



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 25 of the TCM covers the period **January – April 2016**. 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 of the Court of Appeal for Western Sweden upholding the conviction of two Swedish nationals charged with participating in the execution of two men in the area of Aleppo, Syria, on or around the period between 12 April and 2 May 2013. The murders were filmed and the relevant videos were stored on a USB flash drive, which was discovered during a house search carried out against one of the defendants, a Swedish citizen who had returned to Sweden after participating in the armed conflict in Syria.

The Topic of interest section provides a summary of the judgment rendered by the Federal Court of Switzerland on January 2016 which touched upon the following very sensitive matter: could a report from a national intelligence agency, based *inter alia* on information provided by foreign intelligence services, serve as a basis for opening a criminal investigation and subsequently ordering coercive and surveillance measures (such as the interception of the defendants' telecommunications)?

The general objective of the TCM is to inform and kindly invite the National Members to review, confirm, and, if possible, complete the information retrieved from the various open sources. The respective National Desks will be further contacted for specific details, when needed.

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

I. Court Decisions

1. Terrorism Convictions/Acquittals per Member State

January - April 2016

Belgium

January 2016

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 and a fine of EUR 3000. The man, who is of Moroccan nationality, had travelled to Syria in December 2013 and joined the terrorist group ISIL. He had initially denied travelling to Syria. Later, he admitted he had gone there upon the request and guidance of two Belgian fighters in Syria. One of them had also requested the defendant to bring clothes, as well as some of his personal belongings. Upon arrival, the defendant had taken certain exams in order to be allowed to join a terrorist training camp. As his knowledge of Arabic and the Islam had proven insufficient, he had been instructed to improve his knowledge of the latter before he would be allowed to join the training camp. The individual had returned to Belgium in August 2014. He claimed he had undergone an abdominal surgery in Syria and his recovery was not progressing well. The defence has submitted an appeal against the conviction.

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

An Islamic preacher, linked to Sharia4Belgium was tried before the Tribunal correctionnel of Brussels with thirteen other defendants. As the leader of the cell, he was in charge of recruiting new recruits - he launched a new restaurant where he persuaded young people to fight the jihad - and providing the operational means for their departures to Syria. The defendant argued that he never indoctrinated these people, as they already believed in a radical Islam, and supported that they only had a discussion over mutual ideas. He was finally arrested in 2013 after the departure of two minors to Syria. He was sentenced to 10 years' imprisonment, whereas the prosecution required 15 years, for **leadership of a terrorist group**. Most of the other defendants were sentenced to 5 up to 15 years' imprisonment, one was acquitted and one granted the suspension of his sentence.

Source: Le Figaro

Six individuals, of whom 3 *in absentia*, had been convicted on 6 November 2015 by a Belgian court for **participation in the terrorist groups** Al Shabaab, Jabhat al-Nusrah and the Islamic State both in Somalia and Syria. It shall be noted that one of the defendants had already been convicted for participation in a terrorist group by the Tribunal correctionnel of Brussels on 29

July 2015 in the so-called 'Syrian Cell' judgment (*for further details, please see TCM, issue 24, Chapter III. Judicial Analysis*). All defendants were sentenced to three to ten years' imprisonment and fines of EUR 6.000-60.000. Appeal had been submitted for one of the suspects, convicted on 22 January 2016 to four years' imprisonment with suspension of the sentence for five years.

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

The Court of Appeal of Gent heard the case of eight appellants, who had earlier been convicted of terrorist offences. The eight were part of a cell first tried by the Court of First Instance of Mechelen in December 2012 for trying to join extremist militants in Chechnya. In its ruling, the Mechelen court had sentenced a leader of the cell to five years' imprisonment. He had posted his plans to commit a terrorist attack on an extremist website. The remaining thirteen co-defendants had been acquitted of terrorism charges and three of them had been found guilty of violations of the weapons law (*for further details, please see TCM, issue 15*). Following the submitted appeal, the case had been referred to the Court of Appeal of Antwerp, which had acquitted two of the fourteen of the terrorist offences they had been charged with. It had further increased the sentence of the group's leader from five to 12 years' imprisonment. It had also found the remaining eleven guilty of **leadership or membership of a terrorist group** and sentenced them to imprisonment between five and seven years (*for further details, please see TCM, issue 19*). According to the information available in open sources, some of them were known or suspected to have left for Syria to join the fighting there. The Court of Appeal of Gent confirmed the guilty verdicts of the eight appellants and handed down sentences of three to seven years' imprisonment. One of the men had also been convicted for terrorist offences as part of the cell sentenced by the Court of First Instance of Brussels on 29 July 2015 (*for further details, please see TCM, issue 24, Chapter III. Judicial Analysis*). Six of the convicted submitted an appeal to the Court of Cassation.

