



EUROJUST Report

# Terrorism Convictions Monitor

Issue 18 February 2014





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## Introduction

**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 **open sources information** available to the Case Analysis Unit and methodologies such as individual case studies and comparative analysis. There is a link provided to each of the respective articles found on the Internet. **In addition, the TCM includes information exclusively provided to Eurojust by the national authorities of several Member States by virtue of Council Decision 2005/671/JHA with no links to open sources.**

Issue 18 of the TCM covers the period **September-December 2013**. It includes an overview of the concluded court proceedings in the reporting period, a selection of upcoming and ongoing trials as well as an update on relevant legal developments. TCM 18 includes also an analysis of the data received in 2013 by Eurojust by virtue of Council Decision 2005/671/JHA. The analysis will also be used in the Eurojust's contribution to the EU Terrorism Situation and Trend Report (TE-SAT) 2014. Additionally, the report contains a judicial analysis of two court decisions of the District Court of Rotterdam regarding individuals preparing to go to Syria and join the armed jihad there. The court decisions are the first ones in the EU that target the phenomenon of (aspiring) foreign fighters in Syria since the beginning of the conflict there.

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 the various open sources. **As the information in the present issue of the report has already been verified by the competent national authorities and used in the drafting of Eurojust's Contribution to the TE-SAT 2014, TCM 18 is distributed only for information.**

The Eurojust National Correspondents for Terrorism Matters are invited to provide information on an ongoing basis to Eurojust, in conformity with Council Decision 2005/671/JHA.



# I. Court Decisions

## 1. Terrorism Convictions/Acquittals per Member State

September - December 2013

### Austria

#### October 2013

The Regional Court of St. Pölten imposed an additional sentence of four months to a defendant who had been found guilty of **financing of terrorism** in July 2013. The defendant had been prosecuted for transferring at least EUR 7,000 to the Chechen resistance and sentenced to an imprisonment of 12 months. Further investigation following the July 2013 sentencing had revealed other payments which had led to the initiation of additional proceedings. The suspect had been indicted for financing of terrorism in relation to the alleged collection and transfer of approximately EUR 50,000 to a Chechen terrorist organisation. She had confessed to have transferred additional EUR 9,100 via Western Union for the financing of Chechen rebels between the years 2006 and 2011. Both penalties imposed in July 2013 and October 2013 were made conditional for a probationary period of three years. The decision of the court is final.

Source: *Kurier*/Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.



### Czech Republic

#### October 2013

The Municipal Court in Prague found seven defendants guilty of **counterfeiting of documents** and **crimes committed within an organised group** and sentenced them to prison terms of between three and six and a half years. According to the prosecution, four of the defendants had supported a militant salafist group, the Jamaat Shariat, that had allegedly committed a number of attacks in Dagestan and participated in the deadly March 2010 underground attacks in Moscow. The three other defendants had been involved in the production and distribution of forged documents. The prosecution claimed that the high quality forged documents had been provided to some persons linked to terrorists in Germany (*for further details, please see TCM, issue 16*). The decision of the court is final.

Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.



## December 2013

One defendant brought to the District Court Prague 6 on charges of **counterfeiting of documents** was found guilty and sentenced to 15 months' imprisonment. The man, who is a Syrian national, had been among those convicted in Spain in 2005 in relation to the 11 September 2001 terrorist attacks in the United States. He had been found guilty of leadership of a terrorist organisation and sentenced to 11 years' imprisonment by the Spanish court. Following his release from the Spanish prison, the man had attempted to reach Turkey by airplane flying from Malaga via Prague. He had been refused entry in Antalya due to his counterfeit travel document and sent back to Prague. The decision of the court is not final.

Source: *The Guardian*/Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.



## Denmark

### December 2013

The High Court of Eastern Denmark considered the appeal submitted in the case of five individuals tried in 2012 for committing a series of **arson attacks** across Copenhagen as part of a radical left-wing terror campaign. They had been arrested in April 2011 while attempting to set fire to the police academy in Copenhagen. They had also been accused of plotting and carrying out arson attacks against other targets, including the Greek Embassy, the Danish police and several fur companies. In December 2012 they had been found guilty of participating in arson attacks and acquitted of committing terrorist acts (*for further details, please see TCM, issue 15*). The High Court acquitted the five of terrorism and of some of the counts in the indictment concerning the planned attacks. It ruled that the acts of arson, considering their nature and the concrete circumstances, could not be considered as fulfilling the requirements of the Criminal Code regarding terrorism. However, it found two individuals guilty of arson or attempt and sentenced each of them to seven years of imprisonment. The other three defendants were sentenced to 21 months of imprisonment each for attempted arson of the Police Academy in Copenhagen. The decision of the court is final.

Source: *The Copenhagen Post*/Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.



## France

### September 2013

The Paris Criminal Court found eight defendants guilty of **criminal conspiracy for the preparation of a terrorist act** and sentenced them to prison terms of between eighteen months and eight years. The ringleader who received the most severe penalty was convicted also of **financing of terrorism**. He had been arrested in 2011 at a Paris airport on the suspicion of recruiting others in France for committing terrorist acts. He had also downloaded a huge amount of jihadi literature, including an explosive-making manual written by the man known as 'Al Qaida's chemist' and speeches by leaders of Tehreki-e-Taliban Pakistan. The majority of the evidence used against him in court had been collected through Internet surveillance. Two of his co-defendants had attended a terrorist training camp in Pakistan. They had been arrested there in 2010 and later deported to France. According to the authorities, the arrest of the two had led to the arrest of other Tehrik-i-Taliban leaders in Pakistan. The other co-defendants in the case



had also planned to join terrorist training camps in Pakistan but had been unable to fulfil the plans prior to their arrest.

*Source: ICT/Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



### Germany

#### November 2013

A juvenile defendant and former member of the Global Islamic Media Front (GIMF) was brought to the Higher Regional Court of Frankfurt am Main on charges of **financial support** to and **membership of a foreign terrorist organisation**, the Islamic Movement of Uzbekistan (IBU). Following a plea bargain in November 2013, the defendant was found guilty of membership of a foreign terrorist organisation and sentenced to three-and-a-half years' imprisonment. The decision of the court is final. The 21-year old had already faced a trial at the Higher Regional Court of Munich and had been convicted for his membership of the GIMF.

*Source: SWR/Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



### Greece

#### October 2013

The Appeals Court of Thessaloniki acquitted one defendant of the charges of **membership of a terrorist organisation** (DHKP/C), **possession of explosives and munitions**. She had been prosecuted for her alleged involvement in an explosion in Thessaloniki in October 2011 that had resulted in the death of one victim of Kurdish origin. The defendant denied any involvement in the attack. In 2011, using a different name, she had received a political asylum in Greece which had later been withdrawn. The decision of the court is final.

*Source: News247/Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



### Italy

#### November 2013

The court of Genoa found two defendants guilty of **committing an attack with the purpose of terrorism or subversion** and sentenced them to ten years and eight months', and nine years and four months' imprisonment respectively. The prison terms were slightly less than what had been requested by the prosecution. The court, however, acknowledged the aggravating circumstance of a terrorist purpose. In May 2012, the two anarchists had attacked the manager of an Italian company operating in the nuclear sector and shot him in the legs. The attack had been claimed by the organisation Federazione Anarchica Informale.

*Source: Corriere della Sera/Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



## December 2013

The court of Milan sentenced a radical Egyptian cleric to six years' imprisonment after it found him guilty of **association with the purpose of (international) terrorism or subversion of the democratic order**. The court considered it proven that the man had aimed at carrying out acts of violence with terrorist purposes in Italy and abroad. It ruled that he was a leading member of a group that shared a similar offensive plan with other terrorist organisations in Europe, North Africa and the Middle East. The cleric had been wanted in Italy for the alleged recruitment of jihadist fighters. He claimed that he had been tortured while held in an Egyptian prison and blamed the CIA and Italian secret service SISMI for his capture.

Source: *The Global Post*/Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.



## Lithuania

### October 2013

The Vilnius Court of Appeal considered the appeal submitted in the case of one individual convicted in 2011 and given prison sentences of five years for **weapons possession**, six years for **attempting to smuggle weapons and explosives**, and 12 years for **supporting a terrorist group** (the Real IRA). He had been arrested during a MI5-operation in 2008 while trying to purchase AK-47's, a sniper rifle, grenade launchers, explosives and bomb detonators from MI5-officers who worked undercover as arms dealers. According to his 2011 conviction, he had paid USD 5,000 for the arms and equipment (*for further details, please see TCM, issue 12*). In October 2013, however, the Court of Appeal acquitted him and ruled that there was no direct evidence proving his ties with the Real IRA. In December 2013 the prosecution submitted an appeal to the Court of Cassation.

Source: *Daily Mail*/Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.



## The Netherlands

### October 2013

The District Court of Rotterdam reached a verdict in the case of one defendant who had expressed his wish to travel to Syria and join the armed jihad there and had undertaken a series of preparatory activities, aside from booking tickets to Turkey and packing his suitcase. He had also visited websites with information about (violent) jihad and martyrdom and had sent multiple messages, in which he had stated that he wanted to fight for the establishment of an Islamic state or of the sharia rule, etc. According to his defence, the acts described in the summons were not punishable due to the fact that there was an internal armed conflict in Syria and international humanitarian law was applicable. The court rejected this argument and ruled that the defendant, with a view to **preparing to commit murder**, had committed all acts as charged. The court pointed out that the offence should be considered in a terrorist framework, namely that of participation in the armed jihad in Syria. The acts undertaken by the defendant were to be seen as preparatory for his departure to Syria in order to take part in the armed jihad against the regime of the Syrian president and to establish an Islamic state. With that in mind, as well as the personality and personal circumstances of the defendant and his established mental

disorder, the court ruled that he should be placed in a psychiatric clinic for a period of one year (*for further details, please see chapter IV. Judicial Analysis*). The decision of the Rotterdam court is final.

