



EUROJUST Report

# Terrorism Convictions Monitor

Issue 22 June 2015 4/L/2015





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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 current 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 22 of the TCM covers the period **January - April 2015**. 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. The analytical part of the report contains an analysis of two judgments against Europeans who fought in the ranks of terrorist groups in Syria. The report presents also some highlights of the European Agenda on Security presented recently in a communication from the Commission.

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. The respective National Desks will be further contacted for specific details, when needed.

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

January - April 2015

#### Austria

February 2015

At a trial that took place in heightened security at a Vienna court, one person of Kurdish descent was handed down a six-month conditional sentence and three years probationary period for having **posted images and propaganda** of the 'Islamic State' (IS) on Facebook. The material, posted on the defendant's Facebook page, included photographs of atrocities committed by the terrorist organisation, among which images of decapitated and impaled heads. The photographs were accompanied by comments approving the acts of IS. The man had been arrested together with a group of 13 people at the end of November 2014, believed to be linked with an Islamic preacher and leader of the so-called 'Bosnian cell' in Vienna, who is accused of recruiting fighters to join IS in Syria. The defendant admitted that posting the images on Facebook had been "really stupid", and that he had wanted to "provoke" his former friends and acquaintances.

Source: *The Local*.

#### Belgium

February 2015

Following the investigation launched against the group Sharia4Belgium, the prosecution had brought charges against 46 persons. The charges included **leadership of a terrorist group, participation in an activity of a terrorist group, destruction of property under aggravating circumstances, illegal restraint in the framework of a terrorist group, spreading of messages inciting the commission of a terrorist offence**, threatening with attacks, armed disobedience, committed together with others, forgery of documents and use of such documents. The investigation had revealed that all of the group's leading figures, with the exception of one, as well as all members of its hard core, had travelled to Syria. There they had joined Jabhat al-Nusrah and Majlis Shura Al-Mujahidin, both of which participate in the armed fighting in Syria. 36 of the accused persons did not appear in court and were tried *in absentia*; some believed to be fighting in Syria or even to have died in battle. In its ruling, the Court of Antwerp acquitted one defendant and found the remaining ones guilty as charged. It ordered prison sentences of between three and fifteen years, as well as pecuniary fines. It further ordered the immediate

detention of 41 of the convicted persons.<sup>1</sup> The decision of the court has been appealed by some of the convicted persons. The criminal proceeding against one of 46 defendants was separated and will be tried later.

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

### March 2015

At the Court of first instance of Antwerp three brothers were charged with **participation in an activity of a terrorist group**. Two of them were believed to have left for Syria at the end of August 2013 and joined the terrorist organisation Jabhat al-Nusrah, while the third one had probably left a few months before. Their departure had become known to the authorities after the first defendant had failed to appear at the Court of Appeal of Antwerp where he had been tried for leadership of a terrorist group (*for further details, please see TCM, issue 19*). In October 2013 he had flown back from Syria via Düsseldorf. The second defendant was believed to be still in Syria, while the third one could have possibly passed away. The evidence presented to the court included a statement of one person, who admitted membership in Jabhat al-Nusrah in the framework of another investigation, that he had met the three brothers in a villa held by the terrorist group, as well as intercepted telephone conversations in which it had been mentioned that they had been in Syria. In its ruling, the court pointed out that the acts the first defendant was accused of were a continuation of the acts he had been convicted for in 2014 by the Court of Appeal of Antwerp. The court ordered him to serve two years in prison additional to the 12 years that he had been sentenced to in 2014. The other two defendants were each given a five years' imprisonment and a fine of EUR 500.

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

## France

### March 2015

The Paris Criminal Court found one defendant guilty of **supporting terrorism** after he had posted ambiguous comments on his Facebook page following the Charlie Hebdo attack in January 2015. In one of his posts, he had combined the "Je suis Charlie" slogan with the name of one of the three gunmen involved in the attacks. The man, described as a controversial comedian, faced up to seven years in prison and a fine of EUR 100 000. He had a number of previous convictions of inciting racial hatred and is banned from performing in several French cities. In court, he explained that the post had been intended to illustrate how he often felt treated like a terrorist. The court gave him a two-month suspended sentence.

*Source: BBC.*

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<sup>1</sup> A detailed analysis of the judgment has been produced by Eurojust in March 2015 and distributed to the National Correspondents for Eurojust for terrorism matters. It is available upon request to prosecutors in the EU Member States.

One defendant, charged with **criminal association to commit terrorist acts** and abduction of a minor, stood trial at the Paris Criminal Court for having helped a 14-year old girl on her way to Syria. The girl had met online an IS recruiter who had used Facebook to lure her into travelling to Syria to marry him. The girl had bought a one-way ticket from Lyon to Istanbul. The defendant, who had Facebook contact with the IS recruiter, had booked a hotel room in Lyon for her and paid her train ticket to the Lyon airport. He had also bought her a full face- and body-covering veil, and told her to destroy her phone SIM card in order to avoid detection. The girl had been stopped before boarding the plane to Istanbul; later she had managed to travel to Belgium, where she had married an older man in a Muslim ceremony and become pregnant. She is believed to be in Syria. The defendant denied knowing her real age and claimed that he thought he had been helping her go to her husband in Syria. He further denied that he wanted to wage jihad. The court found him guilty as charged and sentenced him to three years in prison, one of which suspended.

Source: *The New York Times/UK Reuters.*

The Paris Criminal Court handed sentences of between two and five years' imprisonment to the members of a group that had **provided logistical support to Chechen jihadists in Syria**. The group had been active between September 2012 and November 2013. It had sent military clothes, a four-wheel drive vehicle and money collected within the Chechen community in France to the fighters in Syria. The harshest sentence of five years was handed down to a 20-year old man, who had also travelled to Syria. Another co-defendant, who had provided logistical, financial and other support to the Chechen fighters, was ordered to serve four years in prison, while two other co-defendants received a two-year sentence each.

Source: *Fox News.*

## The Netherlands

### January 2015

A court in The Hague considered the appeal submitted by the prosecution in the case of one person preparing to go to Syria. In October 2013, he had been found guilty of **preparation to commit arson and/or cause an explosion, and of distributing material inciting a terrorist crime**. The court in The Hague ruled that the man had also **acquired resources for the commission of a terrorist offence**. He had been acquitted of the charge by the first instance court, which had pointed out that his preparatory acts should be considered in a terrorist framework. He 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. Released on bail in June 2013, he had been arrested in Germany before he could reach Syria. In October 2013, the District Court of Rotterdam had sentenced him to a prison term of 12 months, four of which suspended, with a probationary period of two years (*for further details, please see TCM, issue 18*). At the appeal, the court

sentenced him to three months' imprisonment for the distribution offence and to 15 months for the other two offences.

Source: *Rechtspraak.nl*.

### February 2015

The Gelderland Court considered the cases of two persons charged with **preparation of common crimes, preparation of terrorist offences and conspiracy to commit terrorist offences**. The two had been arrested in Kleve, Germany, on suspicion of preparatory acts to commit crimes with a terrorist objective or of being on their way to Syria to commit either common crimes or crimes with a terrorist objective. They had rented two cars in Germany to travel to Turkey/Syria and intended to sell the cars there. They had large sums of money and bags with survival gear and mobile phones with them. In combination with the videos, pictures and messaging found, these facts may have indicated that the accused and his companion prepared themselves for the commission of criminal acts. Prior to their departure, the accused and his companion had applied for new travel documents and changed address. They had also signed up for several mobile phone subscriptions and taken loans. At trial, one of the accused claimed that he had gone in the direction of Syria because he wished to live with his family in an Islamic country, subjected to Islamic law, where he could freely profess his faith. The other one stated he wanted to visit his half-brother in Turkey. The court acquitted both defendants, as it did not consider the charges against them to be proven.

Source: *Rechtspraak.nl/Rechtspraak.nl*.

### April 2015

The Court of Appeal found five persons guilty of **participation in a criminal organisation with a terrorist objective**, namely the Liberation Tamil Tigers of Eelam (LTTE). The ruling is in relation to the October 2011 conviction by the The Hague Court, which had handed down six-year sentences (*for further details, please see TCM, issue 12*). The Appeals Court considered it proven that the LTTE had as objective, *inter alia*, the commission of war crimes and crimes against humanity in the meaning of the Law on International Crimes. The court ruled that the conflict in Sri Lanka was a non-international armed conflict. It was not convinced that the LTTE was fighting against a racist regime. The court rejected the claim that the LTTE enjoyed combatant status under international humanitarian law. It ruled that national criminal law was applicable with regard to the proven offences. It considered the charges of incitement not proven, as the concerned acts could not be qualified as incitement to violence against public authority, in the given circumstances and context.

Source: *Rechtspraak.nl*.



## Spain

### January 2015

One defendant was handed down a 15-year prison sentence for **causing destruction and possession of explosives**, as a member of a terrorist organisation. Together with others, in February 2009 he had placed a backpack full of explosives close to the seat of the Basque Socialist Party in Lizcao. The backpack had been spotted by the police. A few minutes later, the defendant had made a phone call to the traffic breakdown service DYA, warning them of the upcoming explosion. The device had exploded shortly after, causing damage to the seat of the Basque Socialist Party, as well as other buildings and vehicles in the vicinity. The defendant had been surrendered by the French authorities in April 2014 for the purposes of the present trial. The decision of the court is final.

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

The Audiencia Nacional sentenced one defendant to 28 years and three months' imprisonment after it found her guilty of **committing a terrorist attack resulting in death, illegitimate use of a motor vehicle** and two counts of **causing injuries**. She had been a member of ETA's *Madrid* command, which had been planning to commit an attack against a Spanish military officer in May 1994. For this purpose, the members of the command had placed a tracking device allowing them to trace his whereabouts. As part of the plan, the defendant had placed an explosive device on the bottom of the victim's car. The device had exploded while he had been driving and resulted in his instantaneous death. Several other persons had been injured and their cars damaged. Following the request sent to the French authorities in March 1999, the defendant had been surrendered to Spain in November 2003.

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

### February 2015

The Audiencia Nacional found one defendant guilty of **glorification of terrorism** and sentenced him to one year imprisonment. He had been brought to court for having distributed messages, photographs and texts via Facebook, with the intention to praise ETA terrorists and justify their actions, as well as to humiliate victims of the terrorist group. The messages, photographs and texts had been distributed in the period between 2011 and 2014. 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 person appeared before the court after he had been caught spraying with permanent red paint the inner side of a bus stop and drawing ETA's anagram. The incident had taken place in June 2014. The defendant had been spotted spraying the red paint by police officers driving along a local road in the early morning. The court found the defendant



guilty of **glorification of a terrorist organisation** and sentenced him to one year imprisonment. The decision of the court has been appealed by the defence.

