



EUROJUST Report

Terrorism Convictions Monitor

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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 23 of the TCM covers the period **May – August 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 a judgment from the Oslo District Court in relation to returnees from the conflict zone in Syria. The report presents also some highlights of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, the Political Declaration and the Action Plan adopted in May 2015 by the Council of Europe.

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

May - August 2015

Austria

May 2015

A 15-year-old boy has been convicted for **plotting a bomb attack at a train station** in Vienna and was sentenced to eight months imprisonment by a Sankt Pölten court. He has also been convicted for **belonging to a terrorist organisation** and was sentenced to an additional suspended jail sentence of 16 months. The boy was just 14 years old when he was arrested at school in October 2014, after he began purchasing bomb ingredients online. The police said that the defendant admitted that he was planning on making a bomb and planting it at Vienna's Westbahnhof train station. In preparation of this bomb plot, he had made contact online with terrorist organisations such as Islamic State and al-Qaeda. Furthermore, investigators had found IS propaganda images on his computer, phone and video game console. The defendant also admitted that he was planning on going to Syria to join the 'holy war' after having carried out the bomb attack. After release from custody in November, the boy broke his bail conditions and was arrested again in January when he tried to flee to Syria with a 12-year-old friend. He has since been kept in pre-trial detention until appearing in court for trial. His lawyer argued that the teenager had turned deeply religious due to problems in his private life and because he believed that through religion he could do something good, namely 'to defeat the unbelievers and fight'.

Source: *The Local/The Local*.

June 2015

A court in Vienna has convicted nine people of Chechen origin to prison terms ranging from nineteen months to three years for **belonging to a terrorist organisation**. One of the defendants was convicted to a suspended sentence. Their 34-year-old Turkish driver was sentenced to three years imprisonment, with the court ruling that he already helped Islamists travel to Syria to join Islamic State (IS). The nine defendants – eight men and one woman – were arrested in August 2014 when they tried to leave Austria and travel to Syria by car, after investigators found out that two Turks at a Vienna mosque were arranging transport for would-be jihadists to Syria. Some of the defendants are alleged to have been radicalised by the very same Vienna mosque, under the influence of a hate preacher who is now awaiting trial in another Austrian prison. Four defendants denied wanting to go to Syria and the others admitted it, but stated that they only wanted to live under Sharia law and help the local population. The

lawyer of one of the defendants who admitted wanting to go to Syria claimed that his client was the victim of IS propaganda and had been promised a wife in Syria. The Chechen 22-year-old man had been told at the Vienna mosque that good Muslims go and fight with IS. Another defendant stated that he was just looking for 'freedom and a job'. The presiding judge stated that even if the defendants did not intend to fight, the desire to support IS was enough support for a conviction. The judge said that the Western countries have to stand up against IS by ensuring that this terrorist network will not get bigger and more influential than it already is.

Source: The Local/The Local.

July 2015

On the 16th of July, a 17-year-old Austrian youth has been sentenced for **joining a terrorist organisation**, namely Islamic State (IS), by a Vienna court and he has to serve two and a half years in prison. The young man was arrested in mid-March 2015 at Vienna airport, when he just returned from Syria via Turkey. He had serious injuries which were the result of a bomb attack in Raqqa. According to his lawyer, the youngster has had a turbulent private life, which made him feel like an outsider. In his search for recognition, he was introduced to radical Islamism and converted to this religion. Even though he had been training to become an insurance salesman in Vienna, he made the decision to travel to Syria when he was 16 years old. He told the judge that the options open to young men joining IS were more limited than he expected: suicide bomber, fighter, or surgeon. He furthermore stated that he was not directly involved in the conflict, that he was 'just an ambulance driver', that he never had attended a terrorist training camp and that he only had carried a gun when he had to guard an IS house in Kobane. However, photos brought forward in court which IS had posted online, showed him dressed for battle and heavily armed, urging supporters to 'kill infidels'. It was only after being seriously injured that he started to realise he had made a bad choice by going to Syria. Even though a youth psychiatrist argued for an extensive period of counselling and therapy, the judge showed less sympathy and stated it was necessary to send a signal to all young people that a prison sentence is the consequence for getting involved with extremist groups.

Source: The Local/The Local.

A 30-year-old Russian citizen of Chechen origin, who is an asylum seeker in Austria, has been found guilty of **being involved with a terrorist organisation**, namely Islamic State (IS), by a court in Krems, Lower Austria. He has been sentenced to a prison term of 5 years. He has also been found guilty of possessing pornographic images of minors. The judge said that his pre-trial detention of 11 months will be counted as part of his prison sentence. The defence argued for a lighter conditional sentence, because the defendant had no previous criminal convictions, but the judge nonetheless ruled that 'reasonable guilt' was applicable to this case and that the man had 'ideological convictions'. However, despite of extensive interrogation, it was not proven that the defendant had actually undergone military training in Syria and fought for IS, nor that he had downloaded guidelines or instructions on how to make a bomb. According to the prosecution, the defendant returned to Austria from Syria in August 2013, because he wanted to go to an

optician. He was arrested in the summer of 2014, after police investigators had intercepted his mobile phone records. They found multiple photos the man had taken in Syria, as well as pornographic images. Furthermore, the man had transferred 800 US dollars to Syria and he had sent a message stating that he would return. The court therefore convicted the man of 'at least participating in armed exercises and of providing IS members with food'. Although the trial began in January 2015, the court had to adjourn twice; the first time because a witness did not turn up to his video conference hearing and the second time because the defence insisted on questioning further witnesses.

Source: *The Local*.

Belgium

May 2015

At the Court of First Instance of Antwerp seven female defendants stood trial on charges of **participation in an activity of a terrorist group**. They were suspected of having participated or supported activities of the terrorist organisation Islamic State in Iraq and Sham (ISIS), later calling itself Islamic State (IS). The investigation had been initiated in March 2013 after six young women, including five of the defendants and a minor, had been declared missing. They had been believed to have radicalised and decided to support the fighting in Syria. Some had also left letters as they had travelled off to Syria. One of the defendants had been arrested at the airport before boarding a plane to Turkey, together with the minor girl. She is believed to have attempted to leave for Syria at least three times. She was also involved with several organisations, whose objective was to radicalise young Muslim girls, and she had used those organisations to collect funds to finance her travel and that of the minor girl to Syria, where they had been planning to join ISIS. The two had been helped by another defendant, who hosted them in her house and helped collect money for their trip to Syria. The court heard also that four other defendants had left for Syria. According to the available evidence, they had joined ISIS, which also uses female battalions to patrol in commercial zones, guard the access to cities, etc. They were tried *in absentia*. One of those four defendants had been driven by the seventh defendant to the airport of Düsseldorf, from where she had left for Syria.

The court ruled that participation in an activity of a terrorist group did not require that the defendants commit terrorist offences themselves; the participation in supporting activities, such as cooking or acting as driver for example, while knowing that it is for a terrorist group, is also punishable. The court handed down prison sentences of between 20 months and five years, as well as fines of between EUR 500 and EUR 2500. Taking into consideration the lack of a criminal record and the existence of mitigating circumstances, the court decided to suspend the execution of a part of the sentence for a period of five years.

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

The Court of Appeal of Brussels found 6 defendants guilty of **leadership of and participation in the activities of a terrorist group, use of false documents, forgery of business and**

banking documents, forgery in deeds by private signature and illegal stay. The convictions followed the appeals against two judgments delivered in May and October 2014 when several defendants had faced charges of leadership of and participation in the activities of a terrorist group. The Court of Appeal handed down prison sentences between two and 18 years. The execution of the sentence of one of the defendants was suspended for a period of five years. The court also ordered all convicted persons to pay a fine or serve additional time in prison. The suspects had been initially brought to court in relation to their alleged involvement in acts in support of Al-Shabaab that had taken place in the period 2011-2013. Some of the defendants had been arrested while attempting to cross the border between Somalia and Kenya. They had been held in custody for illegal stay in Kenya for a year prior to their extradition to Belgium (*for further details, please see issues 20 and 21 of the TCM*).

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

June 2015

The Court of First Instance of Antwerp found one defendant guilty of **participation in an activity of a terrorist group** and sentenced him to four years' imprisonment, three of which suspended, and a fine. The defendant had been arrested in January 2014 upon his return to Belgium after spending nine months fighting in Syria. Evidence presented to the court revealed that he had been in contact with the leader and members of Sharia4Belgium since 2012. In April 2013 he had left for Syria to join the group Maglis Shura Al-Mujahidin. Following some training he had received at the group's training camp, he had effectively taken part in the armed conflict in Syria, until he got injured. He had returned to Belgium, with the help of his family and following the intervention of the Belgian authorities, and was arrested at the airport.