Source: [www.rechtspraak.nl](http://www.rechtspraak.nl)//Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.



In another proceeding, the Rotterdam District Court found one defendant guilty of **preparation to commit arson and/or cause an explosion**, and of **distributing material inciting a terrorist crime**. The defendant had visited websites and made queries about homemade bombs and explosives, purchased ten metres ignition cord and one kilogramme of aluminium powder, as well as other materials that could be used to make explosives. He had also posted videos showing the execution of violent attacks and some jihadist texts on websites and engaged in discussions about armed jihad on the Internet. According to the prosecution, he had also visited websites where information about jihad and martyrdom was shared, obtained a travel visa for Saudi Arabia and/or a ticket to Turkey, and undertaken a trip to Turkey (via Germany) with Syria as final destination. He had been arrested in Germany before he could reach Syria. In its ruling, the court pointed out that the offences should be considered in a terrorist framework, namely that of participation in the armed jihad in Syria. The court sentenced the man to a prison term of 12 months, 4 of which suspended, with a probationary period of 2 years (*for further details, please see chapter IV. Judicial Analysis*). The decision of the court is not final.

Source: [www.rechtspraak.nl](http://www.rechtspraak.nl)//Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.



## Spain

### September 2013

The July 2013 decision of the Audiencia Nacional convicting one defendant of **causing terrorist destruction** and sentencing him to 16 years' imprisonment became final in September 2013. Together with some other ETA members, he had installed an explosive device in a hotel in Getxo in June 2003. Shortly before the device had been activated, an ETA member had called the newspaper *Gara* warning about the forthcoming explosion which had allowed the notification of the police and the evacuation of the hotel. As a result of the explosion, the hotel and a vehicle nearby had been seriously damaged (*for further details, please see TCM, issue 17*).

Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.



Four alleged members of Resistencia Galega had been brought to court on charges of **membership of a terrorist organisation** and **forgery of an official document with a terrorist purpose**. Two of them had also been accused of **possession of explosives with a terrorist purpose**. The latter had been arrested by the police as they discovered three explosive devices in the trunk of their car in November 2011. During the house searches which the police had carried out in their homes, they had found computers, records, documents related to violent independence activities, explosive devices and materials, falsified driver's licences, etc. The court found the four defendants guilty as charged and ordered two of them to serve 18 years in



prison and the other two ten years in prison. All four were also given fines. The defence submitted an appeal against the conviction.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The Audiencia Nacional found one defendant guilty of **glorification of terrorism** and sentenced him to six months' imprisonment. Due to his mental disorder, the court ruled that the man should be admitted in a psychiatric clinic for a medical evaluation and treatment and would not be allowed to leave the clinic without the authorisation of the court. The man had been investigated for creating two channels with radical Islamist content in YouTube between 2008 and 2010. There he had posted approximately 1120 videos, many of which supported the Taliban and the former Al Qaida leader killed in Pakistan in 2011 by U.S. forces. The channels provided links to two blogs where he had posted rules on how to succeed in jihad, pointing out the importance of setting up groups to plan attacks, etc. In his public Facebook page he had published documents related to the former Al Qaida leader, as well as to Afghanistan, Somalia, Egypt, Yemen. During the house search conducted by the police, also a collection of videos called *Todo sobre la Jihad (Everything about jihad)* had been found. The defendant had admitted the offences he had been charged with. The decision of the court is final.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The June 2013 decision of the Audiencia Nacional acquitting one defendant of **making threats with a terrorist purpose** and **ill treatment** became final in September 2013. The defendant had been arrested in relation to a clash with some football fans following the victory of the Spanish national team in the Euro Cup final in July 2012. According to protected witnesses, the man had shouted at a group of people in Basque language and together with some others had entered into a fight with the group. A few days later, a video taken with the mobile phone of one of the protected witnesses had been distributed by various media (*for further details, please see TCM, issue 17*). Following the acquittal, the prosecution submitted an appeal which was dropped later. The decision of the court is final.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



## October 2013

The Supreme Court dismissed the appeal submitted by the defence of a man sentenced by the Audiencia Nacional in July 2012 to 34 years' imprisonment for two charges of **assassination** and a concurrent **attack**. The conviction was in relation to his participation in the 1995 murder of two police officers who had intended to question him. He had shot at each one of them without warning. The Audiencia Nacional had also acquitted him of **membership of a terrorist organisation** and **making threats** (*for further details, please see TCM, issue 14*). In September 2012, the defence filed an appeal based on the claims for violation of the law and unconstitutionality. In its decision, the Supreme Court dismissed the appeal and ordered the appellant to pay the inferred costs.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The Audiencia Nacional acquitted one defendant charged with **construction of an explosive device with a terrorist purpose**. In December 2007, the police had found him and others in a car stopped on the side of the road and loaded with an explosive device, some backpacks with gloves, tubes of glue, alarm clocks and other objects. As a result of the house search carried out later, the police had found a basic manual for self-defence for militants, insulating tape and cables at his home. In May 2010, the Supreme Court had convicted him of storing of explosives. The Audiencia Nacional, however, did not consider it proven that the defendant had participated in the construction of the explosive device found in the car.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The Audiencia Nacional acquitted two defendants brought to court on charges of **causing terrorist destruction** and 5 counts of **terrorist injuries**. As part of ETA's Zapa command, both had allegedly participated in the attack on the Port Denia Hotel in Alicante in January 2005. The attack, carried out by means of a time bomb placed in a backpack, had resulted in injuries of a number of people and material damage to the hotel. Warnings of the forthcoming explosion had been made in two phone calls to the traffic breakdown service DYA. The court did not consider it proven that the two defendants had taken part in the terrorist act. Both are currently serving prison sentences in France and had been temporarily surrendered to the Spanish authorities to stand trial. The decision of the court is not final.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The Audiencia Nacional found three defendants guilty of **terrorist assassination**, 25 counts of **attempted terrorist assassination**, 12 of which against members of the security forces, and **causing terrorist destruction**. The court sentenced each of them to 485 years' imprisonment and acquitted them of **using someone else's motor vehicle**. The three who were members of ETA's Otazu command had been suspected of carrying out a number of attacks in 2007 and 2008. The arms, munitions, explosive substances and elements used for the attacks had been stored in their own homes. In September 2008, the three had been provided with a vehicle with explosive material from France. They had parked the vehicle in front of a building in Santoña hosting military personnel and their families. On behalf of ETA a warning of the forthcoming explosion had been made by one of the defendants in a phone call to the traffic breakdown service DYA but the building could not be evacuated on time. As a result of the explosion one officer had passed away, many other victims had been injured and serious material damage had been caused on the building and vehicles in the vicinity. In November 2008, ETA had claimed the attack in a communication sent to the newspaper *Gara*. The decision of the court is final.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



At the Audiencia Nacional one defendant had been brought to court on charge of **terrorist arson**. He had been arrested on allegations of setting an ATM on fire in Sestao in May 2012. According to the prosecution, he had used a jerry can full of an inflammable liquid which he had placed in front of the ATM belonging to the BBVA bank. The ATM had been completely destroyed as a result of the arson. The façade of the building had been damaged as well. The defendant himself had suffered severe burns affecting 20% of his body. At the location of the arson, the

police had found also the defendant's house keys. He admitted his involvement in the acts described and was sentenced to two years and eight months' imprisonment. The decision of the court is final.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The Audiencia Nacional acquitted one defendant charged with **collaboration with a terrorist organisation**. The man had been arrested in relation to an investigation into a SEGI financing scheme set up in 2008 by using lottery tickets sold for one euro and bearing the logo of the organisation. The winning tickets had to be made public on a website later in the year. The website had been closed in June 2008 as SEGI had been declared illegal and the results of the lottery had been posted on another web portal. According to the prosecution, the defendant had uploaded a video on the Internet which showed the lottery draw and SEGI's anagram. He had been detained during the searches of the premises of the youth association Gaztesarea in July 2009. The decision of the court is final.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The Supreme Court dismissed the appeal submitted by the prosecution against the acquittal of four defendants pronounced by the Audiencia Nacional in March 2013. The four had been brought to court on charges of **glorification of terrorism** in relation to an investigation into ETA-linked activities during the April 2011 marathon, 'La Korrika', which had been organised with the purpose of fundraising for Basque language educational centres. During the marathon, several people had exhibited banners with photographs of convicted terrorists. The defendants had been identified via photographs placed on the Internet (*for further details, please see TCM, issue 16*). The decision of the court is final.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



One defendant brought to court on charges of **causing terrorist damage** and **terrorist coercion** was sentenced to two years' imprisonment and a fine by the Audiencia Nacional. The court found him guilty for his role in an attack on a city bus in San Sebastián in April 2001. Together with some other youngsters, he had approached the bus and started breaking its windows and throwing Molotov cocktails that set the bus on fire. The fire had been put out without endangering the life of the driver or the 40-50 passengers in the bus. The attack had been claimed by ETA in a communication to the newspaper *Gara* a few days later. The man had been arrested by the French authorities based on the European Arrest Warrant issued by Spain and later surrendered to the Spanish authorities. The decision of the court is final.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*