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

The Audiencia Nacional acquitted three defendants accused of **glorification of terrorism** in relation to an incident that had taken place in November 2013. The three had placed posters on the walls of various buildings in Pamplona, seeking the release of an ETA member, who had been imprisoned for terrorist offences. 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 **possession of explosives concurring with causing damage using explosives**, both committed as part of a terrorist group, and sentenced him to nine years' imprisonment. The defendant had been a member of ETA's *Elurra* command, which in the beginning of 2007 had been instructed by ETA's leadership to place a car bomb in Oropesa del Mar, Castellon. For this purpose, members of the command had stolen a caravan from a Spanish family, which they had held hostage for several days. They had then loaded the caravan with explosives and parked it a dozen metres away from a high-voltage transmission tower, intending to activate the device with a timer. The explosion had taken place in August 2007 and resulted in significant damage to the tower and the surrounding area. The defendant stood trial together with another person, believed to have been in charge of the *Elurra* command in France. The latter had been acquitted of the charges. Both men had been previously convicted of terrorist offences in France. They had been surrendered to Spain by the French authorities following the issuing of European Arrest Warrants. The decision of the court is final.

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

At the Audiencia Nacional four defendants were brought to court on charges of **possession of inflammable substances**. In September 2012 they had set a telephone repeater on fire using an extremely inflammable substance. The fire had been put off by Guardia Civil officers who had been in the vicinity of the incident. The house searches in the homes of the four defendants, carried out following the incident, had resulted in the seizure of documents, terrorist manuals with instructions on how to make explosives, a poster of the banned organisation Segi against the construction of the high-speed train network, a torturer's manual, etc. The four pleaded guilty as charged and were given a two-year sentence each. The court ordered the suspension of their prison sentences for a period of three years, provided that they do not commit any offences in this period. The decision of the court is final.

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

### March 2015

The Supreme Court dismissed the appeal, submitted by a victim support association, against the March 2014 ruling of the Audiencia Nacional acquitting 14 persons charged with **glorification**

**of terrorism.** The 14 had been brought to court in relation to an incident that had taken place during festivities in the city of Vitoria in the summer of 2012. They had been part of some street acts in the course of which a group of individuals, directly or indirectly related to ETA, had carried a silhouette with photographs of ETA prisoners (*for further details, please see TCM, issue 19*). In May 2014 the Supreme Court had already dismissed the appeal submitted by the prosecution. The decision of the court is final.

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

Two ETA members were given six-year prison sentences after the Audiencia Nacional found them guilty of **belonging to a terrorist organisation.** They had been arrested as a result of a joint operation of the Spanish Guardia Civil and the French police in May 2008. In the apartment, where they had been detained, the authorities had discovered various objects and documents related to the activities of ETA, e.g. arms, vehicle registration plates, numerous informative papers and documents, etc. The examination of the documents had confirmed the existence of a group, consisting of the two and possibly other persons, which had carried out activities in support of ETA. Also, an agenda had been found, which contained planning of the group's operational activities. The decision of the court is final.

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

Two defendants appeared at the Audiencia Nacional on charges of **glorification of terrorism,** resisting and disobeying the authorities, disrespect for property of others and causing injuries. They had been arrested for having drawn graffiti on public buildings, with the words "*Pou askatu*" ("For freedom"), after they had found out that a friend of theirs had been detained in France. The two had been caught in the act by a patrolling police officer. They had resisted when asked to identify themselves and had been detained after another police officer had arrived at the crime scene. The Audiencia Nacional acquitted the two defendants of all charges brought against them.

*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 **terrorist assassination, terrorism concurring with the offence of terrorist assassination,** illegitimate use of a motor vehicle and replacement of a registration plate. They had been accused of having been involved in the assassination of a university professor, who had also been a member of the Council of State and a member of the executive boards of several Spanish banks. The assassination had taken place in January 1992 and had been carried out by one of ETA's commands. The victim had been shot dead as he had been leaving the Faculty of Law at the University of Valencia. The assassins had fled the crime scene, leaving behind a stolen car with an explosive device in its trunk. Shortly after, the explosive device had been activated, as the police had tried to open the trunk of the car, which had been double-parked on the street. As a result, a police officer had been severely injured and other vehicles and property damaged. In

February 1992 ETA had claimed responsibility for the assassination. The court did not consider it proven that the two defendants played a role in the assassination.

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

At the Audiencia Nacional one person stood trial for his alleged role in the assassination of two police officers in Barcelona in December 1991. The victims had been talking to a shop owner, when two persons had entered the shop and shot multiple times at them. As a result, one of the officers had passed away instantaneously and the other died from his injuries on the way to the hospital. The defendant's fingerprints had been found in the car left behind by the assassins. His fingerprints had also been found on a van parked close to the Camp Nou football stadium. The weapon used for the assassination of the two police officers had also been found in the car. According to the prosecution, the defendant had been a member of ETA's *Ekaitz* command from 1991 until its dissolution in March 1992. The command had committed various terrorist acts in Barcelona before the Olympic Games in 1992. For the purposes of the present trial the defendant had been extradited from Mexico, where he had been residing under a false identity. The court found the defendant guilty of two counts of **terrorist attack resulting in death** and sentenced him to 60 years' imprisonment.

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

### April 2015

The Audiencia Nacional acquitted one defendant of **glorification of terrorism** in relation to an incident that had taken place in Vitoria in March 2014. The defendant owned a bar, where the police had found photographs and personal data of six persons convicted for their links with ETA. The photographs had been hanging on the wall and had the anagram of the banned organisation Gestoras Pro Amnistia, established to campaign for the release of ETA prisoners and support their interests, as well as the anagram of Euskal Preso Politikoen Kolektiboa (EPPK), the association that integrates and speaks for most of ETA prisoners. She had also possessed a map of France and Spain, showing the number of prisoners in penitentiary centres across both countries. The map had been handed over to the police. 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 appeared before the court in relation to her alleged involvement in a plot to send a package bomb targeting the Ministry of Justice in Madrid in June 1991. The plot had been carried through by a group of three unidentified persons, who had taken the package to a transportation company in Valladolid. It had been addressed to the deputy head of "Human Resources". As a sender, the perpetrators had indicated a non-existing company. As the package had been rejected by the recipient, it had been taken back to the Madrid office of the transportation company, which had contacted the police. The device had exploded as the authorities had tried to de-activate it, as a result of which two officers had lost their lives instantaneously and another one had passed away shortly after as a consequence of

his injuries. The prosecution had charged the defendant with **an attack with a terrorist objective**, three counts of **terrorist assassination**, one of which attempted, and **causing terrorist destruction**. The court found her guilty as charged and handed down a sentence of 119 years' imprisonment. The defence has submitted an appeal.

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

Three defendants were acquitted and two other were convicted by the Audiencia Nacional in relation to an investigation into alleged financing of ETA by means of collecting the so-called "revolutionary tax". The "tax" had been collected by sending letters to various businessmen and professionals who had been instructed to make contact with ETA in order to negotiate the amounts to be paid and the locations to do so. In case they would not make contact with ETA, they would receive a reminder warning them that if they would not comply with their obligations to pay, they, together with their property, would become ETA's targets. In the period between 2000 and 2006 one of the locations used by ETA to establish contact with the victims and receive payments had been a bar in Irun, close to the border with France. The bar's owner, who had passed away in 2014, had been responsible for those contacts. He had been receiving the letters that had to be sent to victims in Spain from members of ETA situated in France. According to the prosecution, one of the defendants had been distributing the letters and maintaining contact with the victims. The court found him guilty of **belonging to a terrorist group** and sentenced him to four years' imprisonment. Another co-defendant was convicted of **collaboration with a terrorist group** and handed down a sentence of two years and six months. Their defence has submitted an appeal. The decision of the court is final for the three acquitted persons.

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

The Audiencia Nacional sentenced one person to serve seven years in prison after it found him guilty of **possession of an explosive device** (in relation to the offence of collaboration with a terrorist organisation). He had been prosecuted for having provided an explosive device to members of the terrorist organisation Resistencia Galega. The device had been used in an attack against an ATM, which had taken place in Vigo in October 2011. It had been left in a bag close to the ATM by an identified person, together with a note saying "Danger. Bomb." The bag had been discovered by some youth, who had alarmed the police. The special team that had arrived had the device explode on the street causing damage to property in the vicinity. The defence has submitted an appeal.

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

One defendant appeared at the Audiencia Nacional charged for his alleged role in the fatal attack against a military officer that had taken place in November 1995. According to the prosecution, following orders by ETA, he had placed an explosive device under the victim's car. As a result of the explosion, the officer had suffered grave injuries leading to invalidity. The explosion had also caused psychological trauma to the victim's underage daughter and three friends of hers, who

had stepped out of the car shortly before the explosion. The attack had been claimed by ETA in a communication sent to a newspaper later the same month. The court found the defendant guilty of five counts of **attempted terrorist assassination**, one of which against a member of the armed forces, and sentenced him to a total of 100 years' imprisonment.

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

The Audiencia Nacional acquitted one defendant of **causing terrorist destruction and injuries**. She had been brought to court following an investigation into a bomb attack against the offices of the Basque Socialist Party in Bilbao that had taken place in April 2008. The bomb had been left at the gates of the building by a member of ETA's *Basaku* command. It had been put in a briefcase, with the label "Danger. Bomb". The upcoming explosion had been announced in a telephone call, allowing the police to cordon off the area. The explosion had resulted in serious damages to the offices of the political party, as well as other buildings and vehicles in the surrounding area. Several police officers had also been injured. The court did not consider it proven that the defendant had been involved in the attack.

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

### United Kingdom

#### February 2015

A 20-year old Serbian student was sentenced to three and half years in prison after he was convicted of **preparing for terrorist acts** in Syria. In December 2014 he had been found guilty of planning to join rebel forces in Syria. According to the prosecution, he had visited Syria in December 2013 and had been on his way back to fight there when he had been arrested at Heathrow airport on in May 2014. His defence lawyer had called for leniency, as the defendant was an "emotionally immature and naïve" man, misfortunate for being personally affected by two civil wars – in the Balkans and in Syria. In Syria, his extended family had suffered from atrocities during the conflict in the past few years. He claimed he had visited Syria in 2013 in order to collect his grandfather's belongings. He had been arrested after his fellow students in London had become aware of his radical views on Islam and his pictures posing with guns in Syria. In his laptop and telephone, the police had found photographs, videos, including a beheading video, and documents revealing his "extremist sympathies", as well as the fact that he had been fighting in Syria before and had the intention to return. At sentencing, the judge ordered his detention in a young offender institution.

*Source: The Guardian.*

At the Woolwich Crown Court one defendant pleaded guilty to **preparation of acts of terrorism, attendance to camp and weapons training, encouraging murder and unlawful possession of firearms** and was sentenced to 12 years' imprisonment and further five years on licence. In January 2014 he had left for Syria where he had joined Rayat al-Tawheed (RAT) – a militant group linked to the IS. He had stayed in Syria for several months. During this time, he

had engaged in armed activity and had been part of a social media campaign aimed at recruiting others from Britain. He had also been pictured posing with severed heads, automatic weapons and tanks. He had tried to come back to the United Kingdom undetected after an Instagram posting had announced his death. He had been arrested in Dover in June 2014 upon his return. His cousin, who had driven to Serbia to collect him and bring him back to the United Kingdom, was found guilty of **assisting an offender** and sentenced to 21 months' imprisonment. The same sentence was handed down to another co-defendant who had **provided him with funds** (*for further details, please see Chapter III. Judicial Analysis*).

Source: BBC.