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

In June 2015, the Court of First Instance of Liège found one defendant guilty of **attempted participation in the activities of a terrorist group** and certain acts inspired by racism or xenophobia, and another defendant guilty of **attempted participation in the activities of a terrorist group**. The first defendant was given a two-year prison sentence, while the second one received 15 months' imprisonment, both with a five-year suspended execution under the probationary conditions set out in the judgment. The court also ordered both individuals to pay a fine or serve additional time in prison. According to information provided by other radicalised individuals, both men had left Belgium together in July 2013 in order to join the armed jihad fought by the Islamic State in Syria. While *en route* to Syria, they had been followed by family members in Turkey who had persuaded them to return to Belgium. One of them had been charged also for having posted statements inciting to hatred or violence against the Jewish community on his Facebook profile.

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

Following the February 2015 verdict of the Court of Appeal of Antwerp against leaders and members of Sharia4Belgium, one of the persons sentenced in absentia challenged the decision of the court. In February, he had been found guilty of **leadership of a terrorist group** and **illicit restraint** and sentenced to 15 years' imprisonment and a fine (*for further details, please see issue 22 of the TCM*). As the court tried the case again, this time in the presence of the defendant, it confirmed its earlier findings regarding the terrorist nature of Sharia4Belgium. It handed down a prison sentence to 12 years and a fine. The court ordered also compensation for the hostage – a former Sharia4Belgium member – who was a civil party to the case.

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

In June 2015, the Court of First Instance of Liège found two defendants guilty of **participation in the activities of a terrorist group**. The first individual was sentenced to five years' imprisonment, while the second individual was sentenced to two years' imprisonment with a five-year suspended execution. The court also ordered both individuals to pay a fine or serve additional time in prison. In November 2014, both men had left Belgium together in order to join a terrorist group in Syria via Turkey. One of them continued his route to Syria where he took part in the fighting, while the other travelled back to Belgium from Turkey, but provided nonetheless logistical and financial support. Their departure to Syria had been allegedly prepared through an organised network facilitating aspiring jihadists from Belgium to Syria via Turkey. The analysis of the photos and videos stored in the suspects' mobile phones undoubtedly showed their intentions to join the armed jihad.

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

July 2015

In July 2015, after joining three terrorism-related files, the Court of First Instance of Brussels delivered one single judgment. Out of a total of 31 defendants, it found 29 defendants guilty and acquitted two others. The judgment was rendered final in case of nine persons, while four other submitted appeals. 18 persons were tried *in absentia*, believed to be still fighting in Syria. The defendants were sentenced mainly for **leadership of and participation in the activities of a terrorist group**. Certain defendants were additionally sentenced for numerous common law offences, i.e. thefts, concealment, forgery, falsification of records linked to their activities within the terrorist group. The court handed down prison sentences between two and 20 years, with a five-year suspended execution for six persons under the probationary conditions set out in the judgment. The court also ordered the convicted persons to pay fines amounting to a total of EUR 471,000 or serve additional time in prison. The suspects had left Belgium in the course of 2013 to join the armed conflict in Syria and Iraq, and particularly the terrorist groups Islamic State and Jabhat al-Nusra. Their departure had been prepared through organised networks recruiting and facilitating aspiring jihadists to reach the Middle East. A Moroccan national was held the main responsible for these terrorist networks.

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

The Court of First Instance of Antwerp heard the case of one person who had tried to reach Syria in March 2015 and was charged with **attempt to take part in an activity of a terrorist group**. Prior to his departure, his mother had contacted the authorities and reported that he had converted to Islam and had seriously radicalised. He had boarded a plane to Istanbul with the intention to go to Gaziantep, close to the border with Syria. The Turkish authorities had banned him from entering Turkey and put him on a plane back to Belgium. The court found the defendant guilty as charged. It held that he suffered from a severe mental illness and was incapable of controlling his behaviour. Considering the security risk to the society and the need for specialised care, the court ruled that he should be placed in a psychiatric clinic.

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

Denmark

June 2015

The Eastern High Court has sentenced a man to four years imprisonment and revocation of his Danish citizenship. The man has been convicted for **posting online terrorist texts** in which he expressed his support for the founder of terrorist group Al Qaeda and called on his readers to join al Qaeda's al-Nusra front. He has also posted videos of soldiers being executed in Syria and Iraq. He furthermore published three books that were considered terrorist propaganda and of this act he was convicted on charges related to **promoting terror**, the same charge he was convicted of in 2007. For this previous conviction, he served three and a half years in prison.

Source: The Local.

France

July 2015

A Parisian criminal court has sentenced the 37-year-old leader of the Islamic group Forsane Alizza to nine years imprisonment for **criminal association with a terrorist organisation**. According to the court documents, he was accused of plotting attacks, including targeting kosher markets and other Jewish businesses in Paris, abducting and torturing a Jewish judge in Lyon and threatening France. In August 2010, he founded Forsane Alizza to counter anti-Muslim feelings in France and to lead young Muslims away from violence. Soon after its creation, the Islamic group caught the attention of the French national intelligence agency and in 2012, the minister of Internal Affairs ordered to dissolve the group, accusing them of 'promoting the armed fight'. During the trial on the 8th of June, the defendant admitted that he favoured an 'uninhibited' Islam, but denied any violent intent or 'terrorist inspiration'. However, the judge stated that the defendant had intended to 'perpetrate an act of a terrorist nature'. She cited an online chat conversation in which the defendant praised the man who had killed three children and a rabbi at a Jewish school in Toulouse as well as three French paratroopers before being killed by police. The court also cited another conversation in which he stated that they were going to 'slash up' France and in another, he compared himself with the founder of Al Qaeda.

Investigators pointed to videos and texts posted by the group, 'declaring war' against France, and to data found on the group's computer hard drives and memory sticks, containing a terrorist handbook and information on 'targets'. The prosecutor argued that the 'small group was founded to compose actions' and the evidence brought forward illustrated that the group was driven by 'the will to commit a terrorist act'.

Source: *Le Monde/US News*.

Germany

June 2015

A woman has been sentenced to a prison term of three years and nine months by the Higher Regional Court of Düsseldorf. She has been convicted of having **supported a terrorist organisation**. The court established that she had married a terrorist who fights for Islamic State and that she financially supported that organisation by sending them at least EUR 5000. In May 2013, she, her brother, her husband and her son had travelled to Syria. A co-defendant has been convicted for having supported a terrorist organisation as well and he was given a suspended sentence of one year and nine months.

Source: *Spiegel*.

July 2015

In the beginning of July, a man has been convicted of **supporting a terrorist organisation** fighting in Syria and has to serve two and a half years in prison. A Berlin court found him guilty of two counts of supporting a terrorist organisation and fraud. He is believed to have defrauded a bank of EUR 25 000 in 2013, of which he used EUR 7000 to send it to the Syrian rebel group Junad al-Sham, as well as procuring a vehicle for them. The defendant was arrested after he had sent another EUR 1550 to an Islamic State group-related organisation in March 2014.

Source: *ABC News*.

The Netherlands

June 2015

On 8 June, a 22-year old man has been sentenced to four years imprisonment for **preparing a terrorist offence and possession of illicit firearms**. The Dutch public prosecution office claimed for four years of imprisonment and one year suspended sentence. The defendant has been recognized as a member of Islamic State (IS) by a friend who stood trial in Belgium for having travelled to Syria. Also, the Dutch Intelligence Service has tapped several telephone conversations between the defendant and his friends, during which he frequently mentioned the Syrian civil war and a potential terrorist attack on a Dutch politician. The court in Rotterdam found that the defendant had been planning on committing a robbery, thereby using the illegally obtained money to support the jihadist fighters in Syria. Given that jihadist groups in Syria are

guilty of large-scale human rights violations, the court ruled that committing criminal activities for the purpose of continuing and maintaining that very same jihad is a serious terrorist offence. Therefore, the Dutch court found the defendant guilty.

Source: Rechtspraak.nl/NRC Handelsblad.

After ten years, the Dutch Supreme Court has cleared two suspects who were accused of **being members of the 'Hofdstad' terror group** in The Hague. This name refers to the loose grouping of young radical Muslims with connections to the murderer of a Dutch film maker. Over the past ten years, the Supreme Court referred the case twice to lower appeal courts. At the original trial, all suspects were found not guilty of being members and they were later sentenced to one and a half years imprisonment by another court. The Supreme Court tore up the latter verdict, because the court failed to give proper motivation for its verdict. In June, the case has been heard again and the men have been found not guilty.

