law, just like its predecessor against organized crime in its Article 3, stipulates that the measures against assets³⁶ are applied even to persons for whom *there is reasonable doubt based on indicia*,³⁷ that they are part of terrorist organizations and commit criminal offences for terrorism intentions, set forth in chapter VII of the Criminal Code, Special Part. The current anti-mafia law, in relation to its predecessor against organized crime has not brought any novelty in terms of the measures against the assets of persons involved in terrorist organizations. The novelties of the anti-mafia law are related to procedural guarantee, the standard of proof, but not to the measures against assets of persons committing terrorist acts. The same problems mentioned above are also present in this law.

Despite the various provisions in different laws providing measures against the assets of persons involved in terrorist acts, the administration of the seized or confiscated assets is performed by a single institution, the Agency for the Administration of seized and confiscated Assets. The establishment of this agency was part of the legal reforms undertaken by the Albanian State.

Agency for the Administration of Seized and Confiscated Assets (AASCA).

In addition to other tasks, AASCA is also in charge of the administration of seized and confiscated assets from terrorist acts, irrespective of the entities or authorities deciding on the seizure and confiscation. This agency is a budget institution, subordinate to the Minister of Finance and its main objective is the management of these assets and increases their monetary value through good administration. This is performed by administrators assigned by a court decision.

The data from this agency show that there is a total number of 21 orders of the Minister of Finance on seizure of assets owned by persons listed by the UN resolution, whose assets, funds or activities are in Albania. There are 3 such persons:

- Abdyl Latif Saleh
- Yassin Al Qadi
- Hamzeh M.A Abu, Rayyan

³⁵ Law no.10192, dt.03.12.2009 "On preventing and fighting organized crime and trafficking through measures against assets".

³⁶This implies such measures as seizure and confiscation of assets owned by persons suspected of involvement in organized crime activities.

³⁷ The standard used in the Anti-mafia law, reasonable doubt based on indicia was subject to the constitutional examination. The Constitutional Court, by decision no. 4, dated 23.02.2011 has decided let this law into force and the standard used in this constitutional law.

The total number of these assets is 131, with a monetary value of 1.691.799.879 ALL; the number of immovable properties is 55, with a monetary value of 1.339. 929.424 ALL, including apartments, commercial units, offices, villas, warehouses, buildings, lands and garages. There are 44 movable properties (bank accounts). The data of AASCA show that this agency administers only assets frozen or seized by order of the Minister of Finance and it has not yet administered terrorist-related assets seized or confiscated by the First Instance Court for Serious Crimes. This is expected to happen in the future.

Conclusions and recommendations

In spite of being a crime which violates the world peace and security, there is no definition of terrorism and it is still judged by national jurisdictions and not by international ones. Nevertheless, after 11 September, countries have enhanced their cooperation by creating joint criminal policies and various measures against this complex and dangerous phenomenon. The Council of Europe as a regional organization established a number of efficient legal instruments and entities to combat terrorism. Similarly, the USA adopted the USA PATRIOT ACT, also known as the patriotic act of Americans, which, in spite of having a comprehensive nature, mainly aimed at the fight against terrorism by controlling all bank transactions made by non-American persons and non-American banks. The Albanian State, in pursuance of its legal obligations, has also made a number of legal reforms by approving different laws and establishing relevant authorities to combat terrorism. There has been considerable success. The approval of the law against the financing of terrorism brought about the freezing and seizure of considerable assets owned by persons listed as terrorists by the Resolutions of the UN Security Council. Afterwards, following the approval of the law against organized crime and the current Anti-mafia law, they can be seized or confiscated under this law. All these assets, irrespective of the entity or authority in charge of seizing, freezing, or confiscating them, are administered by the Agency for the Administration of Seized and Confiscated Assets. This agency is currently administering the assets and seized funds of 3 persons announced as financiers of terrorism.

However, in spite of the positive and significant results achieved so far and a comprehensive legal framework against terrorism, there is a clash of laws, powers, and most importantly, this legal regulation is not in compliance with the Conventions of the Council of Europe and the Warsaw Convention of May 2005³⁸. For example, the law on the measures against the financing of terrorism provides only for the seizure and freezing of all licit or illicit assets when they are used to finance terrorism, but

³⁸ This convention was ratified by the Albanian Parliament by Law no. 9646, dated 27.11.2006 and in accordance with the Constitution of the Republic of Albania, Articles 116 and 122, this convention is part of the domestic legislation and of mandatory use.

not for the confiscation of assets of persons listed by the UN Resolution. Both the law against organized crime and the current Anti-mafia law provide for the seizure and confiscation of assets of persons suspected of having committed one of the criminal offences set forth in chapter VII of the Criminal Code, created during the exertion of the terrorist activity and for the criminal offence of financing terrorism, beyond criminal procedure, but up to the value corresponding to the legally unjustified assets. This means that when criminal procedures have initiated against the person for the criminal offence of financing terrorism, the First Instance Court for Serious Crimes shall confiscate only those assets which are not legally justified and not the lawful assets, because this is stipulated by the Anti-mafia law. Meanwhile, Article 2 of the Warsaw Convention also provides for the confiscation of licit or illicit assets used to finance terrorism or the profits from this criminal offence. Therefore, even the Anti-mafia law should have exclusively provided for the comprehensive confiscation of any licit or illicit assets for the criminal offence of financing terrorism, in conformity with Article 2 of this Convention.

Although the Anti-mafia law should have been a completion and continuation of the law against the financing of terrorism, it contains contradictions. Firstly, the seizure measure can be taken in pursuance of two laws, the law against the financing of terrorism and the Anti-mafia one, but the difference is that in the former the measure is taken by the Minister whereas in the latter it is taken by the court. Secondly, the Anti-mafia law should have gone further with the confiscation procedure as a final measure against seized assets by a decision of the Minister, but it has not happened until now.

We also notice deficiencies in chapter VII of the Criminal Code, which provides for criminal offences related to terrorist acts. This chapter endeavors to define terrorist acts and their derivatives in conformity with the UN convention against the financing of terrorism and the annex to this convention, but it has not reached its goal.³⁹ I think that additions should be made to Article 230 of the Criminal Code, which provides for terrorist acts, by adding the provisions set forth in the annex of the UN Convention against the financing of terrorism.

AASCA is not administering confiscated assets yet. In these circumstances, with this agency not possessing the title of ownership, its chances to alienate the property or well administer these assets are limited. The other law enforcement agencies are obliged to decide on the confiscation of such assets. All these recommendations will reflect the changes, evolutions and provisions in international acts.

³⁹ Our Criminal Code has not considered all actions or inactions as terrorist acts, thus not excluding as criminal offences such unlawful actions set forth in various conventions, such as: -The convention against terrorist bombing, the convention against hostage taking, the convention for the international protection of diplomats, etc. For more information see the annex of the UN Convention against terrorism.

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