### March 2015

An extended sentence of nine years' imprisonment, six of which in custody and three on extended licence, was handed down to one defendant who pleaded guilty to two counts of **engaging in conduct in preparation of terror acts**. He had been arrested in December 2013. During the police search at his home, evidence had been recovered revealing that he had funded the travel to Syria of his younger brother and another person and had been aware of their motivation to fight and join a terrorist organization. He had intended himself to travel to Syria but had not been able to leave as his family had taken away his passport. Knowing that his brother and two other persons had joined a terrorist group in Syria, he had received a list of items that they needed and started to purchase some of those items. He had also made some financial arrangements for his wife during his intended absence and applied for a replacement passport forging the countersignature on the application form.

Source: BBC.

A young woman was found guilty of two counts of **funding terrorism** and sentenced to 21 months' imprisonment on each count to run concurrently but suspended for two years. She was convicted in February at the Old Bailey, after the court found that she had supplied money to her boyfriend, who had left UK in July 2012 to join rebels fighting the government forces in Syria. According to the judge, the case was "exceptional", as the defendant had not been radicalised herself but had been deceived with promises for marriage and settling in Turkey. She had given her boyfriend a total of GBP 1 000, while he had been fighting in Syria, before he had dumped her in August 2013 for marrying someone else. Her co-defendant was found not guilty of four funding charges at the trial in February.

Source: *The Guardian*.

At a partially secret re-trial, a student was found not guilty of **preparation of acts of terrorism**. In 2014 he had been convicted of possession of a bomb-making manual and had to face re-trial for having allegedly plotted an IS-inspired terrorist attack (*for further details, please see TCM, issue 20*). He had started taking interest in IS some time ago. During a check, the police had found the address of a former prime minister in his car. A listening device had been placed in the car.



Among the conversations recorded was one regarding the purchase of a firearm. When he and his co-defendant had been arrested, they had been found to be in possession of almost identical SD memory cards concealed inside their iPhone cases. The cards contained a number of documents concerning explosives, including the five-page bomb-making manual. The police had also found traces of emails and Skype messages, as well as communications referring to “straps” (slang for firearms) and what is believed to be a reference to the 2008 Mumbai attack. In his defence, the man claimed he wanted to buy a gun, as he had planned to deal in drugs and believed he needed to protect himself.

*Source: The Guardian.*

### April 2015

One defendant brought to the Kingston Crown Court pleaded guilty to **disseminating terrorist material** and was sentenced to nine months’ imprisonment. He had been arrested in December 2013 after a police raid at his home. The raid had resulted in the discovery of extremist publications and records of hundreds of letters and gifts he had sent to convicted terrorists. One of those publications had been intercepted by prison staff before it had reached its recipient.

*Source: BBC.*



## 2. Other Court Decisions of Interest

### January - April 2015

#### Sweden

##### February 2015

At the Södertörn District Court a Syrian refugee was sentenced to five years' imprisonment after he was found guilty of abusing a captured member of the Syrian government forces. The man had received asylum in Sweden in 2013. He had joined the Free Syrian Army and together with some other men had assaulted an injured prisoner captured in fighting. The assault had been recorded and posted on Facebook. The man initially denied appearing in the video but had later confessed to the police. In court, the man had claimed that he had been forced to commit the assault. He had been charged with attacking an enemy who is defenceless, which is a war crime in Sweden. Swedish law allows its courts to prosecute people for war crimes even if they are committed abroad. The case is the first of this kind in relation to the conflict in Syria.

*Source: BBC.*

#### United States

##### March 2015

A jury at the Brooklyn Federal Court found one person guilty of providing material support to Al Qaida, conspiring to provide material support to Al Qaida, and conspiring to use a destructive device in relation to a crime of violence. At sentencing, he faces life imprisonment for his acts. The evidence presented to the court revealed that, together with others, he had been planning to execute an attack on a busy shopping mall in the heart of Manchester, the United Kingdom, in April 2009. The planned attack, targeting also the New York City subway system and a newspaper office in Copenhagen, Denmark, had been directed by and coordinated with senior Al Qaida leaders in Pakistan. Three other persons had already been convicted for their role in the plot.

*Source: FBI.*

##### April 2015

The federal jury found one of the two brothers responsible for the 2013 Boston marathon bombing guilty of 30 counts. The attack, which is the worst terrorist attack on American soil since 11 September 2001, killed three and injured more than 250 people. It was committed in retaliation for American-led wars in Iraq and Afghanistan. According to the defence, the younger of the two brothers was a misguided adolescent led by his domineering and malevolent older brother, who was obsessed with violent jihad. His lawyers called four witnesses, whilst the



government called for 92. Following the guilty verdicts, in the second phase of the trial the jury is to decide whether he will be sentenced to life imprisonment or to death.<sup>2</sup>

Source: *The New York Times*.

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<sup>2</sup> The outcome of the sentencing phase will be reported in the next issue of the TCM.

## II. Legal Update

January - April 2015

### 1. EU

#### European Parliament

##### February 2015

The European Parliament adopted resolution 2015/2530 of 11 February 2015 on anti-terrorism measures. The Resolution underlines the fact that terrorism and violent extremism are among the major threats to security and freedom of the EU and its citizens. The Resolution points out that strategies are needed to prevent and combat terrorism; the Council and the Commission are asked to endorse a renewed roadmap in this sector. These strategies should rely on a multifaceted approach aimed at directly countering the preparation of attacks on EU territory, and at integrating the need to address the root causes of terrorism. The Resolution calls for Internet and social media companies to work with governments, law enforcement authorities and civil society in order to combat the spreading of this phenomenon in cyberspace.

Member States should invest in schemes, which address the root causes of radicalisation, including educational programmes, social inclusion, dialogue, tolerance, understanding among different cultures and religions, and rehabilitation programmes. Member States are encouraged to exchange best practices on radicalisation in prisons and to set up specific programmes of disengagement, rehabilitation and deradicalisation. The Commission is asked to strengthen the Radicalisation Awareness Network (RAN) and the Council is asked to adopt a recommendation on national strategies for the prevention of radicalisation.

The Commission has been asked for a clear and common definition of 'EU foreign fighters' and the need for more specialised measures to tackle this problem has been underlined. The Resolution calls for Member States to make an optimal use of existing platforms, databases and alert systems at European level, such as the Schengen Information System (SIS) and the Advanced Passenger Information Systems (APIS). They are invited to step up judicial cooperation between them based on the available EU instruments, such as ECRIS, the European Arrest Warrant and the European Investigation Order.

Furthermore, the Resolution refers to the ongoing work on the finalisation of an EU PNR Directive, on the consequences of the Court of Justice's judgment on the Data Retention Directive, as well as on the Data Protection package. Member States should implement the Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of terrorism-related crime. Combating the trafficking in firearms is considered a priority.

Member States should strengthen external border controls and improve the exchange of information with law enforcement authorities and EU agencies, namely Europol and Eurojust. European agencies and national law enforcement authorities must combat the main sources of



revenue for terrorist organisations, including money laundering, human trafficking, and the illicit arms trade, also with a full implementation of EU legislation in this area. The Parliament stressed the need to:

- improve Europol's unique capabilities by ensuring that Member States' national units provide Europol with the relevant information;
- step up the effectiveness and the coordination of the criminal justice response through Eurojust;
- harmonise criminalisation of foreign fighter related offences across the EU;
- provide a legal framework and facilitate cross-border cooperation;
- avoid prosecution gaps;
- address the practical and legal challenges in the gathering and admissibility of evidence in terrorism cases, by updating Framework Decision 2008/919/JHA.

The Resolution calls for the EU to actively promote a global partnership against terrorism and to work closely with regional actors, such as the African Union, the Gulf Cooperation Council and the Arab League, and in particular with the countries which are neighbours of Syria and Iraq and countries that have been dramatically impacted by the conflict, such as Jordan, Lebanon and Turkey, as well as with the United Nations and notably its Counter-Terrorism Committee. It outlines also several other steps to be taken, e.g. the adoption of an EU external strategy for combating international terrorism, the revision of the EU strategy towards the southern Mediterranean as part of the ongoing European Neighbourhood Policy review, etc.

*Source: European Parliament.*

### European Council

#### March 2015

Council Decision (CFSP) 2015/521 of 26 March 2015 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2014/483/CFSP was adopted. The Annex of the Decision sets out the list of persons, groups and entities to which Articles 2, 3 and 4 of Common Position 2001/931/CFSP apply.

*Source: Official Journal of the European Union.*

Council Implementing Regulation (EU) 2015/513 of 26 March 2015 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 790/2014 was adopted. The Annex of the Decision sets out the list provided for in Article 2(3) of Regulation (EC) No 2580/2001.

*Source: Official Journal of the European Union.*

## European Commission

### January 2015

Commission Implementing Regulation (EU) 2015/64 of 16 January 2015 amending for the 224th 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 two entities under the heading 'Natural persons' and replacing seven other.

*Source: Official Journal of the European Union.*

### February 2015

Commission Implementing Regulation (EU) 2015/167 of 3 February 2015 amending for the 225th 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 four entities under the heading 'Natural persons'.

*Source: Official Journal of the European Union.*

Commission Implementing Regulation (EU) 2015/274 of 19 February 2015 amending for the 226th 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 entity under the heading 'Natural persons'.

*Source: Official Journal of the European Union.*

### March 2015

Commission Implementing Regulation (EU) 2015/480 of 20 March 2015 amending for the 227th 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 three entities, deleting another four and replacing one other entity under the heading 'Natural persons', as well as adding one entity under the heading 'Legal persons, groups and entities'.

*Source: Official Journal of the European Union.*

Commission Implementing Regulation (EU) 2015/532 of 30 March 2015 amending for the 228th 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 entity under the heading 'Natural persons'.

*Source: Official Journal of the European Union.*

### April 2015

Commission Implementing Regulation (EU) 2015/576 of 10 April 2015 amending for the 229th 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 entity and deleting another under the heading 'Natural persons'.

*Source: Official Journal of the European Union.*

Commission Implementing Regulation (EU) 2015/617 of 20 April 2015 amending for the 230th 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 entities under the heading 'Natural persons'.

*Source: Official Journal of the European Union.*

The Communication from the Commission to the European Parliament, the Council, European Economic and Social Committee and the Committee of the Regions – The European Agenda on Security was published. The European Agenda on Security sets out the actions necessary to deliver a high level of internal security in the EU in the next five years. It prioritises terrorism, organised crime and cybercrime as interlinked areas with a strong cross-border dimension, where EU action can make a real difference. The Commission invited the EU Institutions and Member States to take the Agenda as the basis for cooperation and joint action on security. It further invited the Council and the European Parliament to endorse the Agenda as the renewed Internal Security Agenda in view of the European Council meeting of 16 June 2015.<sup>3</sup>

*Source: European Commission.*

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<sup>3</sup> Negotiations are currently ongoing at the time of issuance of this TCM.

## 2. Member States

### Austria

#### February 2015

The Austrian Parliament adopted a new law, which prohibits Muslim organisations from receiving foreign funding and requires imams to be able to speak German in order to make their message more accessible and transparent, while also facilitating the integration of Islam into wider Austrian society. The law is intended as a tool to combat the risk of radical indoctrination of foreign origin. According to the Austrian Minister of Integration, the law promotes an “Islam of European character” by reducing the impact of foreign Muslim nations and organisations, and offering Austrian Muslims a mix of increased rights and obligations in practising their faith in the central European country. It recognises the right of Muslims to consult Islamic clerics working in hospitals, retirement homes, prisons and in the armed forces, as well as their right to halal meals in those institutions and in public schools, and to have a day off on Islamic holidays. The law requires also the nearly 450 Muslim organisations in Austria to demonstrate a “positive approach towards society and the state” in order to continue receiving official licensing.