Source: Dutch News/NRC Handelsblad.

July 2015

A court in Rotterdam has convicted a 29-year old woman to six months imprisonment for **financing a terrorist organisation**. The woman had transferred an amount of EUR 2000 in total to a person in Turkey, who in turn sent it to the Islamic Jihad Union (IJU). The court found that the woman ought to have been aware of the fact that the money was used to support the civil war in Syria. The defendant's lawyer claimed that this was not his client's intention and that she instead intended to support orphans and widows of Islamic fighters. The court did not find her guilty of the charge of membership of a terrorist organisation. The woman currently lives in Turkey, together with her family. However, the Dutch Prosecution Office is planning on arresting her when she is in the Netherlands. In case she stays in Turkey, the Prosecution Office will request Turkey to extradite her or to execute the Dutch punishment there.

Source: Algemeen Dagblad/Rechtspraak.nl.

Spain

May 2015

Two members of the terrorist organisation ETA were accused by the public prosecutor for having approached the victim on 8 June 1986, who was at that time, the chief of the Spanish Guardia Civil, having shot him while forcing him to enter a vehicle, causing him such serious wounds that he died before arriving at the hospital. The prosecutor brought charges against the two defendants **for an attack resulting in the death of the victim** under Article 233.3 in relation with Article 57bis a) and 406.3 of the Penal Code. He proposed a prison sentence of 29 years for each defendant, together with their absolute disqualification for the duration of the sentence. The Audiencia Nacional acquitted one defendant of all the charges that were brought

against him and convicted the other to 17 years imprisonment for the offence of an attack resulting in death, due to the mitigating circumstances of an unduly delayed trial.

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

28 people have been identified by the National Police Force as members of the illegal organisation SEGI, which was declared a terrorist organisation by the decision of the Supreme Court n. 50/2007 issued on 19 January. Initially, the public prosecutor brought charges against all the defendants for the offence of **forming part of a terrorist group**, as defined in Article 571.2 of the Penal Code. Charges against 12 defendants were dismissed by the prosecutor in the course of his closing speech due to a lack of evidence. After the conclusion of the court proceedings, the Audiencia Nacional found 7 defendants guilty of forming part of a terrorist group and sentenced them to 6 years imprisonment, disqualification from the right to stand as a candidate for the duration of the conviction and disqualification from public employment for 8 years. The court dismissed the charges against 9 defendants. 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 found the defendant guilty of **glorification of terrorism** and **scorn for victims** under Article 578 of the Penal Code. The defendant was publishing on her Facebook profile messages and photos related to “Kale Borroka/Lucha Callajera” and to the terrorist attack on the former Spanish Prime Minister. The Audiencia Nacional found her guilty of all the charges and handed down a sentence of 1 year imprisonment together with a penalty of absolute disqualification for the duration of 7 years. The decision of the court is final.

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

The defendant was using his Facebook profile to post messages and photos related to persons who were convicted for being members of the terrorist organisation GRAPO, and other terrorist groups. During the search of his residence, some letters were found, together with books whose author was accused of the glorification of terrorism. The letters were sent to the defendant from a penal institution, where persons convicted of terrorism or related crimes were serving their sentences, and subsequently published on his Facebook profile. The public prosecutor qualified the described facts as **glorification of terrorism** and **humiliation of victims** under Article 578 and 579 of the Penal Code and brought the respective charges against the defendant. The Audiencia Nacional found him guilty of all the charges and handed down a sentence of two years imprisonment, together with a penalty of absolute disqualification for the duration of eight years.

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

In March 2007 the Civil Guard executed a house search in a basement used by the released members of the terrorist organization, ETA, for the storage of different items and chemical and explosive materials, such as bags with ETA anagrams, bags containing sulphur, sodium chlorate,

electric detonators, initiating mechanisms for explosive devices, cash, mobile phones, etc. The basement was hired by a Spanish national who was followed by the police when transporting explosives, together with other persons from the mentioned basement. In addition, a house search was executed in the residence of another suspect, also a Spanish national, where additional documents related to ETA, arms and munition were found. The public prosecutor has qualified the described facts primarily as the criminal offence of **forming part of a terrorist group** under Article of 515.2 and 516.2 of the Penal Code (PC) and alternatively as the criminal offence of **collaborating with armed groups** under Article 576 of the PC, proposing the mentioned charges for the two suspects a sentence of eight years imprisonment each. Finally, the Audiencia Nacional convicted both defendants for collaborating with armed groups to five years imprisonment, imposed an additional fine and a penalty of absolute disqualification for the duration of 11 years. The decision of the court is final.

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

June 2015

The defendant, who was at the time the leader of the ETA's Madrid command, was accused of having ordered the assassination of the Spanish Prosecutor General and for having facilitated, for that purpose, the transfer of a vehicle and missiles from the ETA's command in France. The vehicle was finally used for attempting the murder of the President of the Supreme Court on 8 May 1986. The attack left the victim physically unharmed. The public prosecutor brought charges against the defendant for the offence of **attempted attack against a State's authority** that was concurrent with the offence of **attempted murder involving the use of explosives**, proposing a sentence of 17 years imprisonment together with a penalty of absolute disqualification for the duration of the sentence, taking into account the aggravating circumstances offered by premeditation. The Audiencia Nacional found the defendant guilty of all the charges and followed the prosecutor's proposal in its sentence. The decision of the court is final.

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

The Audiencia Nacional found the defendant guilty of **humiliating the victims of terrorism** and convicted him to one year imprisonment together with the penalty of absolute disqualification for the duration of seven years, for having posted from his Facebook profile insulting comments following an interview by a local TV station held with a detainee, a former ETA member, in relation to the assassination of a local Spanish politician for the Popular Party -PP. The decision of the court is final.

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

The Audiencia Nacional convicted two defendants, members of the ETA command called 'Jata', to a total of 377 years of imprisonment for **attempted murder involving the use of explosives**. They were accused by the public prosecutor of having planted and activated an explosive device in February 2002, which was hidden in a shopping cart, on the route that was usually used by

their targets; the socialist mayor and her bodyguard. The two suffered injuries from the explosion together with 18 passers-by. The defendants were respectively surrendered by the French authorities to Spain in December 2011 and March 2014.

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

The defendant was charged of **glorification of terrorism** for having drawn an ETA anagram on a traffic sign. The public prosecutor proposed a sentence of one year and six months imprisonment, which was reduced by the Audiencia Nacional to one year imprisonment and substituted with a fine of EUR 2.920.

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

The Audiencia Nacional found one defendant guilty of **glorification of terrorism** and sentenced him to one year imprisonment together with a penalty of absolute disqualification for the duration of seven years. The court substituted the prison sentence with a fine amounting to a total of 2.920,00 EUR. The defendant was brought to court for having carried out graffiti in a public place, consisting of radical political content with a clear aim to glorify and justify persons and acts related to the terrorist organisation ETA and the terrorist group GRAPO. The decision of the court is final.

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

The defendant, a leading member of SORTU, was brought to court on charges of **glorification of terrorism**. The public prosecutor accused him of having organised the reception of the hearse of the deceased member of the terrorist organisation ETA, of exclaiming his name at the funeral and of raising the terrorist flag. A proposed a sentence of one year and six months of imprisonment together with a penalty of absolute disqualification for the duration of 12 years was made. The Audiencia Nacional acquitted the defendant of the charges. The decision of the court is final.

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

The defendant was sentenced by the Audiencia Nacional to 32 years imprisonment together with a penalty of absolute disqualification for the duration of 50 years. He had been brought to the court on charges of **committing a terrorist attack resulting in death, possession of arms for the purposes of terrorism and causing damage for the purposes of terrorism**. The defendant shot the victim while he was approaching his car in the afternoon on 8 March 2008, causing him serious wounds which resulted in his death. On April 2nd 2008, ETA took responsibility for the attack.

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

The Audiencia Nacional sentenced the defendant to seven months imprisonment after it found him guilty of a continuous offence of **public distribution of terrorism material (terrorism propaganda)**. At the beginning of the trial, the public prosecutor reduced the proposed sentence from the initial 2 years imprisonment, to seven months imprisonment, together with the disqualification from public employment for the duration of four years. The defendant was accused of having glorified guiding figures of jihadists' movements and for incitement to commit terrorist acts using his Facebook and Twitter profiles. The defendant was also administering three Facebook accounts and one Twitter profile for jihadist platforms that were used for the indoctrination and recruitment of activists. These accounts were used for publishing documents, videos and images worshiping terrorist ideas and inciting to commit terrorist acts. During the search of his residence, terrorism related material was found, such as books on the acts of the martyrs made by the followers of the Prophet, documentation and boarding passes related to his planned trip to Istanbul (the final destination being Syria) and videos containing jihadists' themes and ones picturing the guiding jihadists' figures and activities carried out by terrorist groups such as Hamas, ISIS, the Caucasian Emirate, etc.

