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Terrorism Convictions Monitor

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Issue 5



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I. Introduction



Why a Terrorism Convictions Monitor

The Terrorism Convictions Monitor (TCM) is intended to provide a regular overview of the terrorism-related developments throughout the EU area. The Monitor has been developed on the basis of the **open sources information** available to the CMT and methodologies such as individual case studies and comparative analysis. There is a link provided to each of the convictions and acquittals found on the EUROJUST Intranet External News and/or the Internet.

The current issue contains also information provided by one National Desk at Eurojust on the basis of Council Decision 671/JHA/2005.

It also contains a new chapter with judicial analysis on selected cases from the recent past.

Issue 5 of the TCM covers the period **May-August 2009**.

The general objective of the TCM is to inform and kindly invite the National Members to review, confirm and, if possible, complete the information retrieved from various open sources. In the cases where such a confirmation and/or follow-up is needed, a special icon  will appear. The respective National Desks will be further contacted for specific details. In cases where the information has already been provided, it will be noted by a .

II. Terrorism Convictions Overview

1. Terrorism Convictions/Acquittals by Member State May-August 2009



Denmark

June 2009

The Eastern High Court upheld the sentence of ██████████ who had been convicted last year of planning terror attacks. The 12-year sentence of the first man was confirmed and the 7-year sentence of the second one was increased by 1 year and his deportation to Afghanistan, after serving his prison term, confirmed. The two had been arrested in 2007 after the national intelligence agency learned that one of them had attended an Al-Qaida training camp. They were convicted of making explosives to be used in a terror attack. The men had admitted making triacetone triperoxide (TATP), commonly used in terrorist bombs, but claimed that the explosive was to be used for fireworks (*for details, please see TCM, Issue 3*).

Source: [The Copenhagen Post Online](#), [External News Intranet](#)



France

May 2009

The Paris Magistrate's Court found Corsican nationalist militant ██████████ guilty of "criminal conspiracy for terrorist purposes" and "transporting weapons" and handed down a 20-months suspended sentence. The defendant, alleged close associate of the leader of **A Cuncolta Naziunalista (the legal wing of the FLNC-Canal Historique)**, was prosecuted for offences related to a bomb attack on Bordeaux town hall on 5 October 1996. The responsibility for the attack was claimed by the FLNC-Canal Historique (Corsican National Liberation Front-Veteran Wing). The perpetrators have never been identified.

Source: [RTL Info](#), [External News Intranet](#)



July 2009

The Paris Special Court of Assize handed down sentences of between 18 months' and 16 years' imprisonment to eight suspected members of **ETA** tried following the discovery in 2004 of one of ETA's biggest arms factories. One of the defendants, ██████████ who got a 16-year sentence, with a requirement for two-thirds of it to be served and a permanent ban on entering French territory, had already been sentenced to 19 years' imprisonment in December 2008 as the former head of ETA's logistics apparatus. Two other defendants, ██████████ believed to be leaders of the logistics apparatus, were sentenced to 15 years' imprisonment, also with a requirement for two-thirds of it to be served and a permanent ban from French soil. A 14-year sentence was handed down to ██████████ The farmer ██████████ whose land was used for an underground ETA workshop, dismantled on 4 April 2004, was

given an 11-year sentence. Both ██████████ received 10-year sentences, and ██████████ got a 3-year sentence, with 18 months to be served. He had already spent 8 months on remand and was left free. The workshop dismantled in 2004 contained 185 detonators, 590 kilos of materials used to make explosives, 14 rockets, 61 grenades, 2 mortars, a heavy submachine gun, many handguns and ground-to-air missile parts. Flight plans for trips of the Spanish King were also found.

Source: [External News Intranet](#)



The Paris Magistrate's Court found ██████████ guilty of criminal conspiracy for terrorist purposes, attempted extortion and illegal confinement and sentenced him to 5 years' imprisonment, 2 years of which suspended. He was tried for his part in an attempt to extort €120,000 from a couple of pensioners in Corse-du-Sud, supposedly to finance an underground **separatist movement**. In September 2006 several armed, hooded men entered the home of the pensioners, kept the wife confined and threatened the husband with having to leave the island if he did not pay €120,000 to the "cause". The couple had received phone calls for 2 months but did not bring charges. The police, however, identified the defendant by telephone taps.

Source: [External News Intranet](#)



The Paris Magistrate's Court convicted 8 individuals for having set up a network to recruit and send volunteers for "jihad" in Iraq. Two of them, ██████████ were arrested in Syria in December 2006 as they were attempting to enter Iraq to fight the international coalition. In February 2007 they were returned to France and were arrested when leaving the plane. The court found the two men guilty of criminal conspiracy for terrorist purposes and sentenced each of them to 5 years, one of them suspended, with 3 years' probation. Their co-defendants, one Moroccan and five French converts to Islam, were convicted of having supplied them logistic or financial support. One of the co-defendants, ██████████ viewed by the prosecution as being one of the organizers, was given a 5-year prison sentence. Another one, ██████████ got 6 years. ██████████ who may have disappeared in Iraq, received a 5-year sentence while the warrant for his arrest was maintained. The other three defendants were given sentences between 6 months and 3,5 years. Some of the convicted are expected to appeal.

Source: [La Depeche](#), [External News Intranet](#)



Germany

July 2009

A state court in Koblenz convicted ██████████ of membership in **Al-Qaida** and sentenced him to 8 years in prison for his active support of the terrorist group. In addition to the terrorism charges, he was also convicted of eight counts of violating German export laws. According to the judge, the man had contacts with high-ranking figures in Pakistan that dated back to November 2003 and he subsequently supplied the group with some €80,000 in cash, along with equipment such as binoculars, night-vision goggles, laser range-finders and radios. In 2006 he participated in fighting against U.S. forces in Afghanistan. The court also found that he recruited four people to undergo military training. The man was arrested in Pakistan in 2007 and held in custody there for 2 months before his return to Germany. The convict's lawyer

said he reserved the right to appeal the verdict.

Source: [The Associated Press](#), [External News Intranet](#)



The Düsseldorf Court found ██████████ leader of the German branch of the **PKK**, guilty of membership in a criminal organisation and sentenced him to 3 years and 9 months' imprisonment. He ran the organisation's Southern sector in Germany from February to June 2007, and Germany-wide operations after that until April 2008, and co-ordinated organisational, financial, propaganda and personnel matters for the group.

Source: [Yahoo! News](#)



August 2009

A Stuttgart court convicted 2 Turkish nationals and a German citizen of raising funds and organising weapon supply for the Revolutionary People's Liberation Party-Front (**DHKP-C**) in Germany. ██████████ ██████████ sentenced to 3,5 years, and ██████████ ██████████ sentenced to 5 years' imprisonment, were also convicted of forging documents. ██████████ was handed down a sentence of 2 years and 11-months.

Source: [SETimes](#), [External News Intranet](#)



May 2009

The Special Criminal Court sentenced ██████████ to 7,5 years with 12 months suspended after he had pleaded guilty to the unlawful possession of a 9mm Israeli-made micro Uzi sub-machine gun and three magazines with a 30-round capacity in suspicious circumstances contrary to S27A of the Firearms Act 64 as amended. The court suspended the final year of the prison term after he gave an undertaking on oath that he would not get involved in crime in the future.

Source: [The Irish National Desk at Eurojust](#), [The Argus](#)



The Special Criminal Court sentenced ██████████ to 5 years' imprisonment after he pleaded guilty to the unlawful possession of a Browning 9mm semi automatic pistol and 10 rounds of ammunition contrary to S27A of the Firearms Act 64 as amended. The Court suspended the final 18 months of the sentence as he had given an undertaking on oath that he would not be involved in crime in the future. The man, who had rammed two Garda vehicles to escape arrest, had denied during questioning that he had anything to do with either the IRA or the INLA.

Source: [The Irish National Desk at Eurojust](#), [Eircom net](#)



The Special Criminal Court sentenced ██████████ to 7,5 years' imprisonment on a guilty plea for unlawful possession of five ME .38 Compact G revolvers and 64 rounds of .380 inch M.E. Gum ammunition contrary to S27A of the Firearms Act 64 as amended. During interviews he said that he owed a favour to someone who had

¹ On the basis of Council Decision 671/JHA/2005 the Republic of Ireland reported a number of cases to Eurojust. The reported convictions that took place in the period May-August have been included in the overview together with the information found in the open sources.

helped him clear a €20,000 debt and he was collecting the revolvers and ammunition as a favour to that individual. He also said that he was holding the weapons "for an organisation which no longer exists in the eyes of the Government". [REDACTED] had a previous conviction for theft and had pleaded guilty to a firearms offence in April last year but had not turned up for the sentence hearing and was unlawfully at large at the time of his arrest. [REDACTED] was co-accused with [REDACTED] who is scheduled for arraignment in October 2009 and with [REDACTED] for whom a trial date still needs to be set.