### November 2013

The Audiencia Nacional found one defendant guilty of **glorification of terrorism** and sentenced her to one year and six months' imprisonment, as requested by the prosecution. She had produced a banner with ETA's anagram and an inscription with a reference to the continuation of the armed struggle and political efforts. The banner had been placed on the façade of a public building during festivities held in Guernika in October 2012. The defence submitted an appeal against the conviction.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The Audiencia Nacional acquitted two defendants that had been brought to court on charges of **causing terrorist damage**. The two had been arrested for their alleged involvement in an attack against a city bus in Bilbao in February 2002. According to the prosecution, both defendants had entered a bus in the late evening hours and set it on fire by means of a gasoline container. The bus had been completely destroyed. The court, however, did not consider it proven that the two men had carried out the attack.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The Audiencia Nacional acquitted one defendant charged with **glorification of terrorism**. He had been investigated in relation to the appearance of some ETA propaganda material in a brochure containing the programme of Bilbao's local festivities in 2012. The material referred, among others, to Basque prisoners. The defendant had been arrested as he had been responsible for preparing the brochure and holding contacts with the printing company. The decision of the court is final.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The Audiencia Nacional found one defendant guilty of committing a **terrorist attack concurrent with a terrorist homicide** and of **terrorist homicide** and sentenced him to 56 years' imprisonment. The man had previously been convicted of membership of a terrorist organisation in July 2002 in France. From the end of 1994, he had been the leader of ETA's Andalucía command consisting of three other members who had already been convicted of terrorist offences. The command members had been collecting information regarding public figures and members of the People's Party in Spain. In January 1998, they had attacked a Seville city councillor and his wife, shooting them dead on the street. The deceased couple had three underage children.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



## December 2013

The Audiencia Nacional found three defendants guilty of 160 counts of **attempted terrorist assassination** and **causing destruction with a terrorist purpose** and sentenced each of them to a total of 3860 years' imprisonment. The three had been members of ETA's Otazua command and had also been convicted of several other terrorism related offences earlier in the year. In this case they had been prosecuted for carrying out an attack against the Guardia Civil barracks in Burgos in July 2009. For the attack they had used a vehicle stolen in France which had then been loaded with explosives and parked behind the barracks. As a result of the explosion, 160 people had been injured. In August 2009, the attack had been claimed by ETA in communications sent to the newspapers *Gara* and *Berria*.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



The Audiencia Nacional acquitted one defendant brought to court on charges of **causing terrorist destruction**. He was suspected of having been involved in an attack that had taken place in Santander in December 2002. Shortly before the attack, ETA members had contacted the newspaper *Gara* and announced that a car bomb was to explode on a parking lot. The police had been informed immediately and started evacuating the area. The explosion had occurred a few minutes after the announced time and caused considerable damage to buildings and vehicles in the vicinity. The court did not consider it proven that the defendant had been involved in the attack. He had been temporarily surrendered by France to stand trial at the Audiencia Nacional following the European Arrest Warrant issued by the Spanish authorities in September 2003.

*Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA.*



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## 2. Other Court Decisions of Interest

September - December 2013

### Belgium

#### September 2013

The Council of State rejected the appeal of a radical Tunisian jihadist against a ministerial decision granting his extradition to the United States where he faces terrorism charges and possible life imprisonment. He had been arrested two days after 11 September 2001 for an attempted attack on the military base of “Kleine Brogel” in the Belgian region of Limburg where a lot of American military airborne staff had been stationed at the time. In 2003, a Belgian court had sentenced him to ten years’ imprisonment for terrorist offences, possession of illegal arms and membership of a private militia. However, the defendant had been acquitted of planning a terrorist strike against the U.S. embassy in Paris. In 2008, the U.S. authorities had requested his extradition from Belgium following his indictment by the Washington Court of several terrorist crimes: conspiring to kill Americans abroad, conspiring to use weapons of mass destruction and support to Al Qaida. Prior to granting the extradition, the Belgian authorities obtained guarantees from their U.S. counterparts that the man would not face trial before a military tribunal and, if convicted, he would not be given the death penalty which is forbidden in the EU. He was extradited in October 2013.

*Source: Knack.*

#### November 2013

The Court of Cassation denied the surrender of a suspected ETA member to Spain. The woman, who had been on the run from the Spanish authorities since 1979, was arrested in Ghent in October 2013. She had been suspected of involvement in the killing of at least six persons between January and July 1981, as a member of ETA’s Vizcaya command. According to her lawyer, she was accused of having acted as a look-out in an ETA-attack against the Guardia Civil and of the assassination of a lieutenant-colonel in Bilbao. In his opinion, the maximum time for legal proceedings to be initiated had also passed. The Court of Cassation rejected the appeal against an earlier decision against the surrender that had been based on concerns for possible human rights violations.

*Source: Nieuwsblad.*

### The United Kingdom

#### October 2013

The Supreme Court upheld an earlier ruling by declaring that the Home Office had acted illegally when trying to ban a terror suspect from re-entering the United Kingdom. The man, who had given up his Iraqi nationality on taking a UK passport, had lived in the country between 1992 and 2004, when he had left for Turkey. Between 2004 and 2008 he had been detained in a UK prison in Iraq for alleged arms smuggling and planning of bomb attacks for a terrorist group. In



2007, the UK government had revoked his UK citizenship practically leaving him stateless. However, the Home Office submitted evidence (i.e. a photocopy of an Iraqi passport application, dated January 2008) to the court and proved that he had actually been granted the Iraqi nationality in 2008. It remained unclear whether this evidence would form a legal basis for further proceedings by the Home Office to avoid awarding a UK passport.

Source: *The Telegraph*.

## European Court of Human Rights

### December 2013

The European Court of Human Rights ruled that non-disclosure of police sources did not make the trial of an IRA member unfair. In a Chamber judgment on application no. 19165/08, the ECHR declared no violation of Article 6 (right to a fair hearing) of the European Convention on Human Rights in the conviction of the appellant which had been based, *inter alia*, on evidence given by a Chief Superintendent, who testified that it had been his belief that the appellant was a member of the IRA. At the trial court, the Chief Superintendent claimed privilege stating that disclosure of his sources would endanger lives and state security. The court had received and reviewed all relevant documentary sources which had formed the basis of his belief. Neither the prosecution nor the defence had been given access to that confidential material. According to the appellant, the non-disclosure had made his trial unfair as it had seriously restricted his defence rights. The trial court had, however, confirmed that there had been nothing in the undisclosed files that might have assisted the defence. In its judgment, the ECHR ruled against the appellant, as it held that the trial court had upheld the non-disclosure of sources for the legitimate purpose of protecting human life and state security. The ECHR held also that the decision to convict had been reached with the support of additional evidence which corroborated the Chief Superintendent's belief, and there had been a number of safeguards in place during the trial to ensure that the non-disclosure of the sources would not undermine the fairness of the proceedings. The judgment is not final and can be referred to the Grand Chamber within three months following its delivery.

Source: *European Court of Human Rights*.

## II. Comparative Analysis

2013

*The present chapter contains quantitative and qualitative analysis of data collected by Eurojust by virtue of Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences, according to which Member States shall collect all relevant information concerning prosecutions and convictions for terrorist offences and send it to Eurojust. This information covers the data that is available for the entire year 2013.*

*The chapter is divided in two main sections. The first section summarises the key findings of the analysis of the quantitative data, providing clarifications where needed. It includes also some case illustrations selected on the basis of the qualitative analysis performed. The second section gives an overview of the amendments in the terrorism-related legislation of the EU Member States, as reported to Eurojust.*

*The analysis below will also be used in the Eurojust's contribution to the EU Terrorism Situation and Trend Report (TE-SAT) 2014.*

### Convictions and Penalties in 2013

#### Court proceedings, verdicts and individuals in concluded court proceedings

In 2013, 15 EU Member States reported to have concluded a total of 150 court proceedings on terrorism-related charges.<sup>1</sup> The relevant court decisions in 2013 concerned terrorist offences some of which date back to the 1980s.

The court proceedings concluded in 2013 involved 313 individuals, 42 of which were female. Twelve of those individuals appeared in court several times for different offences.<sup>2</sup> One of them was tried both in France and Spain on different charges.<sup>3</sup> In addition to the 313 individuals, two legal entities in Denmark and one legal entity in France were convicted for having committed terrorist offences. In Ireland two individuals were brought to court on terrorism charges but the prosecution entered a "*nolle prosequi*".

In 2013, Spain was the Member State where the highest number of court proceedings for terrorist offences were concluded. Despite of the slight decrease, Spain remains also the country where the majority of terrorism verdicts were rendered. In 2013, the courts in some other Member States pronounced less verdicts as compared to previous years. This was the case for

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<sup>1</sup> Contributions containing information on terrorism-related court decisions in 2013 were sent by the following Member States: Austria, Belgium, Cyprus, the Czech Republic, Denmark, France, Germany, Greece, Ireland, Italy, Lithuania, the Netherlands, Romania, Spain

[REDACTED]. The data received from Ireland does not cover the whole 2013. The data for the Netherlands includes 2 verdicts concerning animal rights extremism. In case a verdict pronounced in 2013 was appealed and the appeal was concluded before the end of the year, Eurojust counted the proceeding as one.