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

The public prosecutor brought charges against the defendants for **glorification of terrorism** under Article 578 of the Penal Code. They were accused of participating in a meeting organised to pay tribute to a recently deceased member of the terrorist organisation, ETA. The event was also filmed and covered by one defendant, who published information on the internet. Finally, the Audiencia Nacional acquitted the defendants of all the charges.

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

The Audiencia Nacional acquitted ten defendants that were brought to court on charges of **participation in a terrorist organisation**. The defendants were members of an organisation called SEGI that was defined as a terrorist organisation by the decision of the Supreme Court in 2007. The organisation was engaged in the organization of protests, meetings of youth groups and addressing issues regarding development, youth unemployment, housing, etc. It was never involved in the planning and organisation of violent acts. The defendants were detained in November 2008 on the basis of the material found in their homes during house searches. The court held that the seized material was not of such incriminatory nature to prove an active participation of each of the defendants in the mentioned organisation.

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

July 2015

The public prosecutor brought charges against the defendant for **glorification of terrorism** under Article 578 of the Penal Code. He was accused of having painted graffiti of an anagram utilised by the terrorist organisation ETA together with a message in Basque saying "We are proud to fight. Salute to you, the people are with you!" and intended to pay tribute or to praise terrorist activities carried out by the members of the mentioned terrorist organisation. The

Audiencia Nacional found the defendant guilty of 'glorification of terrorism' and sentenced him to one year imprisonment together with a penalty of absolute disqualification for the duration of seven years.

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

The defendant was utilising his twitter profile for publishing messages and images extolling and supporting the actions of the ETA members and encouraging the latter to commit more terrorist attacks. The public prosecutor brought charges against the defendant for the offence of **glorification of terrorism** under the Article 578 of the Penal Code. The Audiencia Nacional found the defendant guilty and sentenced him to one year and six months imprisonment imposing also the closure of the defendant's twitter account together with the related web address (URL) as a consequence of the principal penalty. The decision of the court is final.

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

The defendants were accused of producing explosive devices and of hiding them in backpacks that were left in different locations of a local television and mobile telephone station. One device exploded in early morning on 16 January 2009 causing material damage to the station. The two others were deactivated by an explosive disposal unit. The members of the command "EZUSTE" claimed responsibility over the attack on 15 June 2009 in the local Basque newspaper. The public prosecutor brought charges against the defendants for the offence of **causing damage by a terrorist attack** that was concurrent with the offences of **attempted murder involving the use of explosives, participation in a terrorist organisation, and of unlawful possession and manufacture of explosive**, proposing a sentence of jointly 376 years imprisonment together with a penalty of absolute disqualification for the duration of 15 years. The Audiencia Nacional finally convicted each of the defendants for participation in a terrorist organisation to eight years imprisonment together with the special disqualification for the exercise of charge or public employee for the duration of ten years, for each of the 25 offences of attempted murder involving the use of explosives to 15 years of imprisonment (to jointly 375 years of imprisonment), for unlawful possession and manufacture of explosive to eight years of imprisonment together with a penalty of absolute disqualification for the duration of 404 years. The two defendants were previously convicted (respectively in December 2013 and March 2014) by the Correctional Tribunal in Paris for several offences of unlawful possession of arms and explosive, use and possession of falsified documents, participation in criminal groups, etc.

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

One defendant was accused by the public prosecutor of an offence of **menacing** under the Article 169 of the Penal Code and an offence of **glorification of terrorism** under the Article 578 of the Penal Code. The defendant was sending from his Twitter account menacing messages about ETA hurting the victim's direct family and posting other messages on his twitter account referring to ETA's terrorist attacks. The Audiencia Nacional found the defendant guilty of all the charges brought against him and handed down a sentence of jointly six months imprisonment,

together with a penalty of absolute disqualification for the duration of seven years and disqualification from the right to stand as a candidate for the duration of the conviction. The decision of the court is final.

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

The Audiencia Nacional found the defendants guilty of the continued offence of **causing damage for terrorist purposes** under Article 577 of the Penal Code. The defendants were accused of causing damage to local municipality monuments and of damaging the local municipality property by painting street signs and graffiti with the purpose of defacing and of undermining memorial celebrations of historic events. The Audiencia Nacional found them guilty of the above mentioned charges and handed down a sentence of two years imprisonment for one defendant and one year and six months imprisonment for the other two defendants, together with a penalty of disqualification from the right to stand as a candidate for the duration of the conviction.

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

United Kingdom

June 2015

A 22-year old woman has been jailed for three and a half years for **posting tens of thousands of messages glorifying jihad and calling for children to be armed**. She appeared before the Old Bailey in June. In just under one year, she uploaded 45,600 Tweets and used photo-sharing website Instagram to post pictures of prisoners being beheaded and soldier's corpses. She also posted tweets calling on mothers to support their children who go fighting abroad and to bring up their children with the belief that it is their duty to take up arms, to wage violent jihad and embrace martyrdom. The judge stated that, although she copy-pasted all materials from other sources, this material and its dissemination are important factors in encouraging young men and women to travel to Syria and engage in terrorist acts. The defendant accepted the view that she intentionally disseminated the material to encourage young people to go fight. The Twitter account associated with an Instagram account was created in June 2013 and the police became aware of the Twitter account in August 2013, because of the volume and intensity of the posts.

Source: The Telegraph.

July 2015

In the beginning of July, a 19-year old man has been convicted for **preparing for acts of terrorism**. He appeared before the Old Bailey in June. The court heard he fell under the influence of older men he regarded as more learned. After having stayed in Bangladesh for half a year in 2013, he returned to the UK and saved around three thousand pounds, allegedly for the purpose of traveling to Syria. When attending a demonstration about the Gaza conflict in 2014, he came to the attention of anti-radicalisation group Prevent after carrying a banner proclaiming his support for Isis. Moreover, he searched on the Internet and networked on Twitter for advice

on how to join Isis and downloaded extremist material. He was arrested in December 2014. During police hearings, the defendant made extremist comments and stated that he had not gone to Syria yet because he wanted to find someone he trusted to go with. He also said he wanted to be the one to bring the Sharia law to the UK. The court accepted the view that the man was immature, not academically capable and impressionable to indoctrination. He has to serve three years and four months at a youth offenders' institution.

Source: BBC.

2. Other Court Decisions of Interest

May - August 2015

European Court of Human Rights

May 2015

Three Northern-Irish nationals – a couple and a man – appeared before the European Court of Human Rights (ECtHR) in May. Their cases concerned their arrest and detention under the United Kingdom’s anti-terrorism legislation. The couple was arrested in 2009 on suspicion of involvement in the murder of a police officer. The third defendant was arrested on the same day on suspicion of involvement in the murder of two soldiers. During their detention, the Director of Public Prosecutions (DPP) needed extra time to conduct forensic tests and carry out further questioning once the results of the forensic tests had been received. Therefore, in accordance with the United Kingdom’s Terrorism Act (2000), the DPP successfully applied on two occasions to the County Court for warrants to extend their detention beyond the normal limit of 48 hours. In the meantime, the applicants had requested a judicial review of the judge’s first decision on the extension of their detention beyond 48 hours. In carrying out this judicial review, the High Court considered whether the County Court had included some degree of review of the lawfulness of the arrest. As the County Court judge had not included this in her first review of detention, the High Court quashed the decision to extend the applicants’ detention. The three applicants were released on the same day, after having been detained for 12 days. In the judicial review, the applicants also complained that their rights stated in the European Convention of Human Rights (ECHR) Article 5 § 3 (right to liberty and security/entitlement to trial within a reasonable time or to release pending trial) had been violated, as they claimed that Schedule 8 of the UK’s Terrorism Act (stating terms for detention) was incompatible with the ECHR. This complaint was rejected in 2011 and they were refused to leave to appeal to the Supreme Court. No charges were brought against the couple. The third applicant was subsequently charged with murder of the two soldiers as well as five attempted murders, but he was acquitted on all counts in 2012. The Court ruled that there had been **no violation of Article 5 § 3 ECHR** with respect to the couple’s case. Furthermore, the Court declared **inadmissible** their complaint under Article 5 § 2 (right to be informed of the reasons for arrest) ECHR as well as the application of the third applicant.

Source: European Court of Human Rights.