*Source: The Local.*

### Germany

#### April 2015

On 24 April 2015 the Bundestag adopted legislation supplementing the existing provisions on the financing of terrorism and criminalising the act of travelling for terrorist purposes. This legislation introduces a new subsection (2a) in section 89a of the German Criminal Code (StGB) expressly criminalising travel, as well as the attempt to travel, with the intention of committing a serious violent act endangering the State, or of providing or undergoing training for the purpose of committing such an offence. The new provision will ensure that those who travel – or intend to travel – to relevant conflict areas with such intentions, will not only be criminalised but also can be stopped and arrested before they leave Germany. The sentence is six months to ten years’ imprisonment.

As far as the financing of terrorism is concerned, the same law removes number 4 of subsection (2) in Section 89a StGB and replaces it with a new section 89c, which makes the financing of terrorism a separate offence. The provision no longer includes a threshold of “not unsubstantial assets” and thus is applicable to any collection and provision of funds with the intention that they should be used for terrorist acts, or in the knowledge that they are to be used for terrorist acts. Section 89c contains a catalogue of provisions that define these terrorist acts in order to cover the offences falling within the scope of Article 2 (1) of the International Convention for the Suppression of the Financing of Terrorism and defined in one of the treaties listed in the annex to the Convention.



The wording of the recently drafted section 89c StGB does not require that funds be linked to a concrete terrorist act. It is not a requirement that such an act is even attempted. However, a recent decision by the Bundesgerichtshof (Federal Court of Justice) concerning the criminalisation of preparatory terrorist acts indicates that the person providing the funds would have to be aware that the payee intended to use the funds for a terrorism-related purpose. This new provision will also criminalise the financing of terrorist travel in conjunction with the new subsection (2a) of section 89a StGB. For all financing offences covered by this section, the sentence is six months to ten years' imprisonment. The financing of terrorism may also be subject to other already existing provisions, e.g. supporting a terrorist organisation (sections 129, 129a StGB) or aiding and abetting (section 27 StGB).

*Source: National Desk of Germany at Eurojust.*

### Italy

#### April 2015

In April 2015 Law No. 43 enacting the law-decree of 18 February 2015 was adopted. It provides for measures against terrorism in compliance with the principles mentioned in the Operational Paragraph 6 of the UN Security Council Resolution 2178 (2014) and in Council Framework Decision 2008/919/JHA. The Law makes it a crime to take part in a conflict abroad in support of a terrorist organisation. It envisages a prison term of between five and eight years for those who are recruited for terrorist purposes, as well as those who organise, finance or promote travel with the purpose of committing terrorist acts. It provides for punishment on persons found guilty of training themselves in terrorist methods on their own and carrying out terrorist acts. Penalties are increased when the acts are performed through digital or telecommunications instruments. The Law punishes also those who, without legal authority, introduce or provide within the national territory substances or mixtures that serve as precursors of explosives. The mentioned provisions concern criminal conducts that are not necessarily linked to a specific terrorist act.

The Law gives the right to the prosecution to temporarily withdraw suspects' passports during criminal proceedings. The measure must be validated by the president of the provincial court of the place where the accused resides. It further allows for imposing travel bans, as well as for expulsion and prevention of re-entry into Italy. The law authorizes the President of the Council of Ministers, through the General Director of the Department for Security Information, to allow the directors of Italian security agencies to interview detainees for the sole purpose of acquiring information to prevent terrorist crimes of an international character. It also extends the application of tools already used for organised crime to cover terrorist offences. They include, for example, the extensive possibility to set up preventive interceptions (to be used without and before any criminal proceeding, but with judicial authorisation) and the possibility to store IT data, even if collected abroad. The Law envisages that the Postal and Communications Police will maintain a black list of Internet sites, which are used to commit terrorist crimes. Upon request of judicial authorities and the Postal and Communications Police, Internet providers must block



websites and remove illegal content linked to terrorist crimes. Furthermore, the powers of the Italian police to gather personal data that is directly related to preventing the perpetration of terrorist crimes are extended. Members of the Italian armed forces could also be qualified as agents of public security, upon authorisation by the government, in order to enable them to exercise preventive police functions in relation to acts of terrorism.

*Source: National Desk of Italy at Eurojust/Library of Congress.*

## Latvia

### February 2015

In February 2015 the Latvian Parliament, the Saeima, approved amendments in the Criminal Code, which entered into force on 19 February 2015. The amendments concern Articles 77.<sup>1</sup>*Unlawful participation in an armed conflict*, 77.<sup>2</sup>*Financing of an armed conflict* and 77.<sup>3</sup>*Recruitment, training and sending to an armed conflict*. They envisage punishment of imprisonment for a term up to ten years and probation supervision for up to three years for those who unlawfully participate in an armed conflict, i.e. an armed conflict taking place outside the territory of the Republic of Latvia and directed against a State's territorial integrity or political independence, or is otherwise contrary to the international law binding on the Republic of Latvia, the laws of the Republic of Latvia or binding international agreements. The same punishment is envisaged for those who directly or indirectly collect for, or transfer to, a party involved in an armed conflict abroad, financial means or other property, if the activities of that party are directed against the territorial integrity or political independence of a state, or are otherwise contrary to international law binding on the Republic of Latvia; the provision is also applicable in cases when the financial means or other property are collected for recruitment, training or sending a person to unlawfully participate in an armed conflict abroad. Imprisonment for a term up to eight years and probation supervision for up to three years is envisaged for those who recruit, train or send a person to unlawfully participate in an armed conflict outside the territory of the Republic of Latvia.

*Source: National Desk of Latvia at Eurojust.*

## Malta

### March 2015

The Maltese Parliament adopted Acts III and VIII of 2015, amending the Criminal Code and implementing UN Security Council Resolution 2178(2014). The Acts amend the definition of acts of terrorism and terrorist activities (Articles 328A et seq.). They now include the travel or attempt to travel for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist activities, or the providing or receiving of training in terrorist activities, as well as the financing, organisation or other facilitation of such travel. It includes acts of recruitment but also the production, distribution, dissemination, import, export, selling,



transmitting, procuring, etc., for oneself or for another, a publication likely to encourage or induce the commission of terrorist activities or likely to be useful in the commission of such activities. With Act III of 2015 the Parliament strengthened the existing terrorism-related offences and broadened the scope of the existing provisions not merely to acts of terrorism but also to activities that are linked, directly or indirectly, to acts preparatory or conducive to terrorist offences.

*Source: National Desk of Malta at Eurojust/Times of Malta.*

### The Netherlands

#### March 2015

The District Court of The Hague struck down the 2009 Telecommunications Data Retention Act, which requires telephone and Internet service providers to save the traffic and location data of their users for 12 months. According to the court, the Act violated the right to respect for private life and the right to protection of personal data, in contravention of the Charter of Fundamental Rights of the European Union, and this infringement was not limited to the minimum necessary. The suspended Act is based on the European Union Data Retention Directive, invalidated by the Court of Justice of the EU in 2014, which ruled that the Directive violated fundamental privacy rights. According to the District Court of The Hague, the Telecommunications Data Retention Act did not make data access by the authorities subject to review by a court or administrative agency. The court also found there were no safeguards to effectively restrict access to information to what was strictly necessary for the fight against only serious crime. The Court raised objections to the retention of all traffic and location data for six to 12 months, regardless of the purpose, as well as to the retention periods as required by the Data Retention Directive. In the opinion of the court, there was no distinction depending on the usefulness, the objective pursued, or the persons involved and no objective criteria were provided to restrain the storage time limits to what was strictly necessary. The court declared the Act inoperative. The decision of the court could be appealed by the government, which had already proposed to revise the Act through the adoption of stricter data access rules.

*Source: Library of Congress.*

### Spain

#### March 2015

The Spanish Parliament adopted amendments in the Criminal Code, which, *inter alia*, introduce in Article 578.4 the possibility for a judge or a court to order the destruction of books, archives, documents, etc., by means of which an offence has been committed. In case information and communication technologies or services or content accessible via Internet have been used to commit an offence, the content may be removed and services withdrawn. Hosting companies may also be ordered to remove illegal content; search engines may be compelled to remove links

to such content and providers of electronic communication services may be obliged to prevent access to the content or illegal services. The above-mentioned measures may be ordered by the investigating judge as preventive measures during the investigation phase.

Furthermore, the amendments make the accessing of communication services with terrorist content also a terrorist offence. Article 575.2 refers to those, who with the objective to train in order to commit a terrorist offence, carry out on their own one of the activities referred to in this section. It is also considered a terrorist offence to access on a regular basis one or more communication services, available publicly or via the Internet, with content intended to incite membership in or collaboration with a terrorist group or organisation. The acts will be considered carried out in Spain, if the content is accessed from the Spanish territory. The amendments make it a crime to obtain or have in one's possession, with the same objective, documents with content intended to incite membership in or collaboration with a terrorist group or organisation. The amendments will enter into force on 1 July 2015.

*Source: National Desk of Spain at Eurojust.*

## United Kingdom

### February 2015

The Counter-Terrorism and Security Act 2015 received Royal Assent on 12 February 2015. The Act strengthens powers to place temporary restrictions on travel where a person is suspected of involvement in terrorism. It enhances the existing Terrorism Prevention and Investigation Measures to monitor and control the actions of individuals in the United Kingdom who pose a threat. It enhances also law enforcement's ability to investigate terrorism and serious crime by extending the retention of relevant communications data to include data that will help to identify who is responsible for sending a communication on the Internet or accessing an Internet communications service. It strengthens security arrangements in relation to the border and to aviation, maritime and rail transport. The Act reduces the risk of people being drawn into terrorism, by enhancing the programmes that combat the underlying ideology, which supports terrorism through improved engagement from partner organisations and consistency of delivery. It amends existing terrorism legislation to clarify the law in relation to both insurance payments made in response to terrorist demands and the power to examine goods under the Terrorism Act 2000. It also strengthens the independent oversight arrangements for UK counter-terrorism legislation by extending the statutory remit of the Independent Reviewer of Terrorism Legislation and enabling a more flexible reporting schedule; it provides also for the creation of a Privacy and Civil Liberties Board to support the Independent Reviewer to discharge his statutory functions.

*Source: National Desk of the United Kingdom at Eurojust/[legislation.gov.uk](http://legislation.gov.uk)*



### March 2015

The Serious Crime Act 2015 received Royal Assent on 3 March 2015. It gives effect to a number of legislative proposals set out in the Serious and Organised Crime Strategy published in October 2013. Section 81 of the Act provides for extra-territorial jurisdiction for offences under Section 5 of the Terrorism Act 2006 (engaging in any conduct in preparation for giving effect to an intention to commit, or assist another to commit, one or more acts of terrorism) and extends the existing extra-territorial jurisdiction of the Section 6 offences (providing or receiving training for terrorism). As a result, a person who does anything outside of the United Kingdom, which would constitute an offence under Section 5 or 6, could be tried in the UK courts in case they return to the country.