Source: *The Irish National Desk at Eurojust*, [BreakingNews.ie](#)



The Special Criminal Court sentenced [REDACTED] to 5 years' imprisonment, with the final 18 months suspended, on a guilty plea for possession of firearms: a 9mm parabellum calibre Glock semi automatic pistol and 50 rounds of 9mm parabellum calibre ammunition contrary to S27A of the Firearms Act 64 as amended. His co-defendant [REDACTED] was convicted of the same offences in July (*for details, please see below*).

Source: *The Irish National Desk at Eurojust*, [BreakingNews.ie](#)



May/June 2009

In May 2009 [REDACTED] was arraigned before the Special Criminal Court for charges of possession of firearms – one Taurus 9mm semi automatic pistol contrary to S27A (1) Firearms Act 64 as amended and for possession of ammunition at the M1 motorway. The case was remanded back to 26 June for sentence. The height of the sentence given is not known.

Source: *The Irish National Desk at Eurojust*



July 2009

The Court of Appeal dismissed all grounds of the appeal of [REDACTED] against his conviction for membership of the **IRA**. He had been arrested in the course of a Garda investigation into IRA money laundering following the 2004 Northern Bank robbery. He was found guilty, by the Special Criminal Court, of membership of an unlawful organisation, the IRA, and sentenced to 4 years' imprisonment. Following his arrest, he had been found in possession of a box containing €94,250. He denied that he was a member of the IRA or had any involvement in its activities. The grounds for his appeal included that the judges at the Special Criminal Court had erred in drawing inferences "consistent with guilt" from evidence concerning his activities. His lawyers said the prosecution had not produced evidence at the trial of any illegal activity, such as money laundering, taking place prior to his arrest.

Source: [Irish News](#), [External News Intranet](#)



Four men, who had been arrested in an alleged plot to kidnap a businessman, were convicted and sentenced of **INLA** membership by the Special Criminal Court. [REDACTED] [REDACTED] were sentenced to 4,5 years' imprisonment each after they pleaded not guilty to the charges. [REDACTED] who had admitted the charges earlier this year, were sentenced to 4 years' imprisonment. The sentencing of a fifth man, [REDACTED] was adjourned until October for health-related reasons. He was

convicted of the membership charge earlier in July but was released on bail pending sentence.

Source: [The Irish Times](#)



The Special Criminal Court convicted ██████████ who pleaded guilty to the charges of possession of a 9mm parabellum calibre Glock semi-automatic pistol and 50 rounds of 9mm parabellum calibre ammunition, and sentenced him to 10 years' imprisonment. He had been sentenced to life for a murder in 1992 and released on licence in March 2007. In July 2008 he was arrested together with ██████████ who was convicted of the same offences by the Special Criminal Court in May 2009 (*for details, please see above*). Unlike ██████████ did not plead guilty.

Source: *The Irish National Desk at Eurojust*, [BreakingNews.ie](#)



Italy

June 2009

The Court of Assize in Milan imposed sentences of up to 15 years' imprisonment in a trial of 17 alleged members of the new **Red Brigades**. ██████████ were given the heaviest sentences of 15 years' imprisonment each, ██████████ – 13 years and 10 months, ██████████ – 11 years and 4 months, ██████████ – 11 years and 1 month, ██████████ – 10 years and 11 months, ██████████ – 8 years and 3 months, ██████████ – 7 years, ██████████ – 3 years and 8 months, ██████████ – 3 years and 6 months each, and ██████████ – 10 days of arrest. ██████████ were acquitted.

Source: [RAI News 24](#), [External News Intranet](#)



Spain

May 2009

The National Court convicted 4 men of terrorism offenses in connection with recruiting suicide attackers for Iraq and acquitted 10 others for the lack of evidence. The court found ██████████ and ██████████ guilty of membership in a terrorist organisation and sentenced them to 9 years' imprisonment each. ██████████ was found guilty of collaborating with a terrorist group and sentenced to 5 years' imprisonment. ██████████ was given 2 years for falsifying documents. According to prosecutors, the 14 men belonged to a cell that tried to recruit jihad fighters for Iraq. They were also accused of helping several suspects in the 11 March 2004 Madrid bombings to flee Spain. The court said the cell was part of a network, called ██████████ connected with Ansar el Islam, a radical Islamic group linked to Al-Qaida. The court acquitted 10 of the defendants because much of the evidence against them came from e-mails that had been intercepted by police without due authorisation by a court judge, and as such was invalid.

Source: [ABC](#), [External News Intranet](#)



The National Court convicted ██████████ for helping to carry out an **ETA** killing in 1988 and sentenced him to 27 years in prison. The defendant had given information to ETA shooters on the movements of a victim in 1988. According to the court, he had a total

lack of respect for human life. In 1989 three ETA activists were sentenced for the murder.

Source: [Typically Spanish](#), [External News Intranet](#)



June 2009

The Audiencia Nacional convicted **GRAPO** member ██████████ and sentenced her to 7 years' imprisonment for her participation in the robbery of an armoured car in Maliaño on 6 November 2001. ██████████ was found guilty of a terrorist offence against the fatherland and acquitted of membership in a terrorist organisation as she was already convicted in France of a similar offence. She had been extradited from France to Spain after she had served her sentence. Four accomplices of hers had already been convicted earlier.

Source: [Diario Informacion](#), [External News Intranet](#)



The Audiencia Nacional convicted **GRAPO** members ██████████ of membership in a terrorist organisation and robbery with a terrorist purpose. They were handed down sentences of 24 and 22 years' imprisonment respectively. The two took part in the robbery of a branch of Caixa Galicia in Santiago de Compostela which occurred on 4 June 2006 and took away more than €35,000. In the courtroom they confessed their membership in GRAPO and described in detail the circumstances of the crime.

Source: [Siglo XXI](#), [External News Intranet](#)



The Spanish High Court found **ETA** member ██████████ guilty of serious infraction of his sentence terms. His girlfriend ██████████ and his lawyer ██████████ were convicted of collaboration with a terrorist organisation for their help to plan an attempt to escape from prison of ██████████ and his associate ██████████. The judge ordered that ██████████ be kept in custody along with his lawyer. ██████████ was given a suspended sentence and a fine of €60,000. With regard to the three other suspects in the attempted escape, ██████████ the judge ruled that there was no sufficient evidence to justify their imprisonment notwithstanding what could yet be discovered through further investigation.

Source: [Eitb](#), [External News Intranet](#)



United Kingdom

May 2009

The Court of Appeal reduced the sentences of five men convicted of terrorism offences at Kingston Crown Court in April 2008 (*for details, please see TCM, Issue 1*). One of them, the Muslim convert ██████████ born as ██████████ left prison after his former 4,5-year sentence was reduced by a year, because of the amount of time he had already served. He had been convicted of terrorist fundraising and inciting terrorism. He was released under tight restrictions which include a curfew. In July 2009 he was recalled to jail after breaking the terms of his release relating to good behaviour. The Court of Appeal reduced also the sentences of his co-defendants: ██████████ convicted of inciting terrorism, to 2 years' imprisonment consecutive to the sentence of 2,5 years already being served; ██████████ convicted of terrorist fundraising and inciting

terrorism, from 4,5 to 3,5 years' imprisonment; ██████████, convicted of terrorist fundraising, from 2 years to 18 months' imprisonment and ██████████ convicted of terrorist fundraising, from 2 years to 9 months' imprisonment consecutive to the sentence of 4 years passed in July 2007. The defendants were members of an extreme Islamist group, **Al-Muhajiroun**, which has been banned and allegedly re-grouped under another name.

Source: [BBC](#), [Mail Online](#)



June 2009

Following a trial at Kingston Crown Court which in April 2009 found ██████████ guilty of coordinating supplies of material to the **Liberation Tigers of Tamil Eelam (LTTE)**, a judge at Old Bailey handed him down a sentence of 2 years' imprisonment. He had headed the United Tamil Organisation in Britain before it became outlawed in 2001. According to the judge he was a "thoroughly decent man" who had broken the law for a cause he fervently believed in, supplying equipment which he did not necessarily know would be used for military purposes. The judge noted that, at the time of the offences, the Tamil Tigers were not banned in Sri Lanka. He also praised the defendant's "humanitarian" work, which he hoped would continue after he left jail (for details, please see TCM, Issue 4).

Source: [Agence France-Presse](#), [External News Intranet](#)



The Croydon Crown Court sentenced ██████████ to 3,5 years' imprisonment after he pleaded guilty to preparing for acts of terrorism. His co-defendant, ██████████ was cleared of the same offence by a jury earlier this month after he escaped in the middle of his trial. ██████████, whose great-grandfather was the first president of Sudan, together with his co-defendant, was intercepted by police in Turkey as he attempted to travel to Afghanistan to join pro-Taliban fighters. He hoped to enter Afghanistan via the border with Tajikistan, after trekking over the mountainous border. The two men were arrested upon their return to the UK. In November 2008 ██████████ admitted that he had hoped to pursue violent jihad in Afghanistan after being radicalised by extremist websites. In an email message he indicated he would be fighting with a Koran in one hand and an AK47 in the other. He admitted engaging in conduct in preparation for committing acts of terrorism. ██████████ denied the same charge. He was acquitted after claiming he thought he was going on a trekking holiday and that he had been deceived by his co-defendant.

