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THE NEW CONSENSUAL REALITY

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IN ITS DECISION dated March 30, 2007, the Chilean Constitutional Court (*Tribunal Constitucional*) was faced with what would be known in the US as a vagueness challenge concerning the piracy provision of the Chilean Criminal Code (art. 434 *Código penal*).¹ This provision imposes a sentence of up to life imprisonment for the commission of “acts of piracy” (*actos de piratería*), a term that is defined nowhere in the Code. The trial court certified to the Constitutional Court the issue of whether the lack of any specification beyond “acts of piracy” violated the Chilean Constitution’s requirement that “[n]o law may establish penalties unless the conduct sanctioned is expressly described therein” (art. 19 No. 3 sent. 8: *Ninguna ley podrá establecer penas sin que la conducta que se sanciona esté expresamente descrita en ella*).

While noting that jurists and legislators in Chile had been unable for over a century to figure out what piracy actually was, the Court ultimately determined that the statute passed muster, noting that it is not necessary for the “express description” of the proscribed conduct to be “complete or full; rather, it must be sufficient for persons

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¹ www.tribunalconstitucional.cl/archivos/sentencias/ROL0549.pdf.

to know and understand its essential elements” (*no se identifica con totalidad o integridad, sino que está asociado a la comprensión y conocimiento por las personas de sus elementos esenciales*), Decision, p. 8. In so holding, the Court relied on various sources, including the Dictionary of the Royal Academy of the Spanish Language (*Diccionario de la Real Academia Española*), Escriche’s *Diccionario Razonado de Legislación y Jurisprudencia* (similar to *Black’s Law Dictionary*), and *Wikipedia*:

La enciclopedia Wikipedia señala que piratería puede referirse a: “(i) Piratería marítima, su significado original; (ii) Delito de piratería, apropiaciones ilegítimas, derivadas de la piratería marítima; (iii) Piratería aérea, apoderamiento, bajo amenazas, del control de una aeronave (designación inspirada en la costumbre del pirata de abordar barcos por la fuerza); o (iv) Piratería, la denominación popular de las infracciones al derecho de autor (tales como la venta ilícita de copias sin autorización).” La enciclopedia señala que “la piratería es la práctica, tan antigua como la navegación misma, en que una embarcación ataca a otra con el propósito de robar su carga, y muchas veces la nave misma”.

The encyclopaedia *Wikipedia* states that piracy can refer to: “(i) *Maritime piracy*, its original meaning; (ii) *The crime of piracy*, unlawful appropriation arising out of maritime piracy; (iii) *Air piracy*, commandeering, by means of threats, an aircraft (a designation inspired by the pirate custom of boarding boats by force); or (iv) *Piracy*, the popular term for copyright infringement (such as unlawful, unauthorised sale of copies).” The encyclopaedia states that “piracy is the practise, as old as navigation itself, by which one vessel attacks the other in order to rob it of its cargo, and, in many cases, the ship itself.”

Decision, p. 9.

Say what you might about citing as authority a source that once, for a brief time, credited the U’wa people of Venezuela and Colombia with the invention of puff pastry, but there are definite advantages to being able to cite an authority that you can always rewrite to suit your current needs.