*Source: National Desk of the United Kingdom at Eurojust/gov.uk*

## 3. Other

### Council of Europe

#### April 2015

The Plenary Committee of Experts on Terrorism (CODEXTER) approved the draft Additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism, as well as its Explanatory Report and Abridged Report. The draft Additional Protocol contains a set of legally-binding international standards to help tackle so-called "foreign terrorist fighters". Once adopted, the Protocol will require countries to outlaw various actions including intentionally taking part in terrorist groups, receiving terrorism training or travelling abroad for the purpose of terrorism. The Protocol takes into consideration UN Security Council Resolution 2178 (2014) of 24 September 2014, which calls on states to take certain steps to address the foreign terrorist fighters threat, including to prevent suspected foreign terrorist fighters from entering or transiting their territories, to implement legislation to prosecute foreign terrorist fighters and to undertake various steps to improve international cooperation in this field, such as sharing information on criminal investigations, interdictions and prosecutions. The Protocol envisages also the creation of a 24/7 network of national contact points to rapidly exchange information. Later in the same month, the Parliamentary Assembly of the Council of Europe adopted an opinion on the draft Additional Protocol.<sup>4</sup>

*Source: Council of Europe.*

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<sup>4</sup> The Additional Protocol, a political declaration and a three-year action plan were adopted at the 125<sup>th</sup> session of the Council of Europe's Committee of Ministers, which took place in Brussels in May. Further details on the measures included in the Additional Protocol will be provided in the next issue of the TCM.

### III. 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.*

**1) Procedure:** Higher Regional Court Frankfurt am Main, Germany (Case 5 – 2 StE 5/14-3-1/14)<sup>5</sup>

**Date of decision:** 5 December 2014 (in force since 13 December 2014)

#### Introduction

The Higher Regional Court Frankfurt sentenced a German man, who had joined Islamic State militants, to a juvenile sentence of three years and nine months for membership in a foreign terrorist organisation, in the first trial of its kind in Germany.

According to open sources<sup>6</sup> Germany's domestic intelligence service believes about 600 German nationals have joined the jihad fighting for the Islamic State in Iraq and the Levant (ISIL – now IS), 60 have died there in combat or suicide attacks, and 180 have returned to Germany. IS is thought to have attracted hundreds of recruits from European countries in its battle to establish what it describes as a "caliphate", spanning a borderless stretch of Syria and Iraq.

#### The facts

The defendant was born to parents from Kosovo and grew up in Frankfurt. He was radicalized in 2011, after he entered a vocational school, where he became part of a group of about 15 young men who aspired to join an armed holy war. On 2 July 2013, he travelled by bus to the Turkish city of Istanbul, where he and six others were picked up by IS recruiters and taken to Syria.

In Syria, he joined IS fighters who trained him how to operate an assault rifle and a pistol. He also served as an IS guard, manned road blocks and received paramedic training. He participated in an armed fight near the city of Hama with about 1.000 IS militants, and joined in two additional battles although never on the front lines. All the while, the defendant stayed in phone

<sup>5</sup> The Case Analysis Unit would like to thank the National Desk of Germany at Eurojust for kindly providing a copy of the judgment.

<sup>6</sup> *ICSR Insight: German foreign fighters in Syria and Iraq*, ICSR, Department of War Studies, King's College London, January 2015, available at <http://icsr.info/2015/01/icsr-insight-german-foreign-fighters-syria-iraq>.

and Skype contact with his family, who had begged him to come home. His family's pleas motivated the defendant to detach from ISIL and return to Germany, as well as his discontent that jihadist groups fighting the regime of Syrian President Bashar al-Assad were battling each other. He travelled back to Turkey where a relative met him, then flew to Frankfurt. Alerted by his family, German authorities arrested the defendant when he landed at the Frankfurt airport on 12 December 2013.

On 13 December 2013, he was taken in pre-trial detention on the basis of an Arrest Warrant issued by the investigating judge of the Local Court (*Amtsgericht*) Frankfurt, dated 13 December 2013; on 7 March 2014, the pre-trial detention continued on the basis of an Arrest Warrant issued by the investigating judge at the Federal High Court (*Bundesgerichtshof*).

### Jurisdiction

Article 129b of the German Criminal Code establishes German jurisdiction for terrorist organisations abroad. If the offence relates to an organization outside the Member States of the European Union, this shall not apply unless the offence was committed by way of an activity exercised within the Federal Republic of Germany or if the offender or the victim is a German or is found within Germany. In addition, in those cases the Federal Ministry of Justice has to authorise the prosecution. On 18 March 2014, the Federal Ministry of Justice provided an authorisation according to Article 129b (1) 3rd sentence of the German Criminal Code to prosecute members or supporters of ISIL, when the above mentioned conditions are met.

### The evidence

The facts on the personal situation of the accused were established on the basis of credible statements of the defendant, a report of a representative of the Juvenile Court Assistance System and an extract of the German Federal Central Criminal Register.

The deliberations in the verdict on the genesis and development, goals, organisational and leadership structure, methods and previous attacks of ISIL are based on a statement given during the trial by a renowned Islamic expert who had provided his expertise in several proceedings and is active in the field of documentation, analysis and evaluation of Islamic terrorism since years. The Court considered the expertise to be impartial, consistent, convincing and well comprehensible. The sources of information were named.

For the facts of the convicted crime the confession of the defendant, a credible witness statement of a relative of the defendant and intercepted telephone, chats and skype conversations were taken into account. The protocols of the interceptions were read out loud during the trial or audio records were played. In addition, some protocols of the telephone, chats and skype interceptions were introduced as evidence in the so-called *Selbstleseverfahren* according to Article 249 (2) of the German Code of Criminal Procedure, which states that 'the reading may be

dispensed with if the judges and the lay judges have taken cognizance themselves of the wording of the certificate or the document and the other participants have had an opportunity to do so’.

Furthermore, the senate watched a propaganda video produced by ISIL and published under the title “A book that guides, a sword that wins – media reporting from a tent in Dawa in the province Aleppo”.

### Limited prosecution according to Article 154a of the German Code of Criminal Procedure

Article 154a of the German Code of Criminal Procedure states that the prosecution may be limited to the remaining parts of the act if certain parts of one act or several of multiple infractions committed through the same act, do not carry weight compared to the expected sentence or measure of reform and prevention.

In the given case, the Court senate with the consent of the Prosecutor General decided to discontinue the prosecution of the ‘Preparation of a serious violent offence endangering the state’ as regulated in Article 89a of the German Criminal Code (which penalises, *inter alia*, receiving instructions in the use of a firearm and obtaining of a weapon) and to limit the prosecution in accordance with Article 154a of the German Code of Criminal Procedure to membership in a foreign terrorist organisation.

### The prosecution case

According to open sources, the defendant was offered a deal by the prosecutors, where he would receive a lighter sentence in exchange for confessing and providing information about the inner workings of the group. The prosecution had asked for a sentence of four years and three months.

### The sentence

The Court sentenced the defendant to a juvenile sentence of three years and nine months for **membership in a foreign terrorist organisation**. The legal provisions, indicated as applicable in this case, included Articles 129a (1) No.1, (2) No. 2, 129 b (1) sentences 1 and 2 of the German Criminal Code and Articles 17 (2), 74, 105 (1) and 109 (2) of the German Youth Courts Law. The German Criminal Code in connection to the German Youth Courts Law foresees a penalty of six months to 10 years.

The Court argued that an overall assessment of the defendant’s personality, taking account of his living environment, demonstrates that at the time of the act he was still equivalent to a youth in terms of his moral and intellectual development and that he therefore falls under **Juvenile Law**.

The defendant had committed the convicted crime from the time he was 19 years and two months old until he was 19 years and seven months old. He therefore was considered as a 'young adult' according to Article 1 (2) of the German Youth Courts Law.

The Court observed that as youngest child and only son growing up in an intact family, the defendant never had to take responsibility for himself and others. He was a pupil and lived with his parents without any tendencies leaning towards autonomy. The defendant has not completed a professional education and has never tried to have his own gainful employment. Only with his decision to travel to Syria to join the armed Jihad the defendant has made a conscious decision impacting the course of his life. However, also this decision was not taken by the defendant autonomously, but as member of a group of seven like-minded young men. This would be a typical behaviour of a young adult. Being a youth, he could not willingly escape from the influence of his islamist-jihadist minded friends. His behaviour was characterised by increased willingness to adapt and to be obedient, which shows his lack of maturity during the time of the crime. He stayed emotionally connected with his family and was contacting them pro-actively in phone calls and internet-chats, in which he expressed himself defiantly as it is typical of juveniles. In addition, his defiant behaviour at the beginning of the trial showed signs of late puberty.

A youth penalty had to be imposed in accordance with Article 17 (2) of the German Youth Courts Law given the seriousness of the youth's guilt. Even though the contribution of the defendant to the dangerous nature and military power of ISIL was relatively small, he was a member of the armed Jihad of ISIL, which includes terrorist attacks resulting in numerous deaths and injuries.

The Higher Regional Court of Frankfurt took a series of mitigating and aggravating factors into consideration. In its findings on **mitigating factors**, the court noted that the defendant had offered a full confession and cooperated during the trial and thereby contributed significantly to speed up the proceedings, that he had no criminal record, that the timeframe in which the defendant was a member of ISIL was relatively short (5 months), that he voluntarily left ISIL and that he returned to Germany in the knowledge that he would be prosecuted.

As **aggravating factor** the Higher Regional Court of Frankfurt highlighted the special hazardous nature of ISIL as terrorist organisation, which committed terrorist attacks and armed operations in Syria and Iraq causing widespread death and injury.

\* \* \*

### Official translation of the relevant legal provisions

#### German Criminal Code

##### Section 129a Forming terrorist organisations

(1) Whoever forms an organisation whose aims or activities are directed at the commission of



1. **murder under specific aggravating circumstances (section 211), murder (section 212) or genocide (section 6 of the Code of International Criminal Law) or a crime against humanity (section 7 of the Code of International Criminal Law) or a war crime (section 8, section 9, section 10, section 11 or section 12 of the Code of International Criminal Law); or**

2. crimes against personal liberty under section 239a or section 239b,

3. (repealed)

or whosoever participates in such a group as a member shall be liable to imprisonment from one to ten years.

(2) The same penalty shall be incurred by any person who forms an organisation whose aims or activities are directed at

1. causing serious physical or mental harm to another person, namely within the ambit of section 226,

2. committing offences under section 303b, section 305, section 305a or offences endangering the general public under sections 306 to 306c or section 307(1) to (3), section 308(1) to (4), section 309(1) to (5), section 313, section 314 or section 315(1), (3) or (4), section 316b(1) or (3) or section 316c (1) to (3) or section 317(1),

3. committing offences against the environment under section 330a(1) to (3),

4. committing offences under the following provisions of the Weapons of War (Control) Act: section 19 (1) to (3), section 20(1) or (2), section 20a(1) to (3), section 19 (2) No 2 or (3) No 2, section 20(1) or (2), or section 20a(1) to (3), in each case also in conjunction with section 21, or under section 22a(1) to (3) or

5. committing offences under section 51(1) to (3) of the Weapons Act;

or by any person who participates in such a group as a member, if one of the offences stipulated in Nos 1 to 5 is intended to seriously intimidate the population, to unlawfully coerce a public authority or an international organisation through the use of force or the threat of the use of force, or to significantly impair or destroy the fundamental political, constitutional, economic or social structures of a state or an international organisation, and which, given the nature or consequences of such offences, may seriously damage a state or an international organisation.