Source: [Military World](#)



The High Court in Edinburgh convicted the self-styled "tartan terrorist" ██████████ and sentenced him to 6 years' imprisonment. He admitted sending shotgun cartridges and threatening letters to elected representatives and local authority, as part of a postal hate campaign in March 2009. After sending six packages he rang journalists and said it was the work of the **Scottish National Liberation Army (SNLA)**. The packages were intercepted by staff at the Royal Mail in Aberdeen and Glasgow City Council workers, who had been alerted by police. At the time of the offences, the man was on bail in connection with a separate offence. In 1980s his father, currently serving a prison sentence in Ireland for a letter-bomb campaign, founded the tiny cell of so-called "freedom fighters", known as the Scottish National Liberation Army, to resist

“mass English migration”. In 1983 there were 27 SNLA attacks, including letter-bombs to Margaret Thatcher and the Princess of Wales.

Source: [BBC](#), [External News Intranet](#)



July 2009

The Central Criminal Court convicted the neo-Nazi ██████ of having explosives with intent to endanger life and preparing for acts of terrorism. He had been developing a bomb-making factory in his bedroom and was on the point of carrying out a campaign of terrorism in the UK against those he regarded as “non-British”. Sentencing was adjourned until 8 September.

Source: [Crown Prosecution Service](#), [BBC](#)



The Winchester Crown Court sentenced ██████ to a minimum of 10 years’ imprisonment for plotting to blow himself up using a home-made suicide vest. His arrest was the first major one following a community tip-off. The heroin-taking student converted to Islam in 2006, changed his name and became obsessed with the politics of the Muslim world. He became radicalised with the help of extreme material obtained via jihadist websites. According to prosecutors he had developed a “mindset of martyrdom” and a taste for radical clerics on the Internet. The defendant had said he admired the 7 July London suicide bombers and told friends the 11 September attacks on America were a “justified response” for Western aggression.

Source: [BBC](#), [External News Intranet](#)



A jury at the Kingston Crown Court failed to reach a verdict in the trial of ██████ accused of possessing “instructional material” including manuals and videos containing information on how to make suicide vests and bombs. He was alleged to have held documents, such as The Mujahideen Terrorist Handbook and the Mujahideen Explosives Handbook, for the purpose of terrorism. ██████ was acquitted of disseminating terrorist material and cleared of fundraising at an earlier stage. His co-defendant ██████ was cleared of the same two charges. Prosecutors indicated they would be seeking a re-trial on four counts of possessing a document or record for terrorist purposes, contrary to the Terrorism Act. The jury was discharged from service and a date has yet to be set for the re-trial. ██████ was released on conditional bail.

Source: [Herald Scotland](#), [External News Intranet](#)



2. Comparative Analysis Terrorism Convictions May-August 2009

Case highlights

Certain court rulings in the period May-August 2009 are of a particular interest due to the impact of the terrorist activity they were related to or as they may have potential implications on future verdicts. Three such rulings have been selected and a short overview is provided below.

- I. The National Court convicted 4 men of terrorism offenses in connection with recruiting suicide attackers for Iraq and acquitted 10 others for lack of evidence. The court found 2 individuals guilty of membership in a terrorist organisation and sentenced them to 9 years' imprisonment each. Another co-defendant was found guilty of collaborating with a terrorist group and sentenced to 5 years in prison. A fourth man was given 2 years for falsifying documents. According to prosecutors, the 14 men belonged to a cell that tried to recruit jihad fighters for Iraq. They were also accused of helping several suspects in the 11 March 2004 Madrid bombings to flee Spain. The defendants were arrested between 2005 and 2007. Nine of the 14 were released from jail in March and one was already out before the trial.

The court said the cell was part of a network, called Tigris, connected with Ansar el Islam, a radical Islamic group linked to Al-Qaida. The cell operated out of a house in Santa Coloma de Gramanet, a town close to Barcelona. It housed, recruited and prepared people to fight in Iraq. Six people linked to the Madrid bomb attacks in 2004 had been to the house.

In its ruling the court acquitted 10 of the defendants because much of the evidence against them came from e-mails that had been intercepted by police without due authorisation by a court judge, and, as such, was invalid. The court said prosecutors failed to provide any proof against the 10 beyond mere accusations based on police information.

Source: [ABC](#), [External News Intranet](#)

- II. A state court in Koblenz convicted a man of membership in Al-Qaida and sentenced him to 8 years in prison for his active support of the group. In addition to the terrorism charges, he was also convicted of eight counts of violating German export laws. According to the judge, the man had contacts with high-ranking figures in Pakistan that dated back to November 2003 and he subsequently supplied the group with some €80,000 in cash, along with equipment such as binoculars, night-vision goggles, laser range-finders and radios.

In 2006 the man participated in fighting against U.S. forces in Afghanistan. The court also found that he recruited four people to undergo military training. The man was arrested in Pakistan in 2007 and held in custody there for 2 months before his return to Germany.

He had been held in detention since February 2008 when he was arrested at his home in South-Western Germany. The convicted man made no statements during the trial. His lawyer said he reserved the right to appeal the verdict.

Source: [The Associated Press](#), [External News Intranet](#)

III. The Paris Magistrate's Court convicted 8 individuals from the Toulouse region for having set up a network to recruit and send volunteers for "jihad" in Iraq. Two of them were arrested in Syria in December 2006 as they were attempting to enter Iraq to fight the international coalition there. They were arrested by the Syrian army in a house that several other Islamists and members of Al-Qaida passed through. Weapons and radical Islamist papers were found there. In February 2007 they were returned to France and were arrested when leaving the plane. A police raid the following day enabled the investigators, who had already been watching this group for several months, to arrest further suspected members of the network. More arrests took place in October 2007.

The court found the two men guilty of criminal conspiracy for terrorist purposes and sentenced each of them to 5 years, one of them suspended, with 3 years' probation. Their co-defendants, one Moroccan and five French converts to Islam, were convicted of having supplied them logistic or financial support. One of the co-defendants, viewed by the prosecution as being one of the organizers, was given a 5-year prison sentence. A second one, who defended himself without a lawyer, got 6 years. Another, who may have disappeared in Iraq, received a 5-year sentence while the warrant for his arrest was maintained. The other three defendants were given sentences between 6 months and 3,5 years.

In June 2009 the prosecutor called for sentences of between 2 and 8 years. According to him, the defendants "embody a new form of terrorism", in which they put in place "conditions enabling the candidates for jihad to move on to an operational stage". "They hide behind the argument of the fight against a war of occupation", but in fact this is just employed "to conceal their hatred of unbelievers", he added.

The defence lawyers regretted "the very conservative position of the court". Some of the convicted are expected to appeal.

Source: [La Depeche](#), [External News Intranet](#)

Worth noting is also an ongoing investigation in Italy, which was recently reported in the media that shows **a link between international terrorism and illegal immigration**. Following the issued arrest warrants, the Italian authorities arrested two French citizens suspected of being important Al-Qaida representatives in Europe. The men, a Syrian-born French citizen and a French engineer converted to Islam, were held in prison in Bari, Italy.

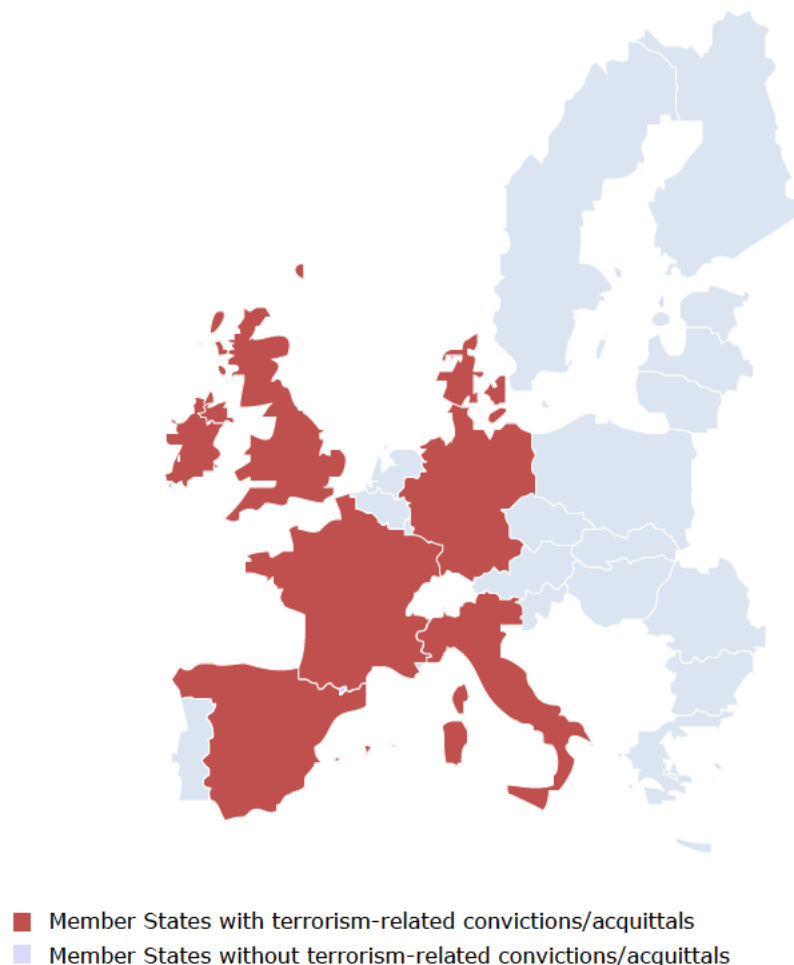
According to the investigators, who had been taping the conversations the men had in

the prison cell that they shared, the men were actively planning terrorist attacks and guerilla action in France and Britain – with talk of “a ton of grenades” and a plane attack on Charles De Gaulle airport. In possession of “weapons and particularly explosives”, they are believed to have also set up a network to recruit and train people “prepared to carry out suicide actions or to fight in Iraq and Afghanistan”. According to the then French interior minister, the men were “known” to belong to recruiting networks but denied any plans to attack the Paris airport. Their names are said to feature in the “Afghan networks” case, opened on the basis of information from the Belgian authorities interested in the Minbar website which has since been closed down.