<sup>2</sup> In Spain, there were 10 individuals who were tried up to 5 times in 2013 in different court proceedings and in France there was one individual who faced trial twice for separate terrorist offences.

<sup>3</sup> This individual is included separately in the number of individuals in concluded court proceedings in France and Spain but is counted only once in the total for all Member States.

Belgium, France and Italy. For the first time in 2013 Cyprus and Romania reported terrorism-related court decisions to Eurojust.

The majority of the reported verdicts are final while others are pending judicial remedy due to the fact that appeals have been submitted.<sup>4</sup>

### Type of terrorism<sup>5</sup>

In 2013, separatist terrorism continued to be the dominant type of terrorism in court proceedings (*for further details, please see Figure 1 below*). The vast majority of separatist terrorism verdicts were pronounced in Spain and in France. A large part (29) of the 42 female defendants was tried for separatist terrorism acts, which confirms a tendency observed in recent years.

*Figure 1 – Number of reported convictions and acquittals in 2013 per EU Member State and per type of terrorism*

MEMBER STATE	Religiously inspired	Separatist	Left wing	Right wing	Not specified	TOTAL
AUSTRIA	1	0	0	0	0	1
BELGIUM	8	0	0	0	0	8
CYPRUS	1	0	0	0	0	1
CZECH REPUBLIC	8	0	0	0	0	8
DENMARK	3	2	5	0	0	10
FRANCE	20	29	0	0	2	51
GERMANY	6	5	3	0	0	14
GREECE	0	0	9	0	0	9
IRELAND	0	6	0	0	0	6
ITALY	2	0	0	4	2	8
LITHUANIA	0	2	0	0	0	2
NETHERLANDS	2	0	0	0	2	4
ROMANIA	1	0	0	0	0	1
SPAIN	6	151	4	0	0	161

<sup>4</sup> According to Council Decision 2005/671/JHA, the information to be submitted to Eurojust is in relation to final convictions. Due to the specifics of reporting, Member States submit information on both final and not final decisions.

Separatist terrorism cases concerned acts related to the terrorist organisations ETA, IRA and the PKK. In Denmark, for example, the High Court of Eastern Denmark dealt with the appeal against the 2012 guilty verdicts pronounced by the Copenhagen City Court against Roj TV A/S and Mesopotamia Broadcast A/S METV. Both entities had been prosecuted for repeatedly releasing PKK-related TV programmes, thereby functioning as a mouthpiece for the PKK, as well as disseminating invitations to join the organisation and participate in its terrorist activities, while glorifying the PKK and its terrorist activities. In 2012, the Copenhagen City Court had found them guilty of aiding and abetting a terrorist organisation and sentenced each to pay a fine of DKK 2,600,000. Whilst the PKK is listed as a terrorist organisation by the EU, that does not suffice in itself to consider the PKK a terrorist organisation in Denmark. The High Court found Roj TV A/S and Mesopotamia Broadcast A/S METV guilty of having aided and abetted the activities of the PKK, which it found to be a terrorist organisation in its July 2013 judgment. Roj TV A/S and Mesopotamia Broadcast A/S METV were sentenced each to pay a fine of DKK 5,000,000 and were disqualified from transmitting television broadcasts until further notice.

As in the previous year, all court decisions in Austria, Belgium and the Czech Republic in 2013 concerned religiously inspired terrorism. In two other cases of religiously inspired terrorism two Dutch individuals preparing to go to Syria and join the armed jihad there were convicted by a Dutch court. The long-lasting conflict in Syria has so far attracted hundreds of radicalised European fighters whose combat skills and knowledge may pose a threat to the security of Member States upon their return. The prosecution of (aspiring) European fighters in Syria is part of the comprehensive criminal policy response to the phenomenon, integrating judicial and administrative measures in order to prevent and disrupt travel and participation in jihad and counter radicalisation.

In those two cases in the Netherlands, the defendants were brought to court on several charges, including (preparation for) the commission of a terrorist crime. In the first proceeding at the District Court of Rotterdam, the defendant had expressed his wish to travel to Syria and join the armed jihad there and had undertaken a series of preparatory activities, aside from booking tickets to Turkey and packing his suitcase. He had also visited websites where information about (violent) jihad and martyrdom was shared and had sent multiple messages, in which he had stated that he wanted to fight on the side of the mujahideen and also fight for the establishment of an Islamic state or of the sharia rule, etc. According to his defence, the acts described in the summons were not punishable due to the fact that there was an internal armed conflict in Syria and international humanitarian law was applicable. The court rejected this argument and ruled that the defendant, with a view to preparing to commit murder, had committed all acts as charged. The acts undertaken by the defendant were to be seen as preparatory for his departure to Syria in order to take part in the armed jihad against the regime of the Syrian president and to establish an Islamic state. With that in mind, as well as the personality and personal circumstances of the defendant and his established mental disorder, the court ruled that he should be placed in a psychiatric clinic for a period of one year.

In another proceeding, the District Court of Rotterdam found the defendant guilty of preparation to commit arson and/or cause an explosion, and of distributing material inciting a terrorist crime. The defendant had visited websites and made queries about homemade bombs and explosives, purchased 10 metres ignition fuse and one kilogramme of aluminium powder, as well as other materials that could be used to make explosives. He had also posted videos showing the execution of violent attacks and some jihadi texts on websites and engaged in discussions about armed jihad on the Internet. According to the prosecution, he had also visited websites where information about jihad and martyrdom was shared, obtained a travel visa for Saudi Arabia and/or a ticket to Turkey, and undertaken a trip to Turkey (via Germany) with Syria as final destination. He had been arrested in Germany before he could reach Syria. The

court sentenced him to a prison term of 12 months, 4 of which suspended, with a probationary period of 2 years.

In both cases the court emphasized the seriousness of the offences and pointed out that these acts should be considered in a terrorist framework, namely that of participation in the armed jihad in Syria.

A closer look at the court decisions concerning the other types of terrorism reveals that in Greece all relevant verdicts related to left-wing terrorism, while Italy was the only Member State that reported right-wing terrorism verdicts in 2013.

### Convictions and acquittals

In 2013, all reported terrorism-related prosecutions in Austria, Belgium, Cyprus, the Czech Republic, Germany, Ireland, Italy, the Netherlands, Romania [REDACTED] resulted in convictions.<sup>6</sup> Germany and the Netherlands are the only Member States that have reported no acquittals in the period 2010-2013 (*for further details, please see Figure 2 below*). The numbers in this figure reflect the verdicts per individual. Further details on this are included in the contribution to the TE-SAT 2014 and will be incorporated there.

*Figure 2 – Number of verdicts, convictions and acquittals per EU Member State in 2013 as reported to Eurojust*

MEMBER STATE	CONVICTIONS	ACQUITTALS	TOTAL	ACQUITTALS in %
AUSTRIA	1	0	1	0%
BELGIUM	8	0	8	0%
CYPRUS	1	0	1	0%
CZECH REPUBLIC	8	0	8	0%
DENMARK	5	5	10	50%
FRANCE	49	2	51	4%
GERMANY	14	0	14	0%
GREECE	5	4	9	44%
IRELAND	6	0	6	0%
ITALY	8	0	8	0%
LITHUANIA	1	1	2	50%
NETHERLANDS	4	0	4	0%
ROMANIA	1	0	1	0%
SPAIN	95	66	161	41%
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>TOTAL</b>	<b>258</b>	<b>78</b>	<b>336</b>	<b>23%</b>



In 2013 acquittals constituted 23% of all verdicts pronounced for terrorist offences. The percentage of acquittals has decreased as compared to 2011 (31%) and 2012 (30%) indicating a higher percentage of successful terrorist prosecutions. Seventeen of the 42 female defendants in the concluded court proceedings reported in 2013 were acquitted. The majority of the acquitted females (14) were brought to court on charges related to separatist terrorist acts.

The verdicts in relation to left-wing terrorism in 2013 had the highest acquittal rate (43%) which is unlike previous years, when the highest acquittal rate was reported for verdicts related to separatist and religiously inspired terrorism. In 2013, 34% of the separatist terrorism verdicts contained acquittals. Prosecutions of religiously inspired terrorism were the most successful, with a conviction rate of 99%.<sup>7</sup>

### Penalties

The court proceedings for terrorist offences resulted in prison sentences of between 3 days and life imprisonment. In some cases (part of) the sentence was suspended or made conditional for a certain period of time.

The majority (47%) of the penalties handed down with the guilty verdicts in 2013 were of up to 5 years' imprisonment. The penalties of 10 and more years constituted 33% of all penalties pronounced. This presents an increase as compared to 2012 when those penalties were 24% of the total. In some cases, e.g. in France, Ireland [REDACTED], the courts ordered lifelong prison sentences. In Spain, cumulative sentences of up to 3860 years of imprisonment were given for separatist terrorism offences.