June 2015

On the 2nd of June, the ECtHR ruled that **the Belgian authorities will violate the prohibition of inhuman and degrading treatment** (Article 3 of the European Convention of Human Rights (ECHR)) in the event of applicant’s extradition to Morocco. In 2007 the applicant has been sentenced to six years imprisonment for taking part in the activities of a terrorist organisation

and for criminal conspiracy. An order for his extradition to Morocco was issued after he had been sentenced. In April 2005, a Moroccan chief prosecutor issued an international arrest warrant in respect of the applicant, who was wanted for 'forming a group to prepare and commit terrorist acts'. This warrant has been declared enforceable by the Brussels Court of First Instance in July 2005. In December 2009 the applicant appealed to the Conseil d'État against a ministerial order of 5 October 2009 approving his extradition to Morocco. He argued that in that country torture is systematically practiced during questioning in prison in terrorism cases and that he would very likely be subjected to such a treatment in the event of his extradition to Morocco. The Conseil d'État declared his appeal ill-founded, basing their argument on the applicant's supplied documents which dated back to the period from 2003 to 2006 and did not warrant a conclusion that the situation in Morocco would be dangerous for him. In 2010, the ECtHR indicated an interim measure in accordance with Rule 39 of the Rules of Court and recommended not to extradite the applicant to Morocco until further notice. His immediate release was ordered on the 30th of July 2010, on the grounds that the length of his detention was disproportionate to the aim pursued. Before the ECtHR, the Belgian government and the applicant disagreed as to whether the judgment of the Conseil d'État of 19 November 2010 withdraws the ministerial order to extradite the applicant. The applicant claimed that if extradited to Morocco, he would face a real risk of being subjected to treatment in breach of Article 3 (prohibition of inhuman and degrading treatment) of the ECHR. He also relied on Article 13 ECHR (right to an effective remedy) in conjunction with Article 3 ECHR, when arguing that his appeal to the Conseil d'État was ineffective. The Court ruled that there will be a violation of Article 3 in the event of applicant's extradition to Morocco, but that there has been **no violation of Article 13 in conjunction with Article 3**. The interim measure in accordance with Rule 39 of the Rules of Court will remain in force until the judgment has become final or until further order. The Court furthermore held that the finding of a violation constituted adequate just satisfaction in respect of any possible non-pecuniary prejudice sustained by the applicant and awarded him 6,500 EUR in respect of costs and expenses.

Source: European Court of Human Rights/European Court of Human Rights.

On the 30th of June, the ECtHR ruled that **UK courts have not violated the right to a fair trial** (Article 6 § 1 of the European Convention of Human Rights (ECHR)) in the case of an al-Qaida linked bomber. The applicant claimed that he was unfairly convicted because of the extensive adverse media coverage, but the Court ruled unanimously that there had been no violation by the UK court's or criminal justice system. The man was arrested in 2006 along with others and on suspicion of conspiring to cause multiple explosions on transatlantic flights by using liquid bombs. Following the first trial in the applicant's case in 2008, in which he was convicted on a charge of conspiracy to murder, there was extensive media coverage over the case, including reporting on material which had never been put before the court. Later that year, the Crown Prosecution Office announced that they had ordered a retrial in respect of the more specific charge of conspiracy to murder by way of detonation of explosive devices on aircraft mid-flight. As this case received a lot of media attention, the applicant argued that it was impossible for this retrial to be fair. However, the retrial judge rejected his argument, convicted him and sentenced him to life imprisonment with a minimum term of 40 years. In her ruling, the Court considered

the UK's applicable legal framework and concluded that the guidance given by this framework to retrial judges to ensure a fair trial was sufficient and that the retrial judge had taken sufficient steps. The Court was likewise satisfied with the reasons given by the retrial judge for refusing the application for a stay on proceedings and by the Court of Appeal for dismissing the appeal. There was nothing in the circumstances of the case to suggest that the jury could not be relied upon to follow the judge's instructions to try the case only on the evidence heard in court. The Court concluded that it had not been shown that the adverse publicity had influenced the jury to the point of prejudicing the outcome of the proceedings and rendering the applicant's trial unfair.

Source: European Court of Human Rights/European Court of Human Rights.

European Court of Justice

June 2015

In June, the European Court of Justice has ruled that Member States **may revoke the refugee status of migrants if they are accused of supporting terrorism**. However, the Court also pointed out that these persons have the right to appeal should countries revoke their asylum. The case was brought to the Court by a Turkish man after he was accused by Germany of supporting the Kurdistan Workers' Party (PKK). The Turkish applicant, who has lived in Germany for decades, was stripped of his refugee status by a German court in 2012. According to authorities, he supported the PKK in 2011. The PKK was banned in Germany in 1994 and the EU followed suit in 2002. This decision was ignored in a 2011 ruling by the European Court of First Instance, ordering that the PKK should be removed from the EU terror list on procedural grounds. The applicant was alleged to have supported the PKK by collecting money and distributing a party magazine. The court suspended his expulsion as his wife and eight children were allowed to remain in Germany. However, the Court dismissed his appeal. With regard to applicant's support for the PKK, the court ruled that carrying out activities such as participating in legal meetings, celebrating the Kurdish New Year and collecting funds for the organization, 'does not necessarily mean that he supported the legitimacy of terrorist activities. Even more so, acts of that nature do not constitute, in themselves, terrorist acts.' The court furthermore found that the German authorities deprived the applicant from his refugee status before it was proven that he posed a threat to the country. The court did not rule on the applicant's status.

Source: European Court of Justice/Deutsche Welle.

Norway

May 2015

Three Norwegian citizens were brought to trial mainly for having participated in and/or supported a terrorist organisation called Islamic State of Iraq and the Levant (ISIL), later known as Islamic State (IS). The crimes were committed in the period June 2013 to May 2014. The accused are Norwegian citizens and were arrested in Norway on 27 May 2014. Two of the accused had served a six month period of active duty for the ISIL and returned from Syria in January 2014. All three defendants were found guilty and sentenced to serve a prison term between seven and 45 months (*for further details, please see Chapter III. Judicial Analysis*).

Source: Norwegian Liaison Prosecutor at Eurojust.

July 2015

An Oslo court has sentenced a 24-year-old man to eight years imprisonment for **planning or preparing of a terror act**. This is the second case of its kind under the new Norwegian anti-terrorism law. He was alleged to have left Norway in 2013 to fight for Islamic State (IS) before joining the Al-Nusra Front. In the beginning of 2014, he tried to return to Norway after having been shot in the leg in Syria. He crossed the Syrian border into Turkey and there he sought help from the Norwegian embassy to get him back home. The prosecution claimed that they found photographs which he had posted on a friend's Facebook a few months before his departure, showing him posing with weapons. They also stated that he carried out online research into weapons and body armour. The defendant had pleaded not guilty and had said he travelled to Syria for humanitarian work. The court found proven beyond a reasonable doubt that the defendant actively participated in the activities of terrorist groups IS and Jabhat Al-Nusra while he was in Syria. It also found that there were no mitigating factors. The defendant disagrees with the verdict and is considering an appeal.

Source: The Local/UK Reuters.

Switzerland

June 2015

The Swiss Federal Administrative Court has ruled that the financial assets of one of Syria's wealthiest men, who owns 40 percent of Syria's largest telecommunication company Syriatel, will remain frozen in Switzerland. In this ruling, the court rejected the defendant's appeal to reverse a decision issued by the Federal Ministry of Economy to block an undisclosed amount of money on his Swiss accounts. As the defendant is the cousin of the Syrian president, the Swiss government believes that this money helps the financing and support of the president's violent regime.

Source: The Local.



United States

June 2015

In May, the man who stood trial for **the 2013 Boston Marathon bombings** has been condemned to death by a federal jury. 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. In this ruling, the jury rejected the defence case and found that death was the appropriate punishment for six of seventeen capital counts. The defendant was found guilty of all 30 charges against him in connection with the Boston Marathon bombings. The jury rejected virtually every argument that was put forward by the defence, including the main argument that the defendant had been highly influenced by his malevolent older brother. Only two of the jurors believed that the defendant expressed sorrow and remorse for his actions. In June, the defendant rose in court once again, but this time to apologize for his deeds. The appeal process, which is inevitable with death sentences, is likely to take years if not decades to play out.

Source: The New York Times/The New York Times.

II. Legal Update

May - August 2015

1. EU

European Parliament

May 2015

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC was adopted.

The fourth money-laundering directive (AMLD) will be the first to oblige Member States to keep central registers of ultimate owners of companies, trusts and other legal entities, open both to the authorities and to people with a 'legitimate interest', such as investigative journalists, under new rules already agreed with the Council and endorsed by Parliament earlier in May. The new anti-money laundering directive aims to step up the fight against tax crimes and terrorist financing. New rules to make it easier to trace transfers of funds were also approved.