On 13 July 2009 the men were sentenced to 4,5 years in prison each for trafficking illegal immigrants between Greece and Italy in their motor caravan. The terrorism investigation is still running.

Member States with convictions

Terrorism related trials in several EU member states have resulted in convictions/acquittals in the period May-August 2009 (*please see map below*).



Based on the information available in the open sources, several comparative charts have been drawn to illustrate some facts of particular interest:

Number of convictions/acquittals per Member State

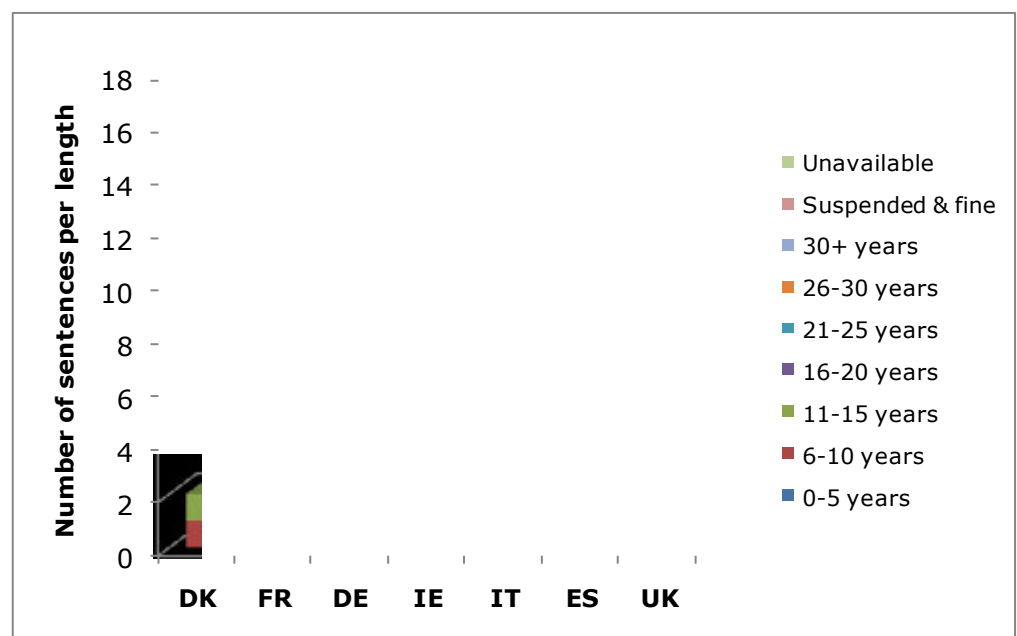
COUNTRY	CONVICTED	ACQUITTED	TOTAL	ACQUITTED (%)
Denmark	2	0	2	0%
France	18	0	18	0%
Germany	5	0	5	0%
Ireland*	12	0	12	0%
Italy	14	3	17	18%
Spain	11	10	21	48%
UK**	9	2	11	18%
TOTAL	71	15	86	18%

The chart contains the information, available in the open sources, regarding the number of convictions/acquittals per Member State over the period May-August 2009.

* The numbers for the Republic of Ireland are based on the information provided by the Irish National Desk at Eurojust and information found in open sources. They include a conviction from July 2009 for which the sentencing is expected in October 2009.

** The numbers for the UK, as well as the charts that follow, include a conviction from July 2009 the sentencing for which will be done in September 2009, and do not include a sentence from June 2009 on a conviction handed down in April 2009, as it was already counted in TCM 4.

Length of sentences



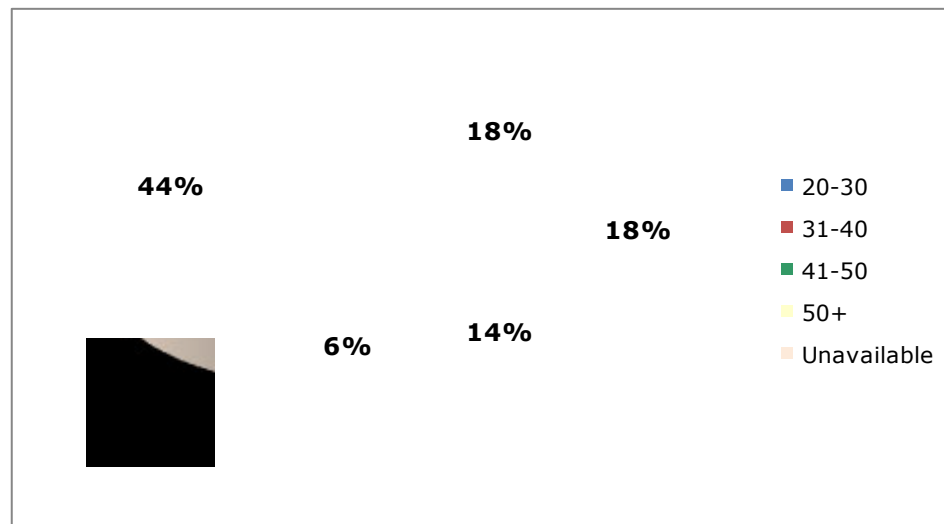
The chart illustrates the information, available in the open sources, regarding the length of terrorism related sentences per Member State over the period May-August 2009.

Affiliation of convicted individuals

Organisation	No. of convicted members/linked
Red Brigades	14
ETA	12
Al-Muhajiroun	5
INLA	5
Tigris (Ansar al Islam)	4
DHKP-C	3
GRAPO	3
Al-Qaida	1
FLNC	1
IRA	1
SNLA	1
PKK	1
Non-affiliated/Unavailable	20
Total	71

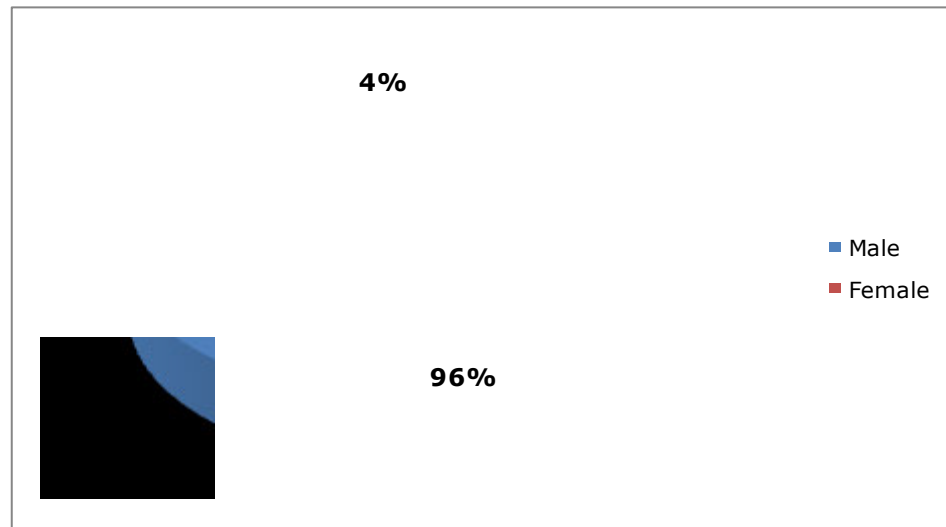
The chart illustrates the information, available in the open sources, regarding the affiliation of convicted individuals, in cases when it was expressly stated, over the period May-August 2009.

Age of convicted individuals



The chart illustrates the information, available in the open sources, regarding the age of convicted individuals in the EU Member States over the period May-August 2009.

Gender of convicted individuals



The chart illustrates the information, available in the open sources, regarding the gender of convicted individuals in the EU Member States over the period May-August 2009.

3. Case Study

Separatist terrorism – the example of ETA

Introduction

The present case study is based on the deliberate selection of the topic, separatist terrorism, as it remains a problem of considerable importance and is of a particular interest from an analytical point of view.