In 2013 left-wing terrorism verdicts received the highest average prison sentence (18 years), followed by separatist terrorism verdicts (13 years). These average prison sentences are considerably higher than the averages reported for the respective type of terrorism in 2012 (8 and 9 years respectively). The average prison sentence given for religiously inspired terrorist offences in 2013 decreased to 4 years as compared to 6 years in 2012.<sup>8</sup>

In some cases, in addition to imprisonment, convicted individuals were imposed restrictions on their civil rights, banned to enter the national territory upon completion of their prison term or ordered to do community service. Occasionally, national courts imposed a pecuniary penalty as the only penalty or in combination with a prison term. The two legal entities convicted in Denmark, for example, were sentenced to pay a fine, while the legal entity found guilty of terrorism in France was dissolved. In other cases, imprisonment terms were pronounced as an alternative to pecuniary penalties. In Germany, youth sentences were ordered to two defendants found guilty of terrorist offences. [REDACTED] and in the Netherlands one individual was placed in a psychiatric clinic for a period of one year.

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[REDACTED]

## Amendments in the national legislation on terrorism in 2013

### Austria

On 30 July 2013, an amendment of Article 278d of the Austrian Criminal Code concerning financing of terrorism came into force. The amendment widens the punishable actions: in addition to the offences of financing of terrorist acts and support to terrorist groups with financial contributions, it makes punishable also the financing of terrorists (without a link to a specific terrorist act) or financing of members of terrorist groups (without a link to the terrorist group they are a member of). Furthermore, the amendment introduces higher penalties of between 1 and 10 years imprisonment for the respective offences (even if the financed offence is punished with a lower penalty).

### Belgium

Several new articles of the Criminal Code entered into force on 14 March 2013. The articles envisage imprisonment of 5 to 10 years and a fine of 100 to 5000 euro for those who:

- spread a message or place a message at the disposal of the public in any other way, with the purpose of inciting to perpetrate one of the offences referred to in Article 137 which defines a terrorist offence, except the offence referred to in Article 137, § 3, 6°, when such behaviour, whether it incites directly to commit terrorist offences or not, creates the risk that one or several of these offenses will be perpetrated (Article 140bis)
- recruit others with the purpose of perpetrating one of the offences referred to in Article 137 or Article 140, except the offense referred to in Article 137, § 3, 6° (Article 140ter)
- give instructions or training for the assembly or the use of explosives, fire arms, or other weapons or harmful or dangerous substances, or for any other specific methods and procedures with the purpose of perpetrating one of the offences referred to in Article 137, except the offence referred to in Article 137, § 3, 6° (Article 140quater)
- in Belgium or abroad, receive instructions or training as referred in Article 140quater, with the purpose of perpetrating one of the offences listed in Article 137, except the offence referred to in Article 137, § 3, 6° (Article 140quinquies).

### Hungary

In 2013, amendments to Chapter XXX Offences against Public Security of the Criminal Code were introduced. Sections 314, 315 and 316 of Chapter XXX define acts of terrorism. Section 314 includes a definition of violent crimes against the person and criminal offences that endanger the public or involve the use of arms, and provides for a penalty of between 10 to 20 years or life imprisonment for those who commit such crimes in order to:

- a) coerce a government agency, another State or an international body into doing, not doing or countenancing something;
- b) intimidate the general public;
- c) conspire to change or disrupt the constitutional, economic or social order of another State, or to disrupt the operation of an international organisation.



The same penalty is envisaged for those who seize considerable assets or property for the purpose defined in paragraph a) above and make demands to government agencies or international organisations in exchange for refraining from harming or injuring said assets and property or for returning them. Section 315 determines the penalties for those who instigate, suggest, offer, join or collaborate in the commission of any of the criminal acts defined in Subsection (1) or (2) of Section 314, or those involved in aiding and abetting such criminal conduct by providing any of the means intended for use in such activities. Section 316 makes the threatening to commit a terrorist act a criminal offence, while Section 317 deals with the failure to report a terrorist act. Further on, Chapter XXX provides for penalties of up to 10 years imprisonment for those who provide or collect funds, or material assistance for acts of terrorism (Section 318). A definition of a terrorist group for the purposes of Section 315 and 318 is also included in the Chapter.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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### III. Legal Update

#### 1. EU

September - December 2013

##### European Institutions

###### September 2013

Commission Implementing Regulation (EU) No 852/2013 of 3 September 2013 amending for the 200th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting one natural person from the list.

*Source: Official Journal of the European Union.*

Commission Implementing Regulation (EU) No 880/2013 of 13 September 2013 amending for the 201st time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting one entry under the heading 'Legal persons, groups and entities'.

*Source: Official Journal of the European Union.*

Commission Implementing Regulation (EU) No 895/2013 of 18 September 2013 amending for the 202nd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting one natural person from the list.

*Source: Official Journal of the European Union.*

###### October 2013

Commission Implementing Regulation (EU) No 943/2013 of 1 October 2013 amending for the 203rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting one natural person from the list.

*Source: Official Journal of the European Union.*

Commission Implementing Regulation (EU) No 965/2013 of 9 October 2013 amending for the 204th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting one natural person from the list.

*Source: Official Journal of the European Union.*

Commission Implementing Regulation (EU) No 996/2013 of 17 October 2013 amending for the 205th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting one entry under the heading 'Legal persons, groups and entities'.

*Source: Official Journal of the European Union.*

### November 2013

Commission Implementing Regulation (EU) No 1091/2013 of 4 November 2013 amending for the 206th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by adding two natural persons and one entry under the heading 'Legal persons, groups and entities' to the list, as well as replacing one entry regarding a natural person with a new one.

*Source: Official Journal of the European Union.*

### December 2013

Commission Implementing Regulation (EU) No 1267/2013 of 5 December 2013 amending for the 207th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by adding one natural person to the list.

*Source: Official Journal of the European Union.*

Commission Implementing Regulation (EU) No 1338/2013 of 13 December 2013 amending for the 208th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting one natural person from the list.

*Source: Official Journal of the European Union.*



## 2. EU Member States

September - December 2013

### United Kingdom

#### October 2013

Amendments in the Protection of Freedoms Act 2012, that received Royal Assent on 1 May 2012, entered into force on 31 October 2013. Part One of this Act reforms police retention of DNA and fingerprint (biometric) material, including material held for national security purposes, providing for a new framework for regulating the retention, destruction and use of biometric material. This new model ensures the right balance between public protection and individual freedoms.

## IV. Judicial Analysis

*The present analytical chapter has been produced in an attempt to provide an insight into terrorist judgments rendered throughout the EU area. It is intended to help practitioners and offer relevant case studies and/or comparative analyses. The judgments to be analysed have been purposefully selected. The analysis focuses on the most interesting aspects of the case, rather than covering all issues and arguments addressed by the court.*

### Foreword

The cases presented below concern the phenomenon of (aspiring) foreign fighters who leave for Syria to join the violent jihad there. Fighters who have undertaken combat training and gained fighting experience on the Syrian battlefield, are perceived as possible threat to the security of the Member States upon their return to Europe. The phenomenon of (aspiring) foreign fighters has affected most of the Member States over the last couple of years. While a number of Member States have specific legal provisions that can be applied with regard to those who plan and leave for Syria to train and wage violent jihad and to those who come back to Europe, challenges to build successful prosecution cases seem to be far-reaching.

The analysis below focuses on two judgements rendered by the District Court of Rotterdam in the cases of two defendants who were arrested prior to leaving or while on the way to Syria. They are the first ones of this kind in the EU. Even though the defendants were acquitted of (preparation for) terrorism and convicted respectively of preparation for murder and of preparation for arson and spreading of materials inciting terrorism, in both cases the court pointed out that the offences should be considered in a terrorist framework, namely that of participation in the armed jihad in Syria. The court ruled that the proven acts could no longer be considered as training, as indicated in the charges for (preparation for) terrorism, but should be seen as de facto preparation and/or execution. The court rejected also the claim made by the defence in one of the cases, according to which the acts described in the summons were not punishable due to the fact that there was an internal armed conflict in Syria and international humanitarian law was applicable.

In addition to those judgments, a brief summary of two other cases is also presented. The first case was brought to a UK court but the defendants were discharged as the prosecution was unable to call either of the victims to give evidence at the court hearing. In the second case, a former U.S. soldier was initially indicted for providing material support to a designated foreign terrorist organisation (Jabhat al-Nusra) and conspiracy to use destructive devices overseas. Following a plea agreement, he pleaded guilty to a munitions export charge involving conspiracy to transfer defence articles and services and was sentenced to time already served.

Generally, case law related to the phenomenon of (aspiring) foreign fighters in Syria is of particular interest following the tactical meeting held at Eurojust in June 2013 and will be further studied at Eurojust.

## 1. The Netherlands, Case 10/960233-12

**Procedure:** District Court of Rotterdam, the Netherlands

**Hearing dates:** 31 July 2013 and 2 October 2013

**Date of decision:** 23 October 2013<sup>9</sup>

### Introduction

At a trial in Rotterdam one defendant was brought to court for his alleged plans to travel to Syria with the intention to wage jihad. The case which was heard by the judge in July 2013 is the first case in the Netherlands in which a defendant is prosecuted for plans to participate in jihadist activities abroad. Following the examinations by a psychologist and a psychiatrist the defendant was declared to be suffering from a psychiatric condition. As a result, the prosecution asked the court to declare the defendant guilty and commit him defendant to a mental hospital for a period of one year. In August 2013 the District Court of Rotterdam stated that more information was needed from the psychologist and the psychiatrist who examined the defendant before. The court reconvened for a new hearing in October 2013 in which these experts were invited to give further information.