(3) If the aims or activities of the group are directed at threatening the commission of one of the offences listed in subsection (1) or (2) above, the penalty shall be imprisonment from six months to five years.

(4) If the offender is one of the ringleaders or hintermen the penalty shall be imprisonment of not less than three years in cases under subsections (1) and (2) above, and imprisonment from one to ten years in cases under subsection (3) above.

(5) Whosoever supports a group as described in subsections (1), (2) or (3) above shall be liable to imprisonment from six months to ten years in cases under subsections (1) and (2), and to imprisonment not exceeding five

years or a fine in cases under subsection (3). Whosoever recruits members or supporters for a group as described in subsection (1) or subsection (2) above shall be liable to imprisonment from six months to five years.

(6) In the cases of accomplices whose guilt is of a minor nature and whose contribution is of minor significance, the court may, in cases under subsections (1), (2), (3) and (5) above, mitigate the sentence in its discretion (section 49(2)).

(7) Section 129(6) shall apply mutatis mutandis.

(8) In addition to a sentence of imprisonment of not less than six months, the court may order the loss of the ability to hold public office, to vote and be elected in public elections (section 45(2) and (5)).

(9) In cases under subsections (1), (2) and (4) above the court may make a supervision order (section 68(1)).

#### **Section 129b Criminal and terrorist organisations abroad; extended confiscation and deprivation**

(1) **Section 129 and section 129a shall apply to organisations abroad. If the offence relates to an organisation outside the member states of the European Union, this shall not apply unless the offence was committed by way of an activity exercised within the Federal Republic of Germany or if the offender or the victim is a German or is found within Germany.** In cases which fall under the 2nd sentence above the offence shall only be prosecuted on authorisation by the Federal Ministry of Justice. Authorisation may be granted for an individual case or

in general for the prosecution of future offences relating to a specific organisation. When deciding whether to give authorisation, the Federal Ministry of Justice shall take into account whether the aims of the organisation are directed against the fundamental values of a state order which respects human dignity or against the peaceful coexistence of nations and which appear reprehensible when weighing all the circumstances of the case.

(2) Section 73d and section 74a shall apply to cases under section 129 and section 129a, in each case also in conjunction with subsection (1) above.

### German Youth Courts Law

#### Section 17 Form and conditions

(1) “Youth penalty” shall mean deprivation of liberty in a facility provided for its execution.

(2) The judge shall impose youth penalty if, as a result of the harmful inclinations demonstrated by the youth during the act, supervisory measures or disciplinary measures are not sufficient for the purposes of supervision or if such a penalty is necessary given the seriousness of the youth’s guilt.

#### Section 74 Costs and expenses

The imposition of costs and expenses on the defendant may be dispensed with in proceedings against a youth.

#### Section 105 Application of youth criminal law to young adults

(1) Where a young adult engages in misconduct punishable under the provisions of general law, the judge shall apply the provisions applicable to a youth set out in sections 4 to 8, section 9, number 1, sections 10 and 11, and 13 to 32, *mutatis mutandis* if:

1. the overall assessment of the perpetrator’s personality, taking account of his living environment, demonstrates that at the time of the act he was still equivalent to a youth in terms of his moral and intellectual development, or
2. the type, circumstances and motives of the act indicate that it constituted youth misconduct.

(2) Section 31, subsection 2, first sentence, and section 31, subsection 3, shall also be applied even if the young adult has already been convicted with legal effect according to the provisions of general criminal law for part of the criminal offences.

(3) The maximum period of youth penalty applicable to young adults shall be ten years.

#### Section 109 Procedure

(1) Of the provisions on criminal proceedings against youths (sections 41 to 81a) sections 43, 47a, section 50, subsections 3 and 4, section 68, numbers 1 and 3, and section 73 and section 81a, shall apply *mutatis mutandis* to proceedings against a young adult. The youth court assistance service and, in appropriate cases, also the school shall be informed of the initiation and outcome of the proceedings. They shall inform the public prosecutor if they become aware that other criminal proceedings are pending against the person charged with the offence. The public may be excluded if this is apposite in the young adult’s interest.

(2) If the judge applies youth criminal law (section 105), section 45, section 47, subsection 1, first sentence, numbers 1, 2 and 3, and section 47, subsections 2 and 3, sections 52, 52a, section 54, subsection 1, sections 55 to 66, subsection 74, subsection 79, subsection 1, and section 81, shall apply *mutatis mutandis*. Section 66 shall also be applied if no single set of measures or youth penalty has been established pursuant to section 105, subsection 2. Section 55, subsections 1 and 2, shall not be applied if the decision was taken in accelerated proceedings under general procedural law. Section 74 shall not apply in the context of a ruling on the expenses of the aggrieved party in accordance with section 472a of the Code of Criminal Procedure.

(3) Section 407, subsection 2, second sentence, of the Code of Criminal Procedure shall not be applied in proceedings against a young adult.

## 2) Procedure: Woolwich Crown Court, United Kingdom (Sentencing Remarks)

**Date of decision:** 6 February 2015

### Introduction

The Woolwich Crown Court has sentenced a man (defendant A) to a twelve years custodial sentence pursuant to a plea of guilty to the charges of preparing terrorist acts, receiving terrorist training, attending a training camp and possessing firearms. He was found to have joined the Islamic State in Syria for several months and participated in the production of multiple images and videos in order to recruit British jihadis. Two other individuals, defendants B and C, were tried and convicted for having helped defendant A with his terrorist activities.

According to open sources, this case is the most serious Syria-related terrorism conviction to date in the United Kingdom<sup>7</sup>. Other open sources estimate that 200-350 British citizens have travelled to Syria with the intention of becoming fighters<sup>8</sup>.

### The facts

#### *Radicalising and travelling to Syria*

Defendant A (27 years) was born in the United Kingdom and grew up in west London. Over the last years, he had been showing an increasing interest in Islamic jihadist material. He shared videos in 2011, 2012 and 2013, by way of tribute and glorifying Islamic martyrs. In 2014 he had become – in his eyes - sufficiently radicalised and decided to travel to Syria to train as a terrorist. The court found that this was something defendant A had been planning for a long time.

Between 6 January 2014 and 17 January 2014, in preparation of this event, the defendant withdrew a substantial amount of money from his bank account and he underwent some physical training. A close friend, defendant C, withdrew money from his bank account and gave it to defendant A for terrorist purposes.

Between 25 January 2014 and 18 March 2014 he travelled between Kurdistan, Turkey, Serbia and Syria. From 18 March 2014 onwards he stayed in Syria for a period of 2 ½ months before making arrangements to return to the United Kingdom on 3 June 2014. On that very same date, he was arrested along with defendant B upon seeking to pass through the immigration control in the United Kingdom.

#### *Training in Syria*

Whilst in Syria, defendant A did not only receive terrorist training, but he also took part in the production of images and films designed to promote IS and to encourage UK Muslims to join them in jihad. These films were published by a London based insurgent group. The first images were published in March 2014, comprising a group of men, including defendant A, in front of an

<sup>7</sup> <http://www.bbc.com/news/uk-31166062>

<sup>8</sup> <http://icsr.archivestud.io/2013/10/british-foreign-fighters-in-syria/>

anti-aircraft gun mounted on a camouflaged truck under a title that glorified Islamic jihadism. This type of images and videos (among which a “particularly disturbing” video in which he held up two severed human heads) continued to be published over the following three months. All the while, he stayed in contact with his sister who was repeatedly requesting him to return to the United Kingdom, but instead he repeatedly sent her images of himself and others with weaponry. Later, he instructed her to delete his communications “in order to seek to frustrate any subsequent investigation” into his activities.

Defendant A was also in contact with defendant B, sending him similar imagery. Defendant A asked defendant B to send him money and a new mobile phone for terrorist purposes. Although defendant B never refused to send this to A, he never did so. Defendant B wanted defendant A to return to the United Kingdom.

### *Returning from Syria*

Towards the end of May 2014, defendant A started to make arrangements for his return to the United Kingdom. In doing so, he contacted defendant B who agreed to facilitate part of that journey. A fourth person maintained contact with defendant C in order to prepare defendant A’s return. This fourth person made it clear that defendant A’s return should be kept secret as the defendants wanted everyone to believe that defendant A had died. On the day defendant A returned to Turkey, the insurgent group posted an image on social media, stating that defendant A had died.

Defendant B hired a motor vehicle and left the United Kingdom on 30 May 2014 to drive to Bulgaria. Defendant A re-entered Turkey on 1 June 2014. On 3 June 2014 he met up with defendant B and drove back to the United Kingdom. Later on that day, when seeking to pass through immigration control, both defendants were arrested by the police. Defendant C was arrested on 14 August 2014.

## **The prosecution case**

After the arrest, both defendant A and B declined to answer questions in the course of the subsequent police interviews, as did defendant C who was arrested one month later. By 15 August 2014, there had already been a number of court appearances by the first two accused. On 31 July 2014 the case had been fixed for a trial to take place in January 2015.

Although the prosecution had finished all of their serving evidence by September 2014, defendant A entered “acceptable pleas of guilty to the indictment” on 12 December 2014. He admitted to preparing terrorist acts, receiving terrorist training, attending a camp and possessing firearms. On 23 December 2014 and 20 January 2015, the other two defendants also entered a plea agreement, and each received a sentence of 21 months imprisonment.

## The evidence

The Court based its findings on the following evidence.

Firstly, the Court found that Defendant A's interest in the material of an Islamic jihadist nature which was found to have been in his possession prior to his departure to Syria was "sufficiently profound" for him to decide to travel to Syria in order to train for jihad. The Court reached this finding by looking at the evidence presented from the defendant's Facebook account, which confirmed that he had interest in that material for a significant period of time prior to making his decision to travel to Syria to support for jihad and the Islamic state, and that decision came after a "long gestation".

In relation to the physical training which defendant A undertook prior to his departure to Syria, the Court was satisfied that – at some point prior to his departure – this had become linked to the jihadist cause. Once again, the Court relied on electronic evidence to reach this finding, which included video and footage material obtained from Defendant A's laptop that contained a film glorifying jihad and showing images of Defendant A engaging with others in physical training in the United Kingdom.

With regard to the publication of the various promotional images and films over the internet glorifying the jihad, the Court found that Defendant A was "personally involved in their production from a very early point after [his] arrival in Syria", and that their contents clearly show that he was "anything but a willing and enthusiastic participant in their production".

The Court acknowledged Defendant A's admissions – as part of his guilty plea – to the effect that, during the period in which he was in Syria, he undertook terrorist training, which included being trained in the use of the firearms.

The Court further found that the evidence presented at trial, including the communications with his sister, suggested that defendant A was in the combat zones in Syria and assisted those who had recently returned from fighting on the front line to the base which he shared with them. The Court, however, was not satisfied that there was sufficient evidence with regard to defendant A's having actually taken part in the "combat itself, as opposed to its assistance and glorification".