As stated in the latest EU Terrorism Situation and Trend Report TE-SAT 2009, "Separatist terrorism remains the terrorism area which affects the EU most" (*Chapter 6. Ethno-Nationalist and Separatist Terrorism, Key Findings, p.25*). It reads further: "The number of attacks decreased in 2008 by 25 percent in comparison to 2007, thereby reaching the level of 2006. The majority of arrests related to separatist terrorism occurred in France and Spain. Significant arrests in these countries led to the dismantling of several ETA cells when some top leaders were arrested."²

The present study focuses on the phenomenon separatist and nationalist terrorism and one of its most prominent examples, the Basque nationalist and separatist organisation ETA.

The analysis of the relevant information available in the open sources that follows below focuses on the following main attributes:

- History, strategy and tactics of ETA;
- ETA at 50;
- The judicial response 2008-2009.

History, strategy and tactics of ETA

As stated in the Wikipedia, **Euskadi Ta Askatasuna** or **ETA** (*Basque Homeland and Freedom*) was founded on 31 July 1959 by young nationalists who were for a time affiliated with the Basque Nationalist Party (PNV). In 1952 they started a student discussion group at the University of Deusto in Bilbao and split from the PNV in 1959 because they considered it too moderate in its opposition to Franco's dictatorship. ETA evolved from a group advocating traditional cultural ways to a paramilitary group with the goal of Basque independence.³

ETA's first assembly was held Bayonne, France in 1962, where it formed its platform calling for "historical regenerationism", viewing Basque history as a process of nation building and declaring the Basque nationality to be defined by the Basque language. It called for socialism and for "independence for Euskadi, compatible with European federalism". In 1965, the sixth ETA assembly adopted a Marxist-Leninist position.⁴

In 1995 ETA published the *Democratic Alternative* in which it outlined its aspiration to force the governments of Spain and France to agree on the following:

- Recognition of the right to "self-determination and territoriality" for Euskal Herria;
- That the Basque citizens are the "unique subject" to make decisions about the

² EU Terrorism Situation and Trend Report TE-SAT 2009, Europol, <http://www.europol.europa.eu/index.asp?page=publications>.

³ Wikipedia, <http://en.wikipedia.org/wiki/ETA>.

⁴ *Ibid.*

future of the Basque Country;

- Amnesty for all members (prisoners or self-imposed exiles);
- Respect for "the results of the democratic process in the Basque Country";
- "Total ceasefire" once these points are guaranteed through a political agreement.⁵

ETA's tactics include:

- Direct attacks: killing by shooting the victim;
- Bombings;
- Shells: hand-made mortars have been used occasionally to attack military or police bases;
- Anonymous threats;
- Extortion or blackmail: called by ETA a "revolutionary tax" from business owners (according to French judiciary sources, ETA exacts an estimated €900,000 per year in this manner. The extorted funds are then moved to fiscal havens);
- Kidnapping: often as a punishment for failing to pay the "revolutionary tax", but also used to try to force the government to free ETA's prisoners under the threat of killing the kidnapped.
- Robbery of weapons, explosives, machines for license plates and vehicles.⁶

ETA's targets have expanded from the former military/police-related personnel and their families, to a wider range, including businessmen (mainly to extort them for the "revolutionary tax"), politicians, judges and prosecutors, university professors who publicly express ideas that counter armed Basque separatism, journalists, economic targets: private or public property, especially railroads, tourist sites, industries, or malls, civilian casualties. Exceptionally, ETA has also assassinated some of its former members as a reprisal for having left the organisation.⁷

Over the years ETA has killed over 800 individuals and undertaken dozens of kidnappings⁸. The group is proscribed as a terrorist organisation by Spain and France as well as the European Union as a whole. Other countries that list it as a terrorist group include the United States, Canada, etc.

ETA operates mainly in the Basque Country, Navarre and (to a lesser degree) Madrid, Barcelona, and the tourist areas of the Spanish Mediterranean coast. To date, about 65% of ETA's killings have been committed in the Basque Country, followed by Madrid with roughly 15%. Navarre and Catalonia also register significant numbers.⁹

ETA needs substantial funds to finance its operations. According to the Wikipedia sources, in 1996 the organisation needed about 15,000,000 pesetas (about €90,000) a day while in 2007 its annual budget was adjusted to €2,000,000.¹⁰

ETA's political goals are also shared by the political party Batasuna. The party generally received 8 to 15% of the vote in the Basque Autonomous Community. It is

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ A list of ETA attacks is available, *inter alia*, at: http://en.wikipedia.org/wiki/List_of_ETA_attacks.

⁹ Wikipedia, <http://en.wikipedia.org/wiki/ETA>.

¹⁰ *Ibid.*

presently banned by the Spanish Supreme Court as an anti-democratic organisation following the Political Parties Law. Batasuna is often referred to as the political wing of ETA although the party itself denies to be such. Membership in both organisations by certain individuals is however recorded on a number of occasions. ETA as well as Batasuna are considered to belong to the so-called Basque National Liberation Movement. Other groups which are considered to belong to it include: the nationalist youth organisation Segi, the labour union Langile Abertzaleen Batzordeak (LAB) and Askatasuna.¹¹

ETA has been known for having "fraternal" contacts with the Provisional IRA as well as links with other militant left-wing movements in Europe and throughout the world. In 1999 its commandos teamed with the (now self-dissolved) Breton Revolutionary Army to steal explosives from magazines in Brittany. The Colombian government stated that there are contacts between ETA and the FARC. According to sources, FARC have attempted to lodge ties with ETA for an attack in Spain and ETA members received training from the FARC; FARC also offered to hide ETA fugitives while requesting anti-air missiles, as well as asking ETA to supply medical experts who could work at FARC prison camps. In addition, it is claimed that FARC also asked ETA to stage attacks and kidnappings on its behalf in Europe.¹²

Some ex-ETA militants have received political asylum in Latin American countries, such as Mexico and Venezuela¹³. Several ex-militants were sent from France to reside in Cuba after an agreement between the Spanish and the Cuban governments.¹⁴

Nowadays there are some 700 ETA convicts or suspects in Spanish jails and another 150 imprisoned in France.¹⁵

ETA at 50

Following the negotiations with the Spanish government, in March 2006 ETA announced a "permanent ceasefire". In a statement released to Basque media, the group said its new objective was "to promote a democratic process in the Basque country." The ceasefire was broken when on 30 December 2006 ETA detonated a van bomb at a parking in the international airport of Madrid. Since then the Spanish and French authorities have launched an unprecedented campaign against the organisation. As a result nearly 100 ETA suspects were arrested in Spain and France.¹⁶ According to the latest Euskobarometro opinion poll, 24% of the Basque population supports ETA's goal but only 1% offer "total support" to its methods.¹⁷

According to publications in the media, in the second half of 2008 ETA devised a new strategy that its military apparatus is following. The main goal in this new strategy is the "destabilisation of the Spanish state". Its criminal activity must have the capacity to "determine the political situation, create upheaval and disrupt situations".¹⁸ The

¹¹ *Ibid.*

¹² *Ibid.*

¹³ In August 2009, for instance, the Supreme Tribunal of Justice of Venezuela refused to hand over an alleged ETA member charged with terrorist murder on the grounds that the crime lapsed. Source: "Venezuela high court refuses to hand over suspected ETA member to Spain", El Universal, http://english.eluniversal.com/2009/08/05/en_pol_esp_venezuela-high-court_05A2590403.shtml.

¹⁴ Wikipedia, <http://en.wikipedia.org/wiki/ETA>.

¹⁵ "Fifty Years of Basque Terrorism", World Politics Review, 3 August 2009, <http://www.worldpoliticsreview.com/article.aspx?id=4152>.

¹⁶ *Ibid.*

¹⁷ "Eta's anniversary calling card", BBC, 31 July 2009, <http://news.bbc.co.uk/2/hi/europe/8178257.stm>.

¹⁸ "ETA said seeking to destabilize Spain with countrywide wave of attacks", BBC Monitoring, source: La Razon website, 3 August 2009.

geographical diversification of the attacks is one of ETA's strategic choices. The fixing of targets is a matter of "harming the main pillars of the Spanish state and causing as much damage as possible to the enemy's interests". Targets include "energy, hydraulic, symbolic, tourist infrastructures, as well as communication networks; the powers of Spain and both economic interests and those of a media-ideological nature; the businessmen and wealthy who, refuse to pay ETA's Basque Revolutionary Tax".¹⁹

In another statement ETA has said that it would base its calls for independence on the example set by Kosovo.²⁰

Some publications from earlier this year claim that ETA is weakened and isolated²¹ and even "dead". According to the media, "ETA is now regarded by many Basques as an anachronistic terrorist group whose violent tactics work against its own goal of Basque independence". It is argued that ETA is now a "shadow of its former self" because of the decreased number of people it has killed in the recent 6 years.²²

ETA, however, has marked its 50th anniversary with a series of attacks that killed 2 Guardia Civil officers in Mallorca and left dozens injured in Burgos. The attacks came after a number of successful operations of Spanish and French police against ETA militants and assets. The fact that the bombings occurred in two cities hundreds of kilometres apart within three days, suggests that there are now at least two effective ETA units operating in Spain for the first time in several years.²³

Following the attacks the Spanish government reiterated that it would not open talks with the terrorist group and that Batasuna would also remain banned and would not return to Spanish institutions as long as ETA exists.²⁴ In August the collaboration between the Spanish and French authorities resulted in the discovery a number of ETA's arms caches and the arrest of several suspects.