Source: European Parliament/Official Journal of the European Union.

European Council

May 2015

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC was adopted.

Source: Official Journal of the European Union.

European Commission

May 2015

Commission Implementing Regulation (EU) 2015/769 of 12 May 2015 amending for the 231st 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 six entities under the heading 'Natural persons'.

Source: Official Journal of the European Union.

Commission Implementing Regulation (EU) 2015/807 of 22 May 2015 amending for the 232nd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting one entity under the heading 'Natural persons'.

Source: Official Journal of the European Union.

June 2015

Proposal from the Commission of 15 June 2015 for a Council Decision on the signing, on behalf of the European Union, of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196). This Additional Protocol was adopted by several Member States the Council of Europe's organisation on 19 May 2015 and comprises a set of legally-binding international standards to help tackle foreign terrorist fighters (*for further details, please see Chapter IV. Topic of Interest*).

Source: European Commission.

July 2015

Commission Implementing Regulation (EU) 2015/1330 of 31 July 2015 amending for the 234th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting one entity under the heading 'Natural persons' and replacing another entity under the heading 'Natural persons'.

Source: Official Journal of the European Union.

August 2015

Commission Implementing Regulation (EU) 2015/1390 of 13 August 2015 amending for the 233rd 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 replacing seven entities under the heading 'Natural persons', replacing four entities and adding one entity under the heading 'Legal persons, groups and entities'.

Source: Official Journal of the European Union.

Commission Implementing Regulation (EU) 2015/1473 of 26 August 2015 amending for the 235th 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 amending two entities and deleting another one under the heading 'Natural persons'.

Source: Official Journal of the European Union.

2. Member States

Malta

June 2015

On 5 June 2015, Malta ratified the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), which now has 33 ratifications.

Source: Council of Europe Convention on the Prevention of Terrorism.

3. Other

Council of Europe

May 2015

On 19 May, the Council of Europe's Committee of Ministers adopted a set of legally-binding international standards to help tackle foreign terrorist fighters. The measures take the form of an Additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism, which has so far been signed by 44 of the organisation's 47 Member States. The ministers adopted also a political declaration and a three-year action plan (*for further details, please see Chapter IV. Topic of Interest*).

Source: Council of Europe.

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: Oslo District Court, Norway ¹

Date of decision: 8 May 2015

Introduction

Three Norwegian citizens were brought to trial for having participated in and/or supported a terrorist organisation called Islamic State of Iraq and the Levant (ISIL), later known as Islamic State (IS). The crimes were committed in the period June 2013 to May 2014. The accused are Norwegian nationals and were arrested in Norway on 27 May 2014. Two of them had served a six month period of active duty for the ISIL and returned from Syria in January 2014.

The prosecution case

Accused A ("A") and accused B ("B") were accused of educating or recruiting members, participating in or providing economic or other support to a terrorist organisation when this organisation has taken step to pursue its objectives by illegal means, on the basis of Article 147 d, in conjunction with Article 12, paragraph 3 under a) of the Norwegian Criminal Code (Charge I). The accused persons were charged with participation in a terrorist organisation by swearing allegiance to ISIL in May 2013 and subsequently serving for ISIL in various places in Syria. They were authorised to return to Norway in January 2014 on the condition that they would return to ISIL later on. During their stay in Norway they prepared for their active duty for ISIL in Syria, by acquiring military equipment, among other things.

B and Accused C ("C") were charged with the attempt to commit the above crime, on the basis of Article 147 d, in conjunction with Article 49 of the Norwegian Criminal Code (Charge II). In April 2014, the accused attempted to provide material support to the terrorist organisation by acquiring combat gear and equipment. They then tried to send a box containing the acquired items to their brother, who participated in the terrorist organisation ISIL in Syria. The box was

¹ The Case Analysis Unit would like to thank the Liaison Prosecutor for Norway at Eurojust for kindly providing a copy of the judgment.

handed over to another person for further transportation to Syria through Turkey. This individual was involved for the purpose of concealing the real sender of the box. While this person still had the parcel, the brother of the accused was killed in Syria. The day after their brother's death, the accused went to retrieve the box from this other individual. The package was subsequently seized on the day of the arrest of the accused.

C was additionally charged with breaches of the Firearms Act for being in the possession of a firearm in a public place without any legitimate reason (Charge III), and for having bought or acquired a firearm without a licence (Charge IV). On the day prior to his arrest, the accused had brought a sawn-off shotgun along in this car when driving around in Bærum, a suburb of Oslo. Prior to this event, the accused had been in the possession of the sawn-off shotgun and a pistol, as well as ammunition for the weapons. The accused had acquired the weapons from another person who was unknown to the police, without a licence.

The prosecution demanded a prison sentence of five years in relation to A, five years and three months for the crimes committed by B and one year and three months for C. In addition, items in the possession of B and C were to be confiscated, including combat gear and other equipment.

The defence case

Accused A stated that he had sworn allegiance to ISIL but broken with this organisation upon his return to Norway. Accused B claimed that he had travelled to Syria to help the civilian population in their fight against President Assad's regime. He had joined a resistance movement called Ahrar al-Sham, but denied having been a member of ISIL. A and B returned to Norway together in January 2014. Both A and B submitted that they should be acquitted of Charge I, A due to a mistake of law and B based on the fact that he had never been a member of ISIL. Alternatively, B also pleaded for an acquittal on the basis of a mistake of law.

B and C argued that they should be acquitted of Charge II for abandoning the attempt to provide support to a terrorist organisation, as they had discontinued the transportation of the box to Syria when they were informed of the death of their brother. In addition, they asserted that sending a box with clothes to their brother could not be characterised as material support to a terrorist organisation under Article 147 d of the Criminal Code. With regard to Charges III and IV, C stated that after the death of his brother, he had been contacted by his brother's friend, who wanted to return a sawn-off shotgun that he had kept for the accused's brother. The reason why C subsequently had the weapon in his possession was that he wanted to bring it to his uncle's weapon safe. The pistol mentioned in the indictment belonged to his uncle and had not been taken out of his uncle's home.

All accused persons pleaded not guilty of the crimes charged and for their acquittal or alternatively that their cases should be considered in the most lenient way possible.

The evidence

The situation in Syria

With regard to the present situation in Syria, the court referred to a statement by an expert witness who explained that out of the 20000 foreign fighters in Syria, most of whom participate in ISIL, 4000 are from Western Europe and some 70 of these are Norwegian nationals. Approximately 20 Norwegian foreign fighters have returned to Norway. While some of these have travelled to Syria in an organised manner, others have gone there on their own. According to the expert witness, the foreign fighters were usually required to hand over their passports and money upon enrolment. Some of them were given trainings in shooting techniques, while others were sent into combat or were employed to keep guard or to work as drivers.

Norwegian terrorism legislation

As concerns the Norwegian legislative response to terrorism in the aftermath of the 11 September 2001 attacks, the court pointed to changes to the Norwegian Criminal Code, more specifically the addition of Articles 147a, 147b, 147c, and 147d, which were introduced gradually since 2002. These provisions cover threats to commit terrorist acts, financing of terrorism and recruitment of people for terrorism purposes, as well as participation in or support to terrorist organisations that have already taken steps to pursue their objectives by illegal means. These legislative changes were also included in the new Criminal Code, which entered into force on 1 October 2015. The last provision, Article 147 d, which is at stake in the present case, had not been applied in court until this judgment was rendered.

Charge I

The court pointed to the fact that ISIL had been placed on the United Nations' list of terrorist organisations and confirmed that the brutality of the organisation, as displayed by executions and car bombings etc., justified the characterisation of ISIL as a terrorist organisation. This fact was not disputed by the parties.

Based on the evidence against B, including some 50 conversations obtained through communication interception, the court saw reasons to believe that B had connections to ISIL and had participated in the activities of this organisation. The claim that he had only joined the resistance movement Ahrar al-Sham, which was not on the UN's list of terrorist organisations, was not accepted by the court. Accused B had not mentioned this organisation until the trial hearing and when questioned about the meaning of Ahrar al-Sham, the accused was not able to provide an answer. The court found that B supported ISIL both during his stay in Syria and after his return to Norway. In fact, he intended to go back to ISIL in Syria, partly to take revenge on his brother who was killed in Syria. It was not established what exact tasks B had carried out for ISIL, but the court found it proven beyond reasonable doubt that he had wilfully participated in the activities of organisation, knowing that this was a terrorist organisation that had taken steps to realise its objectives by unlawful means, in accordance with Article 147d of the Norwegian Criminal Code.