Finally, the Court concluded defendant A to be considered a "dangerous offender", on account of his character, his role in these offences and the assessment of his cognitive abilities by the consultant clinical psychologist. In the Court's opinion, defendant A poses a significant risk to members of the public of serious harm. In this regard, the Court recalled the evidence that defendant A was involved in both the preparation for and return from a significant period of terrorist training in Syria, which was designed and carried out with a degree of professionalism; and that he undertook training in close proximity to a combat zone in which he voluntarily lent assistance to those who were involved in the fighting, during which he took an active and enthusiastic part in producing jihadist promotional material, some of which was of a profoundly disturbing nature, knowing and intending that it would be used to seek to persuade others within the UK to join the jihadist cause of the Islamic State.

### The sentence

#### *Applicable Law*

All defendants were charged with and eventually pleaded guilty to offences concerning terrorism, either directly or indirectly. In this regard, the Court applied a number of sentencing principles that have emerged from cases which have previously been considered by the Court of Appeal Criminal Division. In particular, the Court reaffirmed the principle according to which it makes no difference to the seriousness of the offence whether the intended acts of terrorism were to take place in this country or abroad. It further held that in most cases of terrorism the element of culpability will be extremely high, that the purpose of sentence for the most serious terrorist offences will be to punish, deter and incapacitate and, the starting point for an inchoate offence is the sentence that would have been imposed, if the objective had been achieved.

In addition to above-mentioned sentencing principles, the Court applied the relevant statutory provisions which must be considered in this case, over and above the general principles provided by the Criminal Justice Act 2003 and the maximum available sentences in respect of each offence. In this regard, defendant A's was charged with and pleaded guilty to "specified violent offences" within Chapter 5 of Part 12 of the Criminal Justice Act 2003, including offences which carry the maximum sentence of life imprisonment pursuant to section 225, or have maximum sentences of 10 and 15 years respectively, pursuant to section 226A.

#### *Defendant A*

In determining the nature and length of defendant A's sentence, the Court had regard to the notional sentence that would have been imposed if the intended acts of terrorism had actually been carried out, i.e. to take part in the fighting on behalf of the Islamic state. Yet, the Court held that "although the offences for which [defendant A was] to be sentenced are undoubtedly extremely serious, they are not ones which [...] justify the imposition of a sentence of life imprisonment", pursuant to section 225 of the Criminal Justice Act 2003. In reaching this decision, the court took into account the lack of evidence with regard to defendant A's having actually taken part in the "combat itself, as opposed to its assistance and glorification".

The defendant was given a custodial term and extended sentence of 17 years, comprising an appropriate custodial term of 12 years and an extension period of 5 years, under section 226A of the Criminal Justice Act 2003. The effect of this sentence will be that defendant A will serve a minimum of 8 years and thereafter his release, prior to the expiration of the whole term, will be subject to a decision of the Parole Board as to whether it is no longer necessary for the protection of the public for you to be detained.

The Court took a series of mitigating and aggravating factors into consideration. As mitigating factor the court found that the defendant's plea of guilty, although it was not entered at the first reasonable opportunity, it was at a "sufficiently early stage so as to attract a discount of 25%". The court also considered the defendant's previous good character.

As aggravating factors the court established the defendant's assistance and glorification of jihadism, but of particular importance was the defendant's active and enthusiastic part he

played in the production of aforementioned materials, which he knew were “designed and intended to encourage others in the United Kingdom to take up arms for the cause of the Islamic State”. The Court stated that the sentence is bound to reflect those significantly aggravating factors.

#### *Defendant B*

The Court has sentenced him to 21 months imprisonment. Open sources state that this co-defendant pleaded guilty to assisting an offender. The Court considered that he clearly did not approve defendant A’s actions in travelling to Syria and he was motivated by a desire to see him return. Also, the judge concluded from the statements before him that the defendant has been a positive and good person, helping others and supporting his family. He ultimately was motivated to obtain the return of defendant A. The defendant is, due to his plea of guilty, entitled to a 25% discount.

On the other hand, the Court found that it is clear that the defendant was fully aware of the terrorist purpose of defendant A’s trip to Syria, namely to undertake terrorist training. Furthermore, the particularly serious part of defendant’s conduct is his active role in ensuring that defendant A’s return to the United Kingdom would pass undetected by the authorities. A sentencing rule was applied to establish the defendant’s guilt and the case satisfied all criteria.

#### *Defendant C*

This defendant has been convicted of 21 months imprisonment. According to open sources, this co-defendant pleaded guilty to making a substantial amount of money available to defendant A, while knowing that this act might serve a terrorist purpose. The Court established that, when giving defendant A a sum of money, defendant C was aware of the terrorist purpose of that money. He also did nothing to discourage defendant A from remaining in Syria. The Court has taken in consideration that the defendant is a man of good character and that he has no previous convictions. Also, the defendant is, due to his plea of guilty, entitled to a 25% discount.

## IV. Topic of Interest

### The European Agenda on Security

#### Highlights

##### Introduction

The European Agenda on Security sets out the actions necessary to deliver a high level of internal security in the EU in the next five years. It prioritises terrorism, organised crime and cybercrime as interlinked areas with a strong cross-border dimension, where EU action can make a real difference. As published in the “*Communication from the Commission to the European Parliament, the Council, European Economic and Social Committee and the Committee of the Regions – The European Agenda on Security*”, the Commission has invited the EU Institutions and Member States to take the Agenda as the basis for cooperation and joint action on security. It has further invited the Council and the European Parliament to endorse the Agenda as the renewed Internal Security Agenda in view of the European Council meeting of 16 June 2015. Negotiations are currently ongoing at the time of issuance of this TCM.

##### Working better together on security

The Agenda sets out a shared approach for the EU and its Member States that is comprehensive, results-oriented and realistic. To maximise the benefits of existing EU measures and, where necessary, deliver new and complementary actions, all actors involved have to work together based on five key principles:

- 1) Ensure full compliance with fundamental rights:** all security measures must comply with the principles of necessity, proportionality and legality, with appropriate safeguards to ensure accountability and judicial redress.
- 2) More transparency, accountability and democratic control, to give citizens confidence.**
- 3) Ensure better application and implementation of existing EU legal instruments.**
- 4) More joined-up inter-agency and a cross-sectorial approach:** the increasing nexus between different types of security threats, policy and action on the ground must be fully coordinated among all relevant EU agencies, in the area of Justice and Home Affairs and beyond. The agencies function as information hubs, help implement EU law and play a crucial role in supporting operational cooperation. New actions in the **Digital Single Market** will complement the reinforcement of the European Agenda on Security.



**5) Bring together all internal and external dimensions of security:** maximize the added value of existing policy **dialogues on security** conducted by the EU. This should lead to specific joint action plans with key third countries. The deployment of security experts in EU Delegations in European Neighbourhood Policy countries and other targeted non-EU countries should be a priority. The Union should further develop its relations with international organisations, and use multilateral forums more actively to promote best practices and meet common objectives.

## Strengthening the pillars of the EU action

### Better information exchange

- **Schengen Information System (SIS)** is the most widely used information-sharing instrument. Competent national authorities can use it to consult alerts on wanted or missing persons and objects, both inside the Union and at the external border. It was upgraded in 2015 in order to invalidate travel documents of people suspected of wanting to join terrorist groups outside the EU. The SIS should be used together with the Interpol's database on **Stolen and Lost Travel Documents (SLTD)**.
- Member States have responsibility for controlling their part of external borders. Common high standards of **border management**, in full respect of the rule of law and of fundamental rights, are essential to preventing cross-border crime and terrorism. The European Agenda on Migration will further address border management.
- Complementary measures to improve security in relation to the **movement of goods** contribute to tackle illegal activities at the border. The Customs Advance Cargo Information System provides customs authorities with advance notification for security risk assessment of cargo arriving into and departing from the EU. The Anti-Fraud Information System (AFIS) provides a crucial platform for the exchange of customs anti-fraud information supporting customs law enforcement to fight cross border crime.
- The **Prüm** framework can offer automated comparison of DNA profiles, fingerprint data and vehicle registration data.
- Member States should use Europol as their channel of first choice for law enforcement information sharing across the EU using also the Europol's **Secure Information Exchange Network Application (SIENA)**.
- It urges to finalise the establishment of an **EU Passenger Name Record (PNR)** system for airline passengers that is fully compatible with the Charter of Fundamental Rights. PNR data has proven necessary to identify high risk travellers in the context of combatting terrorism, drugs trafficking, trafficking in human beings, child sexual exploitation and other serious crimes. PNR agreements have been concluded with the United States, Canada and Australia.
- Fighting criminal organisations active in several EU countries also requires information exchange and cooperation between judicial authorities. 26 Member States are using the

**European Criminal Records Information System (ECRIS)**, which allows for information exchange on previous convictions for EU nationals.

- The Commission will assess the necessity and potential added value of a **European Police Record Index System (EPRIS)** to facilitate cross-border access to information held in national police records. In the meantime, the Commission is supporting the launch of a pilot project planned by a group of Member States to establish the mechanisms for automated cross-border searches in national indexes.
- The **Maritime Common Information Sharing Environment (CISE)** will enable interoperability of relevant security data in areas such as piracy, terrorism, arms and drugs smuggling, human trafficking, environmental pollution, civil protection and natural disasters.

### Increased operational cooperation

- With the **EU Policy Cycle for serious and organised crime**, Member States' authorities coordinate common priorities and operational actions. The Standing Committee on Operational Cooperation on Internal Security (COSI) plays a central role. The Policy Cycle should be used more by Member States to launch concrete law enforcement operations to tackle organised crime.
- EU Agencies play a crucial role in supporting operational cooperation. They contribute to the assessment of common security threats, helping define common priorities and facilitating cross-border cooperation and prosecution. Member States should make full use of the support of the agencies. Increased cooperation between the agencies should also be promoted, within their respective mandates. Eurojust and Europol should further enhance their operational cooperation.
- Coordination hubs can facilitate a coherent **European response during crises and emergencies**, avoiding unnecessary and expensive duplication of efforts. In the framework of the Solidarity Clause, a Member State can request EU assistance in case of crisis, including terrorist attacks. The EU Emergency Response Coordination Centre acts as the main 24/7 coordination and support platform for all crises under the Union Civil Protection Mechanism, the Solidarity Clause and the Integrated Political Crisis Response arrangements (IPCR).
- Cross-border tools are available at EU level to support operational cooperation. **Joint Investigation Teams (JITs)** provide a ready-made framework for cooperation between Member States, set up for a fixed period to investigate specific cases.
- Joint Customs Operations (JCOs) allow customs authorities to tackle cross-border crime in the customs area, using a multi-disciplinary approach.
- Cross-border cooperation between national Financial Intelligence Units (FIUs) and national Asset Recovery Offices (AROs) helps to combat money laundering and to access the illicit proceeds of crime.

- Police and Customs Cooperation Centres (PCCCs) in border regions bring together on one site the law enforcement authorities of different Member States.
- **Judicial cooperation in criminal matters** also relies on effective cross-border instruments. Mutual recognition of judgments and judicial decisions is a key element in the security framework. Tools like the European Arrest Warrant have proved effective but other instruments, such as freezing and confiscation of criminal assets, are not yet used systematically in all appropriate cases. National judges should take advantage of the European Judicial Network (EJN) for the execution of European Arrest Warrants and freezing and confiscation orders. The implementation of the European Investigation Order will add a further essential tool. Member States should use Eurojust more often to coordinate cross-border investigations and prosecutions. Eurojust can also be a great help for complex mutual legal assistance requests with countries outside the EU, especially with the network of the Eurojust contact points..