### The charges

The defendant was charged in conformity with the summons, as amended by the prosecution at the hearing of 31 July 2013.

The indictment consisted of primary charges and subsidiary charges, both of which are detailed below. The primary charges concerned the commission of a terrorist crime and/or a crime of preparing and/or facilitating a terrorist crime. The subsidiary charges, brought in case the primary charges did not lead to conviction, concerned the preparation to commit crime(s) punishable with eight or more years of imprisonment and did not refer to terrorism.

Primary charges	Subsidiary charges
<p>In the period 26 October 2012 – 29 November 2012, the defendant had intentionally</p> <ul style="list-style-type: none"> <li>- provided and/or attempted to provide opportunity and/or resources and/or information to himself and/or other(s), and/or</li> <li>- acquired knowledge and/or skills and/or taught other(s)</li> </ul> <p>to commit a terrorist crime and/or a crime of preparing and/or facilitating a terrorist crime,</p>	<p>In the period 26 October 2012 – 29 November 2012, the defendant, with a view to preparing to commit crime(s) punishable with eight or more years of imprisonment, namely all or some of the following:</p>

<sup>9</sup> The full text of the public version of the judgment is available at [www.rechtspraak.nl](http://www.rechtspraak.nl).

namely all or some of the following:	
<ul style="list-style-type: none"> <li>▫ commit arson and/or cause an explosion with a terrorist purpose, with possible material damage and/or danger for the life or serious injury of another person</li> </ul>	<ul style="list-style-type: none"> <li>▫ intentionally commit arson and/or cause an explosion, with possible material damage and/or danger for the life or serious injury of another person</li> </ul>
<ul style="list-style-type: none"> <li>▫ participate in an organisation which has the purpose of committing terrorist crimes</li> </ul>	
<ul style="list-style-type: none"> <li>▫ commit murder with a terrorist purpose</li> </ul>	<ul style="list-style-type: none"> <li>▫ commit murder</li> </ul>
	<ul style="list-style-type: none"> <li>▫ commit manslaughter</li> </ul>
<ul style="list-style-type: none"> <li>▫ commit an attack against the life or the freedom of a friendly head of state resulting in death or committed intentionally</li> </ul>	<ul style="list-style-type: none"> <li>▫ commit an attack against the life or the freedom of a friendly head of state which does not result in death and/or is not committed intentionally</li> </ul>
<ul style="list-style-type: none"> <li>▫ destroy and/or damage a building or wooden structure with a terrorist purpose, with possible material damage and/or danger for the life of another person</li> </ul>	<ul style="list-style-type: none"> <li>▫ intentionally destroy and/or damage a building or wooden structure, with possible material damage and/or danger for the life of another person</li> </ul>

Both the primary and the subsidiary charges refer to the same acts. According to the prosecution, the defendant had committed all or some of the following:

- A. visit one or more websites where information about (violent) jihad and/or martyrdom, and/or armed fighting or war materials was shared (namely via chats on, amongst others, [www.paltalk.com](http://www.paltalk.com) and/or [www.militaira4you.com](http://www.militaira4you.com) and/or [www.dumpshop.online.nl](http://www.dumpshop.online.nl)) and/or had made queries
- B. express his wish to travel to Syria (via Turkey) and/or to join the armed fighting and/or armed jihad upon arrival
- C. send (multiple times) a thank you note expressing gratitude for those who collect money, help others cross borders in order to reach the right address, provide weapons for the mujahideen, make bombs and weapons for the mujahideen, draw strategies for the mujahideen to surmount the enemy, and the mujahideen who fight on the frontline, acknowledging that the single mujahideen is nothing without the others
- D. send (multiple times) chat(s) and/or email(s) communicating all or some of the following: that he wanted to fight on the side of the mujahideen, (in doing this) he would naturally use weapons, that he would fight for the establishment of an Islamic state or of the sharia rule, that he wanted to join the jihad for years, that Jabhat Al-Nusra and other groups had already 50,000 mujahideen, etc.

- E. meet once or more with other(s) to discuss the trip to Syria and/or the fellow travellers
- F. hold one or more chat sessions with other(s) about the fact that money had been collected by a benefit and/or that money can be sent to him and/or his co-accused
- G. hold one or more chat sessions with other(s) about the date of departure
- H. hold one or more chat sessions with other(s) about the already purchased items, those that still need to be purchased (such as wind- and rainproof jacket, jungle boots, laptop(s), map(s), camera(s)), those to be sold (such as computers, sofa, furniture), and/or the termination of rental contracts
- I. send photograph(s) of the defendant carrying an (automatic) firearm (AK-47)
- J. book tickets to Turkey
- K. attempt to make other(s) join
- L. have document(s) or data/information carriers containing information on jihadist ideology and/or martyrdom
- M. have a (packed) suitcase and/or backpack with a travel kit
- N. have (big) sum(s) of money (EUR 2,000 and/or EUR 1,105).

At the hearing of 31 July 2013 the prosecution pleaded that:

- 1) the acts mentioned in the primary charges should be declared proven
- 2) the defendant should be discharged as he is not liable
- 3) the defendant should be placed in a psychiatric clinic for a maximum period of one year, during which optimal treatment should be applied
- 4) the telephone seized from the defendant should be confiscated
- 5) the suitcase seized from the defendant should be returned to him.

### The defence case

#### Validity of summons

The defence challenged the validity of the summons by pleading that it was partially void. The challenged elements of the charges included, *inter alia*, the following:

- **the wording in A. (“among others”) and H. (“such as”)** which indicated that the specifically described websites, which the defendant had allegedly visited (A.), or the items (to be) purchased and/or sold were not exhaustive
- **the charge related to the opportunity and/or resources and/or information (attempted to be) provided in order to commit a terrorist crime** which was not substantiated by all the acts described
- **the charge related to an attack against a friendly head of state**, specifically the part concerning an attack against his freedom, as the latter is not a terrorist crime
- **the unclarity of the subsidiary charges** due to the lack of verbs



- **the charge related to the preparation to commit manslaughter**, as such a preparation should by definition be premeditated.

## International humanitarian law

According to the defence, the acts described in the summons were not punishable due to the fact that there was an internal armed conflict in Syria and the armed opposition was a subject to and may make use of international humanitarian law.

### Liability of the defendant

With regard to the mental state of the defendant, the court received a report by a psychiatrist dated 31 March 2013 and a report by a psychologist dated 24 May 2013.

According to the psychiatrist, the defendant suffered a disorder and/or insufficient development of his mental capacity in the form of a psychosis, probably caused by schizophrenic or schizoaffective development. At the time of commission of the acts the defendant suffered from a psychotic disorder which affected his behavioural choices and conduct. The defendant hallucinated to have received orders to carry out the charged preparatory acts for terrorism.

According to the psychologist, the defendant suffered from a chronic psychotic disorder, possibly in the framework of a schizoaffective development, which could be considered as a mental disorder. This mental disorder affected the defendant's behavioural choices and conduct at the time of commission of the charged acts. The defendant had heard a voice that had incited him to take action in the framework of jihad. His ability for judgment and criticism had been so much affected by these hallucinations that he had done only what the inner voice had dictated him to do.

Both the psychiatrist and the psychologist advised to declare the defendant not liable for the acts charged.

In September 2013 the two specialists produced additional reports. In his additional report, the psychiatrist stated, inter alia, that the defendant had suffered from frequent psychotic symptoms in the form of hallucinations since he was 14 years old and until his recovery under the treatment in the penitentiary psychiatric centre during his detention. In the period June 2012 – November 2012 the psychotic symptoms had been so grave that the defendant could not resist the hallucinations ordering him to prepare a trip to Syria.

The additional report of the psychologist included a conclusion that the defendant was chronically psychotic and it was only by means of medication that an improvement of his condition could be accomplished. It could be assumed that in moments when he had felt better he still had the intention to pursue the path he had been following but had probably postponed the acts needed to do so.

Both specialists testified as experts at the hearing of 2 October 2013. With a view to the high chance of recidivism in case of no treatment, both the psychiatrist and the psychologist advised to place the defendant in a psychiatric clinic for a period of one year.

### The decision of the court

#### The pleas of the defence

The court rejected the first four pleas of the defence and declared the summons partially void insofar as it concerned the preparation to commit manslaughter. According to the court, by definition such preparation should always be premeditated and the prosecution should have limited itself to the charge of murder only.

With regard to the reference to international humanitarian law, the court rejected the claim. In its opinion, the defendant did not commit the preparatory acts in the framework of international humanitarian law.

#### The terrorism charges

In its deliberations, the court contemplated whether the acts committed in this case could be considered in the meaning of Article 134a of the Criminal Code.<sup>10</sup> It ruled that the booking of plane tickets (described in J.), the possession of a packed suitcase (described in M.) and possession of money (described in N.), could serve as *de facto* preparation for staying at another place. Thereby, these actions could no longer be considered as training, as indicated in the primary charges, but as *de facto* preparation and/or execution.<sup>11</sup> Therefore, the acts could not be considered proven and qualified in the meaning of Article 134a of the Criminal Code.

The same considerations were applied to the other acts, which contained references to (armed) fighting, travel for jihad and possession of relevant information on data carriers, but could not be considered as training for jihad.

#### Liability of the defendant

The court embraced the conclusions of the psychiatrist and the psychologist consulted on this case. The defendant was therefore declared not liable and could not be prosecuted for the proven facts.