With regard to A, the court made similar findings. The participation of A in ISIL had been established, despite his claim that he had broken with the organisation upon his return to

Norway. Various conversations between him and B, as well as others, showed his continued sympathy for ISIL. The argument that A had not actively participated in hostilities, but had been involved only in logistical tasks and humanitarian aid, was not accepted. It was established that A had performed both civilian and military tasks and sometimes carried weapons.

Both A and B made reference to a mistake of law with regard to their participation in a terrorist organisation. Norwegian law provides that an excusable mistake of law is possible, but the application of this provision is very limited. Although the court accepted that participation in the armed conflicts in Syria was an unusual and dramatic act, it could not concur with the idea that the prohibited character of their acts was unknown to them. In fact, the accused could have been expected to do some research into the lawfulness of their projects. Nothing pointed to such inquiries by the accused and the court found that A and B were well aware of the fact that their participation in ISIL in Syria was illegal. A possible mistake of law on the part of the accused was far from anything that could be characterised as an excusable mistake of law.

Charge II

The court subsequently considered the attempt of the two brothers B and C to provide material support to a terrorist organisation by sending a box of materials to their brother. The evidence showed that on three occasions C had expressed the view that the box should be sent through another person and not in their own name, as this may lead to criminal prosecution for support to terrorist activities. The court also found that the accused both knew of their brother's participation in ISIL and of the classification of ISIL as a terrorist organisation. As Norwegian preparatory work to Article 147 of the Criminal Code provided little guidance on the meaning of 'other material support', the court made reference to the EU's Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA), and concluded that the attempt of B and C to send a box of clothes and other items to their brother, who was participating in the activities of ISIL, could be considered as other material support under Article 147d. There was no requirement that the support should consist of weapons or other kinds of military supplies. Items like clothes and other combat gear were also important both for the individual fighter and for the terrorist organisation as a whole. Where individual fighters are well equipped upon arrival, the task of distributing materials that are necessary for the various activities of the organisation is simplified. The court further pointed out that if a lowest threshold existed, beneath which an act could not be considered as material support, e.g. sending a pair of socks or an encouraging book, this did not require any discussion in this context. In the present case, the act of the accused qualified as an attempt to provide material support under Article 147d, in conjunction with Article 49 of the Criminal Code.

Although the accused claimed that they had abandoned the attempt to send the box, subsequently to their brother's passing away, the court held that it was the death that made it impossible to complete the criminal act. Evidence showed that the content of the box was intended for their brother's personal use, as he had lost his luggage on his way to Syria, and not for ISIL in general. When B and C heard that their brother had been killed, the reason for sending him supplies fell away. It was not an explicit decision of the accused to abandon their attempt to send the box, and thus it did not qualify as abandonment of an attempt to commit a criminal act under Article 50 of the Criminal Code.

Charges III and IV

The court confirmed the statement by C regarding the facts surrounding the sawn-off shotgun that had been given to him by someone who had kept the weapon for his brother and wished to return it after the death had been announced. The fact that C had transported the weapons to his uncle's weapon safe constituted a breach of the prohibition to unlawfully carry a weapon in a public place, under Article 33, paragraph 1, sub-paragraph 2, in conjunction with Article 27b, paragraph 2 of the Firearms Act. Any additional plans involving the weapon that the accused may have had were not to be considered under Charge III.

With regard to the alleged breach of Article 7, paragraph 1 of the Firearms Act for possessing or acquiring a sawn-off shotgun and a pistol (Charge IV), the court found that the pistol had never left the uncle's home. Accordingly, C was not responsible for possessing or acquiring the pistol. However, C had acquired the sawn-off shotgun and evidence showed that he had plans to sell the weapon. The court found that a breach of the Firearms Act had been established but dismissed the prosecution's claim that the breach was grave.

The ruling of the court

Accused A and B were convicted of participation in a terrorist organisation. It was established that the accused had voluntarily travelled to Syria and returned to Norway when they considered the time suitable, without being hindered. They were very engaged in the activities of ISIL and after their return to Norway they expressed their wish to return to Syria to continue their active duty within ISIL.

The court pointed to the varying levels of engagement with the terrorist organisation that foreign fighters showed and held that the threat of a severe punishment for participation could have a preventive effect. While recognising that preventing potential foreign fighters from travelling was important, the court could not assess the value of preventive acts at the individual level. However, the court was convinced that a considerable imprisonment sentence and knowing that any future activities would be carefully monitored were factors that could influence a foreign fighter's decision to resume his activities.

As no previous case law on the application of Article 147d of the Criminal Code was available, the court referred to considerations by the Supreme Court in a case in which Article 147a was at stake. According to the Supreme Court, in cases in which a provision was relatively new, it is difficult to establish what a standard level of punishment should be. Consideration should be had to the fact that future cases could present offences that were of a greater gravity than those committed in the first cases. In the present case the participation in the terrorist organisation continued for a period of barely one year, with six months of active duty in Syria. While this could be considered more severe than a standard case, future cases may involve severe bodily harm, murder or other similar crimes.

Accused B and C were both convicted of the attempt to provide material support to a terrorist organisation. While the court had established that sending a box of supplies could constitute material support and that all distribution lines to terrorist organisations should be cut off, it held

that such material support could also assume completely different and larger dimensions. In the present case, the support only concerned the attempt to send supplies on one single occasion.

Accused C was convicted of being in the possession of a sawn-off shotgun in a public place and for having acquired this weapon. While possessing a weapon in a public place as such is a serious matter, the court found that the breaches of the Firearms Act in the present case were not grave.

The sentence

Accused A was sentenced to imprisonment for four years and three months, accused B to four years and nine months and accused C to seven months' imprisonment. The court further ordered the confiscation of the items identified by the prosecution in the indictment. All defendants had a right to a reduction of the time spent in custody.

The court further made the observation that C had been released on 25 June 2014, after which he had an obligation to notify the authorities of his whereabouts for a period of six months and was prohibited from travelling abroad. Thereafter the notification was to be made once a week.

IV. Topic of Interest

Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, Political Declaration and Action Plan

On 19 May 2015, the Council of Europe's Committee of Ministers adopted a set of legally-binding international standards to help tackle foreign terrorist fighters. The measures take the form of an Additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism. The ministers adopted also a political declaration and a three-year action plan. Some highlights from the Additional Protocol and the Action Plan are presented below.²

Additional Protocol to the Council of Europe's Convention on the Prevention of Terrorism

The Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism has been signed to achieve greater unity between the member States of the Council of Europe, to recall human rights and fundamental freedoms enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and its Protocols, to express their grave concern about the threat posed by persons who reside in acts of terrorism in the territory of another State and to have regard in this respect to Resolution 2178 (2014) adopted by the UN Security Council at its 7272nd meeting, in particular paragraphs 4 to 6 thereof.

The Protocol comprises a set of definitions of acts of terrorism, including participation in a terrorist association or group, receiving terrorist training, travelling abroad for the purpose of terrorism, funding travelling abroad for the purpose of terrorism and organising or otherwise facilitating travelling abroad for the purpose of terrorism. Each legal provision includes a clause that bounds all Signatories to adopt such measures as may be necessary to establish the criminalisation of the previously mentioned acts of terrorism. The Protocol also provides for a round-the-clock network of national focal points to rapidly exchange information. Furthermore, it includes provisions on conditions and safeguards, as well as on the relation between the Protocol and the Convention and the territorial application.

Political Declaration

The ministers adopted also a political declaration of the Committee of Ministers of the Council of Europe which expresses the necessity of the Action Plan aimed at fighting violent extremism and radicalisation leading to terrorism. Terrorism has a global character and represents a growing

² The documents adopted by the Committee of the Ministers are available on the website of the [Council of Europe](#).

threat to human rights, democracy and the rule of law in Europe and all over the world. The Committee of Ministers strongly condemn terrorism in all its forms and manifestations. The Committee stresses the importance of firmly replying to these attacks, thereby not giving ground and protecting human rights. The EU-action has to be stepped up to deal with the transnational nature of this threat, but long-term prevention of radicalisation is of equal importance. In doing so, a joint international effort is needed and therefore the Committee of Ministers adopted the Action Plan to combat violent extremism and radicalisation leading to terrorism.

Action Plan

The Action Plan will cover the period 2015-2017, building on and complementing the activities set out in the “Immediate action by the Council of Europe to combat extremism and radicalisation leading to terrorism” (SG/Inf(2015)4rev, 9 February 2015). With regard to the implementation of this Action Plan, Member States are encouraged to continue on a regular basis the sharing of “best practices and the internal and external coordination of the Plan will be ensured at a central level within the Secretariat. The Committee of Ministers will receive updates on progress and results on a regularly basis. An interim report on the progress and results of this Plan will be submitted by mid-2016 and a final report by end 2017. The objectives are the following.