#### Supporting action: training, funding, research and innovation

- The current legislative proposal on **CEPOL** would further reinforce its ability to prepare police officers to cooperate effectively and to develop a common law enforcement culture. National police academies should also use EU funding to make cross-border cooperation an integral part of their own training and practical exercises. Training for the judiciary and judicial staff should also be better aligned with EU priorities, building on existing structures and networks and with the support of the **European Judicial Training Network (EJTN)** and of the European e-Justice Portal and e-learning.
- Priority uses of the **Internal Security Fund** should include updating national sections of the Schengen Information System, implementing the Prüm framework and setting up Single Points of Contact. The Fund should also be used to strengthen cross-border operational cooperation under the EU Policy Cycle for serious and organised crime, and to develop 'exit strategies' for radicalised persons with the help of best practices exchanged in the Radicalisation Awareness Network.
- **Horizon 2020** can play a central role in ensuring that the EU's research effort is well targeted, including factoring in the needs of law enforcement authorities by further involving end-users at all stages of the process, from conception to market. More focus on innovation is also needed in the area of civil protection.
- A competitive **EU security industry** can also contribute to the EU's autonomy in meeting security needs. The EU has encouraged the development of innovative security solutions, for example through standards and common certificates.
- It is important to ensure that the forensic data exchanged through information exchange systems, such as the Prüm framework for fingerprints and DNA profiles, can be effectively used in court. A **European Forensic Area**, to align the processes of forensic service providers in Member States, would foster cooperation and ensure confidence.

### Three priorities

- Recent terrorist attacks in Europe have highlighted the need for a strong EU response to **terrorism** and **foreign terrorist fighters**. Too many EU citizens are joining these groups creating new dangerous networks.
- **Serious and organised cross-border crimes** is finding new avenues to operate and new ways to escape detection. There are huge human, social and economic costs. Organised crime also feeds terrorism and cybercrime through channels like the supply of weapons, financing through drug smuggling, and the infiltration of financial markets.
- **Cybercrime** is an ever-growing threat to fundamental rights, to the economy and to the development of a successful Digital Single Market. As commerce and banking shift online, cybercrime can represent a huge potential gain to criminals and a huge potential loss to citizens. Cybercriminals can act from outside the EU to harm critical infrastructures and target a large amount of citizens, with minimum effort and risk. Criminals abuse anonymisation techniques and anonymous payment mechanisms for illicit online trade in drugs or weapons, for criminal transactions and money laundering. Cybercrime is closely linked to child sexual exploitation, with a growing and alarming trend of child abuse through live streaming.

### Tackling terrorism and preventing radicalisation

- Europol has developed a growing expertise on terrorism issues. This should be improved by bringing together anti-terrorism law enforcement capabilities, pooling resources and maximising the use of already existing structures. This could be brought together as a **European Counter-Terrorism Centre** within Europol.
- The Centre would include:
  - Europol's Focal Point Travellers on foreign terrorist fighters and related terrorist networks;
  - The EU-US Terrorist Financing Tracking Programme (TFTP);
  - The decentralised computer network supporting Financial Intelligence (FIU.NET);
  - Europol's existing capabilities on firearms and explosive devices.
- **Eurojust** should be fully involved in the activities of the Centre to improve coordination of investigations and prosecutions. The Centre would not affect Member States' sole responsibility for safeguarding national security, nor the role of the EU Intelligence Analysis Centre (INTCEN).
- The **Internet Referral Unit (EU IRU)** would be part of the Centre. It will act as EU centre of expertise, helping Member States to identify and remove violent extremist content online, in cooperation with industry partners.
- In 2015 the Commission will launch an **EU-level Forum** with IT companies to bring them together with law enforcement authorities and civil society. The Forum will focus

on deploying the best tools to counter terrorist propaganda on the Internet and in social media.

- **Tracking financial operations** can be central to identifying terrorist networks. FIUs can help to identify financial operations of terrorist networks across borders. The TFTP allows Member States to request a search of financial data when there is reasonable suspicion of terrorist activity.
- The Commission will explore new methods in order to tackle **terrorism financing**. More coherent laws against foreign terrorist fighters-related offences across the EU would address the cross-border practical and legal challenges in the gathering and admissibility of evidence in terrorism cases, and to deter departures to conflict zones.
- The Commission will launch an impact assessment in 2015 with a view of updating the **2008 Framework Decision on Terrorism** in 2016. This new framework should intensify the cooperation with third countries.
- The EU and Member States will protect critical infrastructures and soft targets. They will cooperate to assess risks, evaluate strategies, gather best practices and produce guidance.
- EU actions need to **address the root causes of extremism** through preventive measures. Strengthening the EU's own strategic communication with common narratives and factual representation of conflicts is an important aspect of the EU's response. The response must not lead to stigmatisation of any group or community. The Commission will ensure enforcement of relevant EU legislation in this area. It will assess any gaps in legislation and support the monitoring of online hate speech and other actions.
- Education, youth participation, interfaith and inter-cultural dialogue, as well as employment and social inclusion, have a key role to play in preventing radicalisation by promoting common European values, fostering social inclusion, enhancing mutual understanding and tolerance.
- The **Radicalisation Awareness Network (RAN)** was launched in 2011 in order to prevent radicalization and violent extremism. It enables exchange of experience and practices.
- The Commission is setting up a **RAN Centre of Excellence** which will act as an EU knowledge hub.
- With the support of the **European Organisation of Prison and Correctional Services (EUROPRIS)**, the Commission will promote the exchange of best practices and training on de-radicalisation and prevention of radicalisation in prisons.

### Disrupting organised crime

- Operational activities of the **EU Policy Cycle for serious and organised crimes** should be intensified. The disrupting of organised criminal networks involved in smuggling of migrants is highlighted as a priority.
- Law enforcement must look at the finance of organised crime, often linked to corruption, fraud, counterfeiting and smuggling. Licit economy can be infiltrated by criminal organisations.
- The **Anti-Money Laundering package** will help to identify and follow suspicious transfers and facilitate the exchange of information between Financial Intelligence Units.
- The Commission will support the implementation of *ad hoc* legislation to make harder for criminals to abuse the financial system. It will also establish a coherent policy towards third countries that have deficient anti-money laundering and counter-terrorist financing regimes.
- **Eurojust** could offer more expertise and assistance to the national authorities when conducting financial investigations. Mutual recognition of freezing and confiscation orders should be improved.
- Priority: **neutralization and de-activation of firearms** to prevent reactivation and use by criminals. The Commission will review the existing legislation in order to improve the sharing of information, to reinforce traceability, to standardize marking and to establish common standards for neutralising firearms.
- Trafficking of firearms has a critical external dimension, from non EU countries. The cooperation with Western Balkans should be implemented and replicated with Middle East and North Africa.
- **Illicit drugs**: still the most dynamic markets, with the proliferation of new psychoactive substances. EU should support Members States using expertise of the EMCDDA and Europol. The Commission will decide whether to propose a new EU Action Plan for the period 2017-2020.
- Reinforced action against the **smuggling of migrants** between the EU and key third countries will be part of the forthcoming European Agenda on Migration.
- **Trafficking in human beings**: the Commission intends to develop a post-2016 strategy.
- **Environmental Crimes**: the Commission will consider the need to strengthening compliance monitoring and enforcement.
- **Local authorities** have a critical role to play in tackling organised crime, alongside the work of law enforcement and judicial authorities. Organised crime often thinks globally, but acts locally, requiring a multi-disciplinary approach to effectively prevent and counter it.

- More prominence should be given to the work of the **European Union Crime Prevention Network**. With financial support from the EU, the network shares best practices in preventing crime.
- Fight against **corruption** requires a comprehensive approach. In 2014 the **first EU Anti-Corruption Report** was published.

### Fighting cybercrime

- The 2013 EU Cybersecurity Strategy focuses on identifying high-risk areas, working with the private sector to close loopholes, and providing specialised training.
- **Important:** the adoption of a proposal for a Directive on network and information security. The implementation of this Directive would promote better cooperation between law enforcement and cybersecurity authorities, provide cyber-security capacity building of competent Member States' authorities and cross-border incident notification.
- Ensuring full implementation of existing EU legislation is the first step in confronting cybercrime. The Commission is working with Member States to ensure the correct implementation of the Directives linked to cyber security.
- **Cybercrime is by its nature borderless, flexible and innovative.** Cyber criminality requires competent judicial authorities to rethink the way they cooperate within their jurisdiction and applicable law to ensure swifter cross-border access to evidence and information.
- **High-skilled law enforcement** staff is required to fight cybercrime as well as a better **cooperation with the private sector** (public-private partnerships).
- Cybercrime demands a new approach to law enforcement: the response to cybercrime must involve the entire chain: from Europol's European Cybercrime Centre, Computer Emergency Response Teams in the Member States concerned by the attack, to internet service providers.
- EC3 (Europol) can become a central information hub for law enforcement in this area. The Council of Europe's **Budapest Cybercrime Convention remains the most important international standard for cooperation** and all Member States should ratify it.
- **Eurojust** should continue to facilitate the exchange of best practice and identify the challenges regarding the collection and use of e-evidence in investigations and prosecutions of Internet-facilitated crimes.
- The Commission will work to ensure that relevant modern means of communication can be covered by judicial investigation, prosecution and mutual legal assistance.

## V. The Way Ahead

### Ongoing/Upcoming Trials

January - April 2015

*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.*

#### United Kingdom

Four men due to appear at the Camberwell Green Magistrates' Court have been charged with money laundering offences. They were arrested by the counter terrorism police for having allegedly committed the offences between May and June 2014. Two of them are further charged with fraud in relation to alleged offences between October 2011 and May 2014.

Source: [BBC](#).

A 22-year old woman admitted encouraging terrorism and dissemination of a terrorist publication at the Old Bailey. The woman, who holds Iraqi nationality, posted messages on Twitter and Instagram between 1 June 2013 and 14 May 2014. The messages contained links to terrorist propaganda.

Source: [BBC](#).

At a hearing at the Old Bailey three men charged with preparation of terrorist acts pleaded not guilty. The three were brought to court on suspicion of having helped a 17-year old boy to leave the United Kingdom to join fighters in Syria. One of them is also charged with two counts of possessing a document likely to be useful for terrorism and another one has allegedly entered into or become concerned in a terrorist funding arrangement.

Source: [BBC](#).

#### Norway

At the Oslo City Court two defendants have been accused of having fought for the IS, while a third co-defendant has been accused of having tried to send military equipment to Syria. All three have denied the charges. One of them has admitted he joined IS in 2013 in a non-fighting support role and was not aware that it was listed as a terrorist organisation by the United Nations. Prior to their arrest, the two returnees were feared that they would try to return to



Syria or commit an attack in Norway. This is the first prosecution in Norway of returned jihadists from Syria. It is also a test for the recently adopted new provision under Norwegian criminal law allowing prosecution of any “economic or material support to a terrorist organisation”.<sup>9</sup>

Source: *The Local*.

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<sup>9</sup> The outcome of the trial will be reported in the next issue of the TCM.



# Terrorism Convictions Monitor



# Contact and Analysis Team

## Contact

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