#### The conviction

Based on the available evidence, the court considered it proven, as charged in the subsidiary charges, that in the above-mentioned period, with a view to intentionally preparing to commit a crime punishable with eight or more years of imprisonment, namely murder, the defendant had committed all acts (A.-N.), as described in the charges. The court made some amendments to the acts regarding, *inter alia*, the chat sessions (referred to in G.), the items (to be) purchased (described in H.), the amounts of money (referred to in N.), etc.

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<sup>10</sup> Article 134a of the Criminal Code reads as follows: "He, who provided or attempted to provide opportunity, resources or information to himself or someone else for the commission of a terrorist crime or a crime of preparing or facilitating a terrorist crime, or acquired knowledge or skills or taught someone else, shall be punished with imprisonment of maximum eight years or a fifth category fine".

<sup>11</sup> It had been established that the defendant had collected money, terminated his rental contract in Utrecht and booked plane tickets to Turkey.

In its motivation the court pointed out that the criminal acts committed by the defendant with a view to preparing to commit murder included booking, for himself and his accomplices, of airplane tickets to Gaziantep (Turkey) via Istanbul and having a packed suitcase with a travel kit and money at his disposal. It was evident from the remaining proven acts that those three acts were to be seen as preparatory for the departure of the defendant to Syria in order to take part in the armed jihad against the regime of the Syrian president and to establish an Islamic state.

The court emphasized the seriousness of the offence of murder and pointed out that it should be considered in a terrorist framework, namely that of participation in the armed jihad in Syria.

As the facts that were considered proven led to a qualification in line with the subsidiary charges, the court acquitted the defendant of the primary charges.

### **The penalty**

With a view to the seriousness of the acts, the circumstances under which they were committed, the personality and personal circumstances of the defendant and due to his established mental disorder, the court ruled that he should be placed in a psychiatric clinic for a period of one year based on Article 37 of the Criminal Code and due to the danger he presented to others.

## 2. The Netherlands, Case 10/960019-12

**Procedure:** District Court of Rotterdam, the Netherlands

**Hearing date:** 2 October 2013

**Date of decision:** 23 October 2013<sup>12</sup>

### Introduction

The District Court of Rotterdam heard the case of one defendant suspected of planning to travel to Syria in order to join the armed jihad. He was initially arrested in May 2012, following his Internet postings that he was willing to take part in jihad in Syria. At the time of his arrest, the police found ten metres of ignition cord, a kilogramme of aluminium powder and several DVDs with jihadist materials. The defendant was released on bail in June 2013, provided that he would stay in the Netherlands. However, later, he got arrested in Germany. According to the prosecution, the defendant carried almost no luggage and intended to travel to Syria through Turkey. The public prosecutor postponed the case for October 2013 in order to wait for the outcome of the case analysed above which concerned similar allegations.

### The charges

The defendant was charged in conformity with the summons, as amended by the prosecution at the hearing of 2 October 2013.

The charges were as follows:

1.

A. In the period 23 January 2012 – 13 March 2012 and/or in the period 25 May 2012 – 13 June 2013, the defendant had intentionally

- provided and/or attempted to provide opportunity and/or means and/or information to himself and/or other(s), and/or
- acquired knowledge and/or skills and/or taught other(s)

to commit a terrorist crime and/or a crime of preparing and/or facilitating a terrorist crime, namely all or some of the following:

- intentionally commit arson and/or cause an explosion with a terrorist purpose, with possible material damage and/or danger for the life or serious injury of another person
- participate in an organisation which has the purpose of committing terrorist crimes
- commit murder with a terrorist purpose
- commit manslaughter with a terrorist purpose
- intentionally destroy and/or damage a building or wooden structure with a terrorist purpose, with possible material damage and/or danger for the life of another person.

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<sup>12</sup> The full text of the public version of the judgment is available at [www.rechtspraak.nl](http://www.rechtspraak.nl).

In fact, the defendant had committed all or some of the following:

- a) visit one or more websites and/or (subsequently) make queries about “homemade bombs and explosives” (namely [www.bombshock.com](http://www.bombshock.com) and/or [www.pyronfo.com](http://www.pyronfo.com)) and/or “action man detonator” (namely [www.Ebay.com](http://www.Ebay.com)) and “how to make flashpowder” (namely [www.metacafe.com](http://www.metacafe.com) and/or [www.intructables.com](http://www.intructables.com))
- b) purchase and/or have delivered at his home address the following: ten metres ignition cord and/or one kilogramme of aluminium powder and/or a gas bottle, at least one or more (ingredients for) materials suitable to cause an explosion
- c) have ten DVDs and/or data/information carriers containing information on how to make explosives
- d) visit one or more websites where information about jihad and/or martyrdom, and/or armed fighting was shared (namely [www.islamicawakening.com](http://www.islamicawakening.com) and/or <http://behind-bars.net>)
- e) (subsequently) post videos(s) (showing the execution of attacks) on the above-mentioned website(s) and/or (subsequently) start a discussion about jihad in the forum of the website(s)
- f) visit one or more websites where information about travel and/or request for visa for Yemen, Saudi Arabia and/or Syria was shared
- g) obtain a travel visa for Saudi Arabia and/or a ticket to Turkey
- h) express his wish to travel to the above-mentioned countries and/or ask how to get in contact with unidentified person(s) upon arrival
- i) have document(s) or data/information carriers containing information on jihadist ideology and/or martyrdom (including ten DVDs)
- j) undertake a trip to Turkey (via Germany) with Syria as destination

and/or

B. In the period 23 January 2012 – 13 March 2012, with a view to preparing to commit crime(s) punishable with eight or more years of imprisonment, namely all or some of the following:

intentionally commit arson and/or cause an explosion, with possible material damage and/or danger for the life or serious injury of another person, he had committed all or some of the following:

- a) visit one or more websites and/or (subsequently) make queries about “homemade bombs and explosives” (namely [www.bombshock.com](http://www.bombshock.com) and/or [www.pyronfo.com](http://www.pyronfo.com)) and/or “action man detonator” (namely [www.Ebay.com](http://www.Ebay.com)) and “how to make flashpowder” (namely [www.metacafe.com](http://www.metacafe.com) and/or [www.intructables.com](http://www.intructables.com))
- b) purchase and/or have delivered at his home address the following: ten metres ignition cord and/or one kilogramme of aluminium powder and/or a gas bottle, at least one or more (ingredients for) materials suitable to cause an explosion
- c) have ten DVDs and/or data/information carriers containing information on how to make explosives

which items(s), substance(s) and/or information carrier(s), in combination with each other or individually, were obviously intended for the commission of the crime(s).

2. In the period 23 January 2012 – 13 March 2012, the defendant had spread, shown publicly, and/or had in stock to spread or show publicly a written material and/or an image which incites a terrorist crime or a criminal offence and/or violence against public authority, while he knew or had a serious reason to suspect that the written material and/or image contains such an incitement. In fact, the defendant had committed all or some of the following:

- post one or more videos (showing the execution of (violent) attacks)
- (subsequently) post one or more texts titled "Jihad is Fard al-Ayn!"
- (subsequently) start a discussion about armed jihad

on one or more (publicly accessible) websites (namely YouTube) or websites where information about armed jihad and/or martyrdom, and/or armed fighting was shared, namely [www.islamicawakening.com](http://www.islamicawakening.com).

At the hearing of 2 October 2013 the prosecution pleaded that:

- 1) the acts mentioned in 1A, 1B and 2 should be declared proven
- 2) the defendant should be sentenced to a prison term of 36 months reduced by the time spent in custody, with six months conditional sentence and a two-year probationary period. The defendant should report to the authorities and undergo a treatment in a psychiatric clinic
- 3) the computer, DVDs and iPhone seized from the defendant should be confiscated
- 4) other objects seized from the defendant should be returned to him.

### The decision of the court

#### The terrorism charges

As in the judgment above, also in this case the court contemplated whether the acts committed in this case could be considered in the meaning of Article 134a of the Criminal Code.<sup>13</sup> It ruled that the visiting of certain websites (referred to in a) and the purchasing of certain items (referred to in b) were preparatory for the commission of arson, while the obtaining of a travel visa to Saudi Arabia and a ticket to Turkey (described in g) and the undertaking of a trip with destination Syria (described in j) could serve as de facto preparation to stay at another place. Thereby, they could no longer be considered as training, as indicated in 1.A, but as de facto preparation and/or execution. Therefore, the acts could not be considered proven and qualified in the meaning of Article 134a of the Criminal Code.

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<sup>13</sup> Article 134a of the Criminal Code reads as follows: "He, who provided or attempted to provide opportunity, resources or information to himself or someone else for the commission of a terrorist crime or a crime of preparing or facilitating a terrorist crime, or acquired knowledge or skills or taught someone else, shall be punished with imprisonment of maximum eight years or a fifth category fine".

The same considerations were applied to the other acts, related to the search and possession of information and the search for contacts for a trip to Middle East countries. These acts could not be considered as training for jihad. The court found also that posting of videos and starting online discussion (referred to in e) and the possession of information on jihadist ideology and martyrdom (referred to in i), in principle relate to those who give training and not to those who seek to receive training. According to the description of the expert, called in by the court, the DVDs referred to in c) did not contain information on how to make explosives.