1. Reinforcing the international legal framework against terrorism and violent extremism

The relevant Council of Europe legal instruments should be examined to remove all potential legal gaps and inconsistencies. The legal toolbox has to be updated and its effectiveness improved in order to address new developments.

1.1 To help member States, and neighbouring countries, as a matter of priority, to sign and ratify relevant Council of Europe instruments

Proposed actions are:

- The draft additional protocol to the Council of Europe Convention on the Prevention of Terrorism was finalised by CODEXTER on 10 April 2015 and approved by the Minister’s Deputies on 12 May 2015. It was adopted by the Committee of Ministers on 19 May 2015.
- Activities will be organised to ensure an effective follow-up and implementation of the Additional Protocol, which will be the first international legal instrument implementing the main criminal law aspects of UNSC RES 2178 of 24 September 2014.
- CODEXTER will continue its review of the Council of Europe legal instruments in the field of counter-terrorism, assess possible gaps in the legal framework, and review the assistance available to member States needing to overcome obstacles to signature and ratification.
- A cooperation project “Cybercrime XR” to promote implementation of the Protocol to the Convention on Cybercrime on Xenophobia and Racism (ETS 189) will be initiated.

1.2 To elaborate a new recommendation on terrorists acting alone, providing guidelines to member States on how to efficiently prevent and suppress this particular form of terrorism

A number of member States have already suffered attacks from terrorists who act independently of cells and groups. It is vital to ensure that this experience is shared Europe-wide by developing a new scope of recommendations and guidelines on how to prevent and suppress such attacks and by sharing good practices.

1.3 To further disseminate updated and relevant case-law of the European Court of Human Rights, offer Council of Europe expertise to member States, and distribute relevant legal texts

Proposed actions are:

- To set up net-based compilations of relevant case-law of the European Court of Human Rights on freedom of assembly, freedom of expression, freedom of religion and issues related to counter-terrorism. In this regard, the work of CODEXTER on the establishment of a database on case law of the Court relevant for counter-terrorism should be reinforced. This work will form a useful tool within the existing HELP programme.
- To make more efficient use of CODEXTER in providing member States with legal advice on anti-terrorism measures under preparation at national level.
- To enhance cooperation on countering terrorists, including foreign terrorist fighters, the CDPC (European Committee on Crime Problems) and the PC-OC (Committee of Experts on the Operation of European Conventions in the Penal Field) will be tasked to propose recommendations to facilitate the implementation of the European Convention on Mutual Assistance in Criminal Matters (CETS 030) and its Protocols.
- A special MONEYVAL procedure will be implemented to monitor the extent to which the mandatory UN asset freezing provisions in respect of adherents to terrorist organisations are being implemented. FATF (Financial Action Task Force) recommendations and standards on terrorism financing will be used.

2. To prevent and fight radicalisation through concrete measures in the public sector, in particular in schools an prisons, and on the Internet

Action is needed to prevent violent radicalisation and increase the capacity of our societies to reject all forms of extremism. Formal and informal education, youth activities and training of key actors (including in the media, political fields and social sectors) have a crucial role in this respect. Those who play a crucial role in this process are teachers, social workers, local authorities, women, religious leaders and youth and sport representatives. Furthermore, a better understanding is required of the way social media and internet are used for radicalisation.

2.1 Education

2.1.1. “Living Together as Equals in Culturally Diverse and Democratic Societies: Setting Out Competences Required for Democratic Culture and Intercultural Dialogue”

The best way to develop an understanding of “democratic culture” is through education. The Council of Europe is currently developing a project aimed at describing the main competences citizens require in order to participate effectively in democratic society and in intercultural dialogue, such as developing certain values, attitudes, skills, knowledge and critical understanding. The main target group will be education policy makers and practitioners.

Proposed actions are:

- This model will be completed by the end of 2015 and will be tested in 2016. Implementation will take place under the guidance of the Council of Europe’s Steering Committee for Educational Policy and Practice.
- A Council of Europe Conference of Ministers of Education will be organised to provide the strong political impetus and to help ensure that the competences are widely used in schools and other educational contexts.
- The competences will be promoted in the framework of the next Strasbourg World Forum for Democracy, which will help identify ways for democracies to deal with security risks.

2.1.2. Building inclusive societies

Proposed actions are:

- New transversal actions on “Building Inclusive Societies”, based on the report “Living Together – Combining diversity and freedom in 21st-century Europe”, will be finalised and upon adoption, implemented. The projects will include initiatives to combat stereotyping and discrimination and are aimed at actors who are key in the construction and in the consolidation of more inclusive societies.
- The Council of Europe publication “Signposts” will be widely disseminated.

2.1.3. Providing a counter-narrative to the misuse of religion

Raising the profile of and providing a platform for religious leaders and academics who speak with authority about how terrorist organisation are in conflict with religion, are examples of efforts that will be made to counteract the destructive messages of extremists with counter narratives. Proposed actions are:

- A group of leading figures will draw up a reference document for better understanding of religious and conventional issues. This document will be broadly distributed.
- The format of the Council of Europe Annual Exchange on the Religious Dimension of Intercultural Dialogue will be adapted to make it a forum for discussions on issues relating to preventing radicalisation.

- The Secretary General will consider inviting associations of victims of terrorism in Council of Europe member States to submit testimonies and documents on their activities and to report on the initiatives they have undertaken.

2.2. Prisons

A number of those who succumb to recruitment by terrorists are radicalised and recruited in prison. Therefore, the Council of Europe has drafted practical guidelines on the role which prisons and probation services play in countering this process to help them prevent, detect and deal with radicalisation. They are expected to be ready for adoption in December 2015. The proposed action is to introduce radicalisation in prisons as a main topic at the 20th Council of Europe Conference of Directors of Prison and Probation Service on the 9th and 10th of June 2015.

2.3 Internet

Internet and social media are commonly used tools by those advocating hate speech, recruitment for terrorist purposes and radicalisation. The Council of Europe's "No Hate Speech" campaign, to combat hate speech online, is run by the member States with national campaigns, paying due attention to their own national context. Plans are underway in non-member States for similar campaigns. A No Hate Parliamentary Alliance has been established to support the work of the national committees. The proposed actions are:

- The campaign will be enhanced and extended for three more years.
- Due attention will be given to the effective follow-up of recommendations adopted at the Conference "Tolerance trumps hate" which was held in Brussels on 8 May, with a view to developing recommendations for fighting radicalisation and extremism.
- The No Hate Parliamentary Alliance will exchange information on good legislation, policy and practice and promote legislative initiatives.
- The Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed on internet will also be promoted, as a tool to fight hate speech online.
- A conference with the title "Freedom of Expression is STILL the issue" will be organised in Strasbourg on 13-14 October 2015, as a follow-up to the Committee of Ministers' Thematic Debate on "Ensuring freedom of expression on the Internet".
- Work will continue to update and promote the visibility of the website containing information on Council of Europe standards and tools to fight radicalisation and terrorism.
- To continue the work to fully operationalise the Platform on the Safety of Journalists and Protection of Journalism. The purpose of this Platform is to ensure that governments will provide for conditions for freedom of expression and will not unduly interfere in the exercise of this freedom.

V. The Way Ahead

Ongoing/Upcoming Trials

May - August 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.

The Netherlands

Ten suspects charged with participation in a terrorist organisation, recruitment and conspiracy to commit terrorist offenses are due to appear in court in Amsterdam. They are suspected of participating in a terrorist network that has recruited young people to join the armed terrorist struggle in Syria. Some of the defendants are believed to be still in Syria.

Source: [NLTimes](#).

Spain

Eleven alleged members of a terrorist network that had been recruiting and indoctrinating potential foreign terrorist fighters have been brought to court at the Audiencia Nacional. Members of the network are also suspected of having financed and facilitated the travel to Syria and Iraq and the subsequent integration of their recruits into ISIL and Jabhat al-Nusrah. According to the prosecution, at least six fighters recruited by the network died in suicide attacks.³

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

United Kingdom

London's Metropolitan Police have arrested five members of the same family, including three teenage girls on suspicion of possessing information likely to be useful to a person committing or preparing an act of terrorism. One of the girls was previously arrested on suspicion of preparation of terrorism.

Source: [CNN](#).

³ The outcome of the trial will be presented in the next issue of the TCM.



Terrorism Convictions Monitor



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