The judicial response 2008-2009

The case analysis performed on the basis of open sources information has identified a number of convictions, related to ETA, in 2008 and 2009. They have already been reported in the present or previous issues of the TCM and are summarised below:

January 2008



The High Court sentenced a former leader of the ETA to 30 years for ordering the assassination of Andalucía's chief prosecutor. He has already been sentenced to serve more than 1000 years for previous convictions (*for details, please see TCM, Issue 1*).

Source: [ThinkSpain](#)

¹⁹ *Ibid.*

²⁰ "ETA to follow Kosovo example", B92, 5 January 2008, http://www.b92.net/eng/news/world-article.php?yyyy=2008&mm=01&dd=05&nav_id=46703.

²¹ "Weakened and isolated, ETA marks 50 years of armed struggle", M&C, 29 July 2009, http://www.monstersandcritics.com/news/europe/features/article_1492427.php/Weakened_and_isolated_ETA_marks_50_years_of_armed_struggle_Feature.

²² "Basque separatist group Eta still ready to kill despite police triumphs", The Guardian, 29 July 2009, <http://www.guardian.co.uk/world/2009/jul/29/eta-violence-police>.

²³ "ETA return to their grisly business", The Irish Times, 3 August 2009, <http://www.irishtimes.com/newspaper/opinion/2009/0803/1224251928776.html>.

²⁴ "Spain will not negotiate with ETA", Expatica, http://www.expatica.com/es/news/spanish-news/Spain-will-not-negotiate-with-ETA_55123.html.

February 2008

The 10th Paris Criminal Court sentenced 2 individuals to 5 and 4 years in prison respectively for belonging to ETA and, inter alia, for "criminal conspiracy to prepare an act of terrorism " and "possession of false documents" (*for details, please see TCM, Issue 1*).

Source: [External News Intranet](#)

The Paris Criminal Court sentenced a former military commander of ETA to 30 years in jail for the near-fatal shooting of a French gendarme in 2001. His accomplice in the shooting was given a 10-year sentence (*for details, please see TCM, Issue 1*).

Source: [External News Intranet](#)

April 2008

The Constitutional Court turned down the appeal of a former spokesman of the outlawed Batasuna, who the Supreme Court sentenced to 15 months' imprisonment for having taken part in a tribute to an ETA member (*for details, please see TCM, Issue 1*).

Source: [External News Intranet](#)

May 2008

The Paris Special Court of Assize sentenced a former head of ETA's military apparatus to 15 years' imprisonment and permanent ban from French territory. Four other ETA members received sentences ranging from 5 to 12 years' imprisonment and a permanent ban from French territory (*for details, please see TCM, Issue 2*).

Source: [Daily Spain](#), [External News Intranet](#)

The Paris Special Court of Assize sentenced two individuals to 12 years in prison for membership in ETA and collecting the so-called revolutionary tax (*for details, please see TCM, Issue 2*).

Source: [Page Crime](#), [External News Intranet](#)

June 2008

The Magistrates' Court in Paris convicted 4 individuals of membership in ETA and handed down sentences of 8, 6, 6 and 4 years' imprisonment (*for details, please see TCM, Issue 2*).

Source: [Terra](#), [External News Intranet](#)

September 2008

A Spanish court convicted 21 defendants of the Pro-Amnesty Committees (Gestoras Pro Amnistia), accused of being leaders of a terrorist organisation and of controlling ETA convicts inside prison. They were sentenced to between 8 and 10 years' imprisonment. Three other were acquitted. The Pro-Amnesty Committees were provisionally banned in 2001. They were renamed Askatasuna, but it was banned the following year as well. After reading out the sentences, the judge announced a definitive ban on both groups (*for details, please see TCM, Issue 3*).

Source: [International Herald Tribune](#), [External News Intranet](#).



The Spanish court convicted 2 ETA members and sentenced them to almost 1,500 years' imprisonment each for their part in the terrorist attack on 6 November 2001 in Madrid that injured 94 people. They were also accused, *inter alia*, of car robbery, conspiracy to kill, forgery of official documents, possession of arms and explosives. A third person received a 20-year sentence (*for details, please see TCM, Issue 3*).

Source: [Adn](#)

October 2008



The Paris Criminal Court sentenced 18 presumed members of the ETA commando units. Among them was the head of the reserve commando units. The court pronounced one sentence of 15 years, 5 sentences of 10 years, one sentence of 9 years without remission, 2 sentences of 8 years, 3 of 6 years and 6 of 5 years. All the sentences were accompanied by permanent banishment from French territory. For 6 of the 18 sentenced, who have never been detained, the court asked for confirmation that arrest warrants had been issued (*for details, please see TCM, Issue 3*).

Source: [Romandie News](#), [External News Intranet](#)

January 2009



The National Court found an ETA former military chief guilty of "a terrorist crime consisting in an attack against a person resulting in a painful death" and sentenced him to 30 years in prison. He had ordered the assassination of an *El Mundo* newspaper journalist in May 2000. He was ordered by the court to pay €300,506 in compensation to the family of the journalist. He is already serving heavy sentences ranging from 18 to 82 years in prison for several other murders, including the killings of socialist and conservative politicians (*for details, please see TCM, Issue 4*).

Source: [Focus](#), [External News Intranet](#)

March 2009



The Paris Criminal Court convicted one person of having headed a cell responsible for collecting information on prospective targets for ETA and handed down a sentence of 14 years' imprisonment. Two accomplices were sentenced to 12 years' and 10 years' imprisonment respectively. The three were also banned to enter French territory. A sentence of 5 years' imprisonment, 13 months of it suspended, was given to another defendant (*for details, please see TCM, Issue 4*).

Source: [El Mundo](#), [External News Intranet](#)

April 2009



An Appeals Court sentenced the ex-partner of a former ETA military leader to 5 years' imprisonment, with 1 year suspended, and lifted the ban on staying in France. In May 2008 the Paris Special Court of Assize had sentenced her to 5 years in prison and banned her from French soil (*for details, please see TCM, Issue 4*).

Source: [EcoDiario](#), [External News Intranet](#)



The Supreme Court acquitted 9 of 47 activists convicted in 2007 in the country's biggest trial linked to ETA. The court upheld the sentences of 38 others, 8 of whom were free on bail according to the ruling. All belong to various organisations accused of ties to ETA (*for details, please see TCM, Issue 4*).

Source: [Nasdaq](#), [External News Intranet](#)

May 2009



The National Court convicted one individual for helping to carry out an ETA killing in 1988 and sentenced him to 27 years in prison. The defendant had given information to ETA shooters on the movements of a victim in 1988 (*for details, please see above: II. Terrorism Convictions Overview, 1. Terrorism Convictions/Acquittals by Member State May-August 2009*).

Source: [Typically Spanish](#), [External News Intranet](#)

June 2009



Following an attempted escape from prison, the Spanish High Court found an ETA member guilty of serious infraction of his sentence terms. His girlfriend and his lawyer were convicted of collaboration with a terrorist organisation for their help to plan the escape. The judge ordered that the man and his lawyer be kept in custody. His girlfriend was given a suspended sentence and a fine of €60,000. The judge ruled that no sufficient evidence to justify the imprisonment of 3 other suspects in the attempted escape, notwithstanding what could yet be discovered through further investigation (*for details, please see above: II. Terrorism Convictions Overview, 1. Terrorism Convictions/Acquittals by Member State May-August 2009*).

Source: [Eitb](#), [External News Intranet](#)

July 2009



The Paris Special Court of Assize handed down sentences of between 18 months' and 16 years' imprisonment to eight suspected members of ETA who were tried following the discovery in 2004 of one of ETA's biggest arms factories. One of the defendants had already been sentenced to 19 years' imprisonment in December 2008 as the former head of ETA's logistics apparatus. Permanent bans from French territory were also pronounced (*for details, please see above: II. Terrorism Convictions Overview, 1. Terrorism Convictions/Acquittals by Member State May-August 2009*).

Source: [External News Intranet](#)

III. Legal Update

1. EU



June 2009

Commission Regulation (EC) No 490/2009 of 10 June 2009 amending for the 107th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban.

Source: [Official Journal of the EU](#)

Council Regulation (EC) No 501/2009 of 15 June 2009 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2009/62/EC.

Source: [Official Journal of the EU](#)

Corrigendum to Council Regulation (EC) No 501/2009 of 15 June 2009 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2009/62/EC.

Source: [Official Journal of the EU](#).

Council Common Position 2009/468/CFSP of 15 June 2009 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2009/67/CFSP.

Source: [Official Journal of the EU](#)

Commission Regulation (EC) No 574/2009 of 30 June 2009 amending for the 108th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with ██████████ ██████████, the Al-Qaida network and the Taliban.