## The conviction

Based on the available evidence, the court considered the charges under 1.B and 2 proven. With regard to the committed acts, it found that the defendant had:

under 1.B

- visited websites and/or (subsequently) made queries about “homemade bombs and explosives” (namely [www.bombshock.com](http://www.bombshock.com) and/or [www.pyronfo.com](http://www.pyronfo.com)) and “action man detonator” (namely [www.Ebay.com](http://www.Ebay.com)) and “how to make flashpowder” (namely [www.metacafe.com](http://www.metacafe.com) and/or [www.intructables.com](http://www.intructables.com))
- purchased and had delivered at his home address the following: ten metres ignition cord, one kilogramme of aluminium powder and a gas bottle which were obviously intended for the commission of the crime

under 2

- posted videos (showing the execution of (violent) attacks)
- posted a text titled “Jihad is Fard al-Ayn!”
- started a discussion about armed jihad

on (publicly accessible) websites (namely YouTube) or websites where information about armed jihad and/or martyrdom, and/or armed fighting was shared, namely [www.islamicawakening.com](http://www.islamicawakening.com).

As in the judgment above, in its motivation the court emphasized the seriousness of the offence and pointed out that it should be considered in a terrorist framework, namely that of participation in the armed jihad in Syria. In fact, the file contained various email exchanges, chat conversations and videos from which it appeared that the defendant adhered to jihadist ideology. Furthermore, during his questioning by the police he had declared his wish to go to Syria and fight against the Syrian president. By spreading the above-mentioned text and videos, which call for armed jihad, and by initiating online discussion, he had tried to incite others to commit crimes or aggression against the authorities.

The defendant was acquitted of the other charges.



### **The penalty**

With a view to the seriousness of the acts, the circumstances under which they were committed, the personality and personal circumstances of the defendant, the court ruled that he should be sentenced to a prison term of 12 months, four of which suspended, with a probationary period of two years.



### 3. The United Kingdom

In November 2013, three Britons were formally discharged and not-guilty verdicts recorded in a case involving the kidnapping of a British photographer and a Dutch journalist in Syria. The victims had been held captive together with their local guide for nine days in July 2012 after they had come upon a jihadist camp in the north of Syria. One of them had later described that he had been held by about 30 jihadists from around the world, mostly British and Chechen and led by an 'emir' of Saudi Arabian nationality, and threatened with beheading. Both victims had suffered gunshot wounds in an unsuccessful escape attempt. They had eventually been freed by members of the Free Syrian Army after their guide had managed to raise an alarm.

After his rescue, the British victim had described that the wounds he had suffered during his escape attempt had been treated by a British doctor. This led to the arrest of the first suspect at Heathrow Airport when he returned to the United Kingdom with his family. He was originally charged with false imprisonment and accused of being a well-connected jihadist. He was immediately suspended from practicing medicine. His brother, a civil servant, was accused of engaging in conduct in preparation of terrorist acts by supplying funds and equipment to the two other men, such as night vision goggles and medical supplies which he allegedly drove from Britain to Turkey. The third suspect was also charged with false imprisonment. All three suspects denied all charges.

On the opening day of the trial, the prosecution notified the court that a problem had arisen which would frustrate their case since they were now unable to call either of the victims to give evidence. Since the case relied wholly on their testimony, the prosecutor was no longer able to proceed and verdicts of not guilty were recorded. The reasons for this situation were not disclosed in court. The prosecution had considered asking for the case to be adjourned or for the victims' evidence to be read as hearsay, but had concluded neither would be possible.

*Source: BBC.*

### 4. The United States

A U.S. citizen, who had earlier been indicted for providing material support to a designated foreign terrorist organisation and conspiracy to use destructive devices overseas, pleaded guilty to a lesser charge and was sentenced to time served.

The man, who is a former U.S. army soldier, had been indicted for travelling to Syria and fighting alongside Jabhat al-Nusrah in January 2013. Under Title 18, Section 2339B of the U.S. Code, the offence of providing material support or resources to a designated foreign terrorist organisation carries a fine or a maximum sentence of 15 years (or life if the conduct results in the death of a person). The perpetrator must be aware that the organisation is a designated foreign terrorist organisation, as defined by Section 219 of the Immigration and Nationality Act. The term “material support” is defined in Section 2339A of the U.S. Code as “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials”.

Jabhat al-Nusrah was designated by the U.S. government as an alias for Al Qaida in December 2012. According to the authorities, the defendant had admitted fighting with Jabhat al-Nusra. Upon arrival in Syria, he had initially joined the Free Syrian Army, but following one battle he had ended up in a truck together with Jabhat al-Nusrah. Having managed to gain their trust, he had fought together with them in several battles. During these, he had also made use of a rocket-propelled grenade launcher.

The authorities had obtained evidence mainly through material posted on his Facebook account, including pictures and comments, as well as articles and videos appearing on news websites. He had contacted the U.S. authorities in Turkey claiming that he had lost his U.S. passport and could not return to the United States. The FBI had conducted three voluntary interviews with him in the U.S. Embassy in Istanbul in March 2013. He had been put on a “no-fly list” but removed again so he could travel to the United States, where he could be arrested avoiding possible cooperation issues with the Turkish authorities. The FBI had conducted one further interview at the airport upon his return to the United States.

Following a plea agreement in September 2013, he pleaded guilty to a munitions export charge involving conspiracy to transfer defence articles and services and was sentenced to time already served. The plea agreement and any relevant court records remain under seal.

*Source: FBI/Business Insider/CNN.*

## V. The Way Ahead

### Ongoing/Upcoming Trials

September - December 2013

*The overview below includes a selection of ongoing and upcoming trials where decisions are expected within the next few months. Any further developments, resulting in convictions or acquittals, will be presented in the next issue(s) of the TCM.*

#### Greece

In October 2013, four leaders of the extremist right-wing political party Golden Dawn appeared in court for a preliminary hearing on charges of participation in a criminal organisation masked as a political party. In an unprecedented operation on 28 September 2013, the Greek police arrested 22 of the party's leadership. Arrest warrants were issued for other ten people. The party leader faces charges of founding and participating in a criminal enterprise that could lead to ten years' imprisonment. Golden Dawn party members and parliamentarians were frequently accused in the past of being behind numerous violent attacks, most of them against migrants. So far, they have denied all criminal charges, including those of participation in Nazi-style hit-squads or possession of Nazi-memorabilia. Golden Dawn spokesmen distanced themselves from the recent murder of a Greek rapper in September 2013 which triggered the judicial action. The Golden Dawn leaders claimed the trial was politically motivated because the government "feared" Golden Dawn's positive results in opinion polls. The Greek parliament lifted the political immunity of six parliamentarians but did not accuse them of manslaughter. It passed a new law allowing to cut funds for political parties if leaders were accused of criminal activities.

*Source: The Guardian.*

#### The United Kingdom

At a trial at the Belfast Crown Court one defendant admitted two terrorist charges: providing a mobile phone for a terrorist cause and aiding a meeting in support of a terrorist organisation (the IRA). The first charge was linked to the RIRA murder of two British soldiers in a well-planned attack just outside the British Massereene Army barracks in Antrim, Northern Ireland, in March 2009. The defendant was accused of enhancing the communication by providing property (i.e. a mobile phone) for terrorist purposes. With the mobile phone, RIRA-members claimed responsibility for the attack. According to the prosecution, the defendant was caught on CCTV-camera footage while buying a mobile phone from Tesco Store in Newtownabbey. The second charge concerned the support of a radical Easter Sunday commemoration rally at Londonderry. The defendant, nicknamed 'Old Bailey Bomber', had been convicted in 1974 for the 1973 attack on the Old Bailey Court and given two life sentences.

*Source: The Guardian/U TV.*



### European Court of Human Rights

In December 2013 the European Court of Human Rights (ECHR) held a Chamber hearing concerning the “rendition” of two terror suspects to the CIA secret detention sites at which illegal interrogation methods were used. The two applicants, a Saudi Arabian national and a stateless Palestinian, are currently detained in the Internment Facility at the U.S. Guantanamo Bay Naval Base in Cuba. One of them is the prime suspect of the October 2000 terrorist attack on the U.S. Navy ship USS Cole in the harbour of Aden, Yemen. He is also suspected of playing a role in the attack on the French oil tanker MV Limburg in the Gulf of Aden in October 2002. The other man was considered by the U.S. authorities as one of the key members of Al Qaida who played a role in several terrorist operations, including the planning of the 11 September 2001 attacks. Both men claim that they were victims of apprehension by the CIA and extrajudicial transfer to a secret detention site in Poland in 2002, with the knowledge of the Polish authorities, for the purpose of interrogation during which they were tortured. Their complaints before the ECHR concern the following: their torture, ill treatment and incommunicado detention in Poland while in U.S. custody; their transfer from Poland; and, Poland’s failure to conduct an effective investigation into the events. According to them, the Polish authorities knowingly and intentionally enabled the CIA to hold them in secret detention in the Stare Kiejkuty facility, without any legal basis or review and without any contact with their families. Furthermore, they claim that Poland knowingly and intentionally enabled their transfer from Polish territory despite the real risk of further ill treatment and incommunicado detention, allowing them to be transferred to a jurisdiction where they would be denied a fair trial. The appellants claim also that Poland failed to conduct an effective investigation into the circumstances surrounding their ill treatment, detention and transfer from the Polish territory. The ruling of the ECHR is pending.

*Source: ECHR.*

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