Source: [Official Journal of the EU](#)

July 2009

Commission Regulation (EC) No 601/2009 of 9 July 2009 amending for the 109th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with ██████████ ██████████, the Al-Qaida network and the Taliban

Source: [Official Journal of the EU](#), [External News Intranet](#)

Commission Regulation (EC) No 678/2009 of 27 July 2009 amending for the 110th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with ██████████ ██████████, the Al-Qaida network and the Taliban.

Source: [Official Journal of the EU](#), [External News Intranet](#)

August 2009

Commission Regulation (EC) No 732/2009 of 10 August 2009 amending for the 111th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with [REDACTED], the Al-Qaida network and the Taliban.

Source: [Official Journal of the EU](#), [External News Intranet](#)

Commission Regulation (EC) No 774/2009 of 25 August 2009 amending for the 112th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with [REDACTED], the Al-Qaida network and the Taliban.

Source: [Official Journal of the EU](#), [External News Intranet](#)

2. EU Member States Overview

**The Netherlands July 2009**

Amendment in the Criminal Code and some other laws in relation to the participation and co-operation in training for terrorism.

Source: [External News Intranet](#).

IV. The Way Ahead

With a view to a more structured approach to the preparation of EUROJUST's contribution to the TE-SAT 2010, the CMT has been following the current developments in several trials where convictions are expected within the next few months. They include *inter alia*:

**DE**

A trial against 4 men charged with belonging to a terrorist organisation (the Islamic Jihadic Union in Pakistan, linked to Al-Qaida) and plotting to stage attacks with explosives in September 2007. One of the defendants confessed in August of plotting bombings against US soldiers and diplomats stationed in Germany.

**IT**

A trial against 6 individuals charged with membership in Al-Qaida and proselytism for jihad.

Any further developments, resulting in convictions in the above-mentioned or any other trials, will be presented in the next edition(s) of the Terrorism Convictions Monitor.

V. Judicial analysis on selected cases

Foreword

The present analytical chapter has been produced in an attempt to provide a different insight on terrorist judgments throughout the EU area. It is intended to help practitioners and offer relevant case studies and comparative analyses.

The judgments to be analysed have been purposefully selected. In order to ensure a unified approach to the analysis, it has been conducted following a special methodology. The main categories analysed in a 1st instance judgment include: brief description of the facts, peculiarities in the investigation phase, the crimes accused, the crimes convicted, the sentence handed down, etc. In case of an appeal judgment, the grounds for appeal are also studied as well as the decision of the appeal judges on the charges and sentences.²⁵

The analysis of judgments could identify several lines of comparison. They include, for example: brought charges vs. convicted offences (within a judgment), 1st instance judgment vs. appeal judgment (within the same case), judgments of different accomplices in the terrorist enterprise/organisation brought to trial together and judgments for relatively comparable criminal offences in different trials (within 2 or more judgments).

The latter line of comparison is of a particular interest from an analytical point of view in order to identify similarities and differences in the Member States. The deliberate selection of judgments for similar offences will help shed some light on the respective type of terrorist phenomenon as well as the outcome of criminal proceedings/trials in one or more EU Member States. In order to ensure relativity and comparability, judgments from one and the same instance should be selected for comparison e.g. 1st instance judgments should be compared with 1st instance judgments, appeal judgments with appeal judgments, etc.

Introduction

In the present analysis two judgments, one from the United Kingdom and one from the Netherlands²⁶, have been selected. In order to allow for a certain degree of comparison, both judgments are on appeal and, despite differences in the specifics, the two cases feature some common attributes that include:

- Radicalisation;
- Home-grown Islamist terrorism;
- Militant Islamists;
- Converts to Islam;
- Admiration for September 11 attacks;
- Fundraising, etc.

A detailed analysis of the two judgments, including, inter alia, the prosecuted acts, the 1st instance sentences, the grounds for appeal, the opinion of the appeal judges and the sentences handed down, follows below. In both cases, the information has been analysed on the basis of available open source materials.

²⁵ As contents of judgments vary per Member State, it could be the case that not all of the above-mentioned elements are present or there are other components not listed above. In the analysis, special attention shall also be paid to any interesting legal issues that have arisen in the investigation phase or in the course of the trial.

²⁶ The Case Management Team would like to thank [REDACTED], intern at the Dutch Desk at Eurojust, for his kind contribution to the analysis of the Dutch judgment.

1) Judgment 1 – the United Kingdom

Following a hearing on 1 May 2009, on 8 May 2009 the Court of Appeal (Criminal Division) handed down a judgment on appeal from the Crown Court Sitting at Kingston.

Court: Court of Appeal

Procedure: Appeal

Date: 8 May 2009

Outcome: All the renewed applications for leave to appeal conviction were dismissed. Two sentence appeals were allowed. Three renewed applications for leave to appeal sentence were granted and the appeals against sentence were allowed.

I. Background information – 1st instance judgment

Court: Crown Court Sitting at Kingston

Procedure: 1st instance judgment

Duration of trial: 3 months

Date: 18 April 2008

A. Prosecuted Acts

According to the prosecution's case, both counts the defendants were convicted of, were related to, and only to, the town of Fallujah in Iraq and the alleged criminal conduct occurred during speeches made by the defendants during an event held at the Regents Park Mosque in Central London on 9 and 10 November 2004. At the time the speeches were made, the defendants were either members of, or associated with, the group Al-Muhajiroun (ALM).

On 8 November 2004 a battle for Fallujah, used as a base for Al-Qaida activities, began. The battle was part of an attempt of the coalition forces to establish control over insurgent activity. The following day, 9 November, was the holiest day of Ramadan.

The speeches of the defendants were highly emotive, attempting to raise money for the purpose of supporting terrorist insurgents in Iraq, particularly in Fallujah (count 1) and members of the audience were incited to join the mujahideen in Fallujah to take part in the jihad and murder members of the Coalition forces (count 2). The defendants sought to persuade the audience that this was their obligation and applauded others who had become martyrs to their cause, including those responsible for the September 11 attacks in the United States.

The speeches were recorded on DVD by somebody unconnected with the police or security forces. The DVD was recovered in February 2006, during the police investigation of demonstrations in London over the publication in Denmark of a cartoon depicting the prophet Mohammed.

The defendants did not dispute that they had made the speeches attributed to them. They denied that what they said amounted to the offences charged.

B. Offences for which the defendants were convicted by the Kingston Crown Court

Defendant 1: Count 1: fundraising for terrorism purposes contrary to s.15 (1) of the Terrorism Act 2000 and Count 2: inciting terrorism overseas contrary to s.59 (1) and (2)(a) Terrorism Act 2000.

Defendant 2: Count 1: fundraising for terrorism purposes contrary to s.15 (1) of the Terrorism Act 2000 and Count 2: inciting terrorism overseas contrary to s.59 (1) and (2)(a) Terrorism Act 2000.

Defendant 3: Count 1: fundraising for terrorism purposes contrary to s.15 (1) of the Terrorism Act 2000.

Defendant 4: Count 1: fundraising for terrorism purposes contrary to s.15 (1) of the Terrorism Act 2000.

Defendant 5: Count 2: inciting terrorism overseas contrary to s.59 (1) and (2)(a) Terrorism Act 2000.

Defendant 6: Count 2: inciting terrorism overseas contrary to s.59 (1) and (2)(a) Terrorism Act 2000.

C. Sentences

Defendant 1: 2 ½ years imprisonment for Count 1 concurrent to Count 2, 4 ½ years imprisonment for Count 2. Total sentence: 4 ½ years imprisonment.

Defendant 2: 2 ½ years for Count 1 concurrent to Count 2, 4 ½ years imprisonment for Count 2. Total sentence: 4 ½ years imprisonment.

Defendant 3: 2 years imprisonment. He also pleaded guilty to failing to surrender for which he received 3 months imprisonment consecutive. Total sentence: 2 years 3 months imprisonment.

Defendant 4: 2 years imprisonment consecutive to a sentence of 4 years imprisonment for soliciting to murder (this sentence, varied on appeal from 6 years in October 2007, was imposed at the Central Criminal Court on 18 July 2007 for soliciting to murder). Total sentence: 2 years imprisonment.

Defendant 5: 3 years 9 months imprisonment consecutive to a sentence of 2 years 6 months imprisonment (imposed at the Central Criminal Court on 18 July 2007 for inciting racial hatred). Total sentence: 3 years 9 months imprisonment.

Defendant 6: 2 years 9 months imprisonment. Total sentence: 2 years 9 months imprisonment.

II. Renewed applications for leave to appeal conviction

A number of grounds of appeal were abandoned before and during the hearing. The claims of the defence regarding the Crown Court Sitting at Kingston included the following:

- **"Jury bias"**, revealed in three notes sent by the jury: The request of the defence the respective jurors to be discharged was refused by the judge at the Crown Court Sitting.
- **"Abuse of process"**: It was submitted at trial that the judge should stay the proceedings as an abuse of the process of the court because some defendants had been led to believe that they would not be prosecuted for speeches of the kind that they had delivered.
- **Developing arguments**: It was submitted that the judge should have allowed the defendants to develop before the jury the arguments made during the abuse application.
- **Defendant's speech**: It was submitted that the judge should have made it clear that if the defendant's speech was no more than a declaration of moral support for the victims of (alleged) war crimes in Fallujah, then he should be found not guilty.
- **Summing-up of a defendant's case**: It was submitted that the judge wrongly refused to summarise to the jury the evidence of two defence witnesses. It was further submitted that

the judge wrongly refused to direct the jury to acquittal as well as that the judge's summing-up was unfair to the defendant.

No arguable merit was found in these grounds.

According to the appeal judges, the Kingston Crown Court judge ensured that **the appellants all had a fair trial**.

III. Leave to appeal sentence

A. Length of sentences

The sentences passed upon the appellants were reduced as follows:

Appellant 1: sentence reduced to one of eighteen months imprisonment on Count 1 and three years six months imprisonment on Count 2, concurrent.

Appellant 2: sentence reduced to one of eighteen months imprisonment on Count 1 and three years six months imprisonment on Count 2, concurrent.

Appellant 3: sentence reduced to one of eighteen months imprisonment.

Appellant 4: sentence reduced to one of nine months imprisonment consecutive to the sentence of 4 years' imprisonment passed in July 2007.

Appellant 5: sentence reduced to one of two years' imprisonment consecutive to the sentence of two years and six months imprisonment already being served.

B. Reasons for reduction

The Kingston Crown judge accepted that there had been no evidence that any funds had been collected or that an act of terrorism had been committed abroad as a result of the incitement. He noted that the offences were committed a long time ago and in that month, not only had it been Ramadan but Coalition forces had also entered the Iraqi city of Fallujah. They were neither being punished for the feelings they might have had about the part played by the Coalition forces, nor for their association (in whatever capacity) with a group known as ALM as it was then not a proscribed organisation and it had been disbanded some weeks before 9 November 2004. The appellants, at the time of the commission of the offences, either had no previous convictions or had previous convictions which did not amount to relevant aggravating circumstances.

As stated in the present judgment, the appropriate sentences reflect the decision in the Danish cartoons demonstration case²⁷ in which initial sentences of six years' imprisonment for soliciting to murder were reduced to four years. The index case is probably less serious than the Danish cartoons demonstration case as the speeches were delivered in private in the context of religious observance and when emotions were running very high. It was doubted whether any of the appellants thought that they were committing or at risk of committing serious criminal offences.

It was pointed out however that the sentences for the kind of offences committed by the appellants are likely now to be much longer.

In the cases of two of the appellants the effect of making the sentences consecutive to the sentences for the later Danish cartoon demonstration offences made the overall sentences too high and that was taken that into account in determining "the appropriate sentences".

²⁷ Two of the appellants were convicted in 2007 in relation to demonstrations in London over the publication in Denmark of a cartoon depicting the prophet Mohammed. See also above: I., C. Sentences.

2) Judgment 2 – The Netherlands

On 2 October 2008 the Hague Court of Appeal handed down a judgment on appeal against a 1st instance judgment of 1 December 2006 by Rotterdam court.

Court: The Hague Court of Appeal

Procedure: Appeal

Date: 2 October 2008

I. Background information – 1st instance judgment

Court: Rotterdam Court

Procedure: 1st instance judgment

Date: 1 December 2006

A. Prosecuted Acts

The group of five suspects had been holding shooting-exercises in a forest in Amsterdam with several illegally possessed firearms. Police found in their possession: gasmasks, balaclavas, computers and cd-roms, which contained instructions for the use of weapons and explosives, instructions for the fabrication of 'bomb belts', videos of decapitations and terrorist attacks. Also notes were found with addresses of Dutch politicians, and a video message showed the prime suspect standing in front of a picture of an automatic fire-arm, saying he has done his deed in the fear of God and telling the government: "I have brought you the massacre". Other documentary evidence showed that the group members had extremely radical views about Islam, that anyone who was not a 'true' Muslim should be dealt with by the sword. One document contained suggestions on how to avoid phone taps and how to use phones and avoid taps, such as turning them off, in the vicinity of their homes, only using text messaging and coded use of days of the week, addresses and phone numbers. In one call, it was stated that a soup was boiling and that people would be stunned by it. The reply was that nothing had yet been shown on television.

Moreover, two of the suspects gave lectures in the 'proper' Islamic views and law. With these lectures, and through intimidation, they tried to recruit persons for the jihad.

B. Charges brought

All five suspects were charged with illegal arms possession with the intention to commit terrorist crimes, participating in a criminal organisation (art. 140 Penal Code) and participating in a terrorist organisation (art 140a Penal Code). The main suspect was also charged with recruiting people for armed battle without the queen's permission (art. 205 Penal Code) and preparing murder and/or manslaughter of one or more Dutch politicians, done with a terrorist intention (art. 83a Penal Code).

C. Sentences

The prime suspect was convicted to 8 years imprisonment, but the court found him and the other co-accused not guilty of participating in a criminal organization and of participating in a terrorist organisation. The suspects received prison sentences between four and eight years.

II. Charges brought and the opinion of the Court

Criminal organisation and terrorist organisation

The prosecution attempted to prosecute for both participation in a criminal organisation²⁸ as well as participation in a terrorist organisation²⁹. The Court of Appeal ruled that participation in a terrorist organisation is a qualified offence (*specialis*) of participation in a criminal organisation, so a person cannot be convicted for both.

Recruitment for armed battle

Recruitment for armed battle³⁰ is one of the crimes designed to deal with terrorists and which was added to the Penal Code in 2004. It now includes armed battle that will take place inside the Netherlands.

The Court rejected a defence argument on this, arguing that for the recruitment for armed battle in a terrorist context (namely the change of the model of society and fighting anyone who opposes this), the drastic violence involved in the accomplishment of these goals need to be considered. The court found that, therefore, recruitment for jihad and the terrorist attacks that it consists of falls, under circumstances, under art. 205 of the Penal Code, recruitment for armed battle.

Possession of firearms with a terrorist intent

In Dutch law, a number of crimes are punished with a higher prison sentence when committed with a terrorist intent. The prosecutor charged the suspects with illegal possession of firearms with a terrorist intent. The court rejected the view of the prosecution, as the mere presence of the firearms does not contribute to the realisation of the intents listed in the relevant provision in the Penal Code. Nonetheless, the court relied on art. 55 par. 5 of the Weapons and Munitions Law, dealing with firearms acquired to prepare or make easier a terrorist crime as listed in art. 83 of the Penal Code. The illegal possession of the firearms, together with the suspects' interpretation of the Koran, brought the Court to the view that this is proven. The Court also found proven that the preparations to kill one or more politicians was done with a terrorist intent.

III. Defence arguments

Ne bis in idem

To support a claim of ne bis in idem, the defense referred to the verdict against the 'Hofstadgroep', which was at the time still before the Supreme Court and thus not final. The court rejected the defence argument, on the basis that the principle only can be applied to final verdicts. Additionally, there was insufficient overlap in facts, in time span, acts and guilt of the suspect.

Start of the investigation

The defense argued that there was no 'reasonable suspicion' that illegal acts were committed, hence the investigation should not have been taken up at all. The Court rejected this argument.

²⁸ Art. 140: Participation in an organisation whose purpose is to commit criminal offences will be punishable by a prison sentence of a term not exceeding six years, or a fine of the fifth category.

²⁹ Art. 140a: Participation in an organisation, whose purpose is to commit terrorist crimes, will be punishable by a prison sentence of a term not exceeding fifteen years or a fine of the fifth category.

³⁰ Art. 205: He who, without permission from the King, recruits someone for alien armed service or for armed battle, will be punished with a prison sentence of a maximum of four years (...).

IV. Judgment of the Appeal Court

Suspects were found guilty of participating in a terrorist organisation, illegal arms possession, making terrorist crimes easier by giving occasion, means and information and the presence of objects intended to commit terrorist crimes. The main suspect was also found guilty of recruiting for armed battle without permission from the Queen. Another suspect was only convicted of illegal arms possession. The prosecution asked for a 15 years prison sentence. The prime suspect received a sentence of nine years, but filed for cassation. Other suspects were sentenced for four to eight years and one only for three months, on lesser charges. The sentences imposed were similar to the ones given by the court of first instance.

V. Cassation

In the case of the prime suspect, the case was further referred to the Supreme Court. The police found in his house weapons, fertilizer and electric circuits, which were to be used as a bomb. He was prosecuted for planning attacks on the building of the Dutch parliament and other buildings. Although the accused planned on using the fertilizer as an explosive, he had bought the wrong kind, which was harmless. The crucial question was whether the intentions with which a suspect prepares for a crime are decisive or whether the preparations can actually lead to the envisaged crime. The Court of Appeal found that the preparations could not lead to the crime the suspect was preparing for, thus one could not speak of preparation. In cassation, the Supreme Court found the opposite, indicating that the preparation in itself is punishable, as long as it is 'apparently meant' to prepare the crime.

Appendix: Contact and Analyst Team

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Analysts Team

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