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

Three Syrian fighters suspected of recruiting and conveying jihadists and funding to Syria were charged with **participation in the activities of a terrorist group** before the Tribunal correctionnel of Brussels. On 27 January 2016, the latter sentenced two of them to 40 months up to four years with suspension of the execution of imprisonment sentence for five years along with a EUR 6000 fine. The charges brought against the last defendant were declared inadmissible by application of the *ne bis in idem* principle, as he had already been convicted for the same charges in the so-called 'Syrian Cell' judgment on 29 July 2015 (*for further details, please see TCM, issue 24, Chapter III. Judicial Analysis*).

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

April 2016

The Court of Appeal of Brussels confirmed the guilty verdict pronounced in July 2015 by the Court of First Instance of Brussels against a **leader of terrorist group** that had recruited and sent fighters to Syria. The Court of Appeal handed down a 15-year prison sentence, which is three years longer than the one given at first instance. The same sentence of 15 years was

ordered for another person, who had received a penalty of eight years' imprisonment in July 2015. The imprisonment of her sister was also increased from ten months to four years, suspended. The last of the appellants received also a harsher sentence of five years for her **participation in the activities of the terrorist group**. All appellants were part of an organised network, which had been recruiting, indoctrinating and facilitating the travel to Syria of potential fighters, indoctrinated with the violent jihadist and Salafist doctrine by the cell's leaders. One of the group members sentenced *in absentia* is believed to have played a major role in the attacks that took place in Paris on 13 November 2015. He was reported dead following a police action in the aftermath of the attacks. Another one, also sentenced *in absentia* and suspected to have been plotting terrorist acts, was arrested in March 2016 in France (*for further details, please see TCM, issue 24, Chapter III. Judicial Analysis*).

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

Estonia

January 2016

The Harju County Court found two defendants guilty of **terrorist financing**; one of them was also convicted of **morally aiding the membership in a terrorist organisation**. The two had financed the first Estonian resident, who had joined the terrorist organisation ISIL in 2013. The main evidence presented to the court was information gathered on the basis of the Security Authorities Act. The court allowed the evidence and considered also whether there was sufficient evidence regarding the elements of the crime. The two denied the charges and submitted an appeal against the conviction.

Source: National Desk of Estonia at Eurojust/The Moscow Times

Finland

March 2016

The Helsinki Appeals Court acquitted four individuals, who had been found guilty of **financing of terrorism** by the Helsinki District Court in December 2014. At the first instance trial, the court had heard that the four had transferred a total of EUR 3200 to Somalia. According to the prosecution, the money had been used to buy equipment and food for Al-Shabaab's soldiers (*for further details, please see TCM, issue 21*). The Appeals Court, however, ruled that the financing of terrorism was not yet criminalised in Finland at the time of the acts, except in cases where it was clear that the money would be used for terrorism. The fact that one of the four had been aware that the money was going to support paramilitary actions by al-Shabaab was not enough to rule that it was supporting terrorism as there was a civil war in Somalia at the time, and al-Shabaab was one party to that conflict. The court held that the other three believed the money was to be used for charitable purposes. The Appeals Court overruled also the guilty verdict for **recruitment for terrorism and preparation of a terrorist offence** for one of the four men.

Source: Yle

France

January 2016

The Tribunal correctionnel de Paris tried seven people suspected of **terrorist activities** in a cell of Paris. Six of them were contradictory tried, but the last and most famous one was tried *in absentia*. The 35 year-old man is a worldwide known jihadist, even considered as one of the leaders of ISIS in Syria, and has been given the nickname of “the executioner”. He first became radicalised in prison before organising the recruitment and the departure for Syria of young French people willing to join terrorist groups in the Middle-East. Regarded as highly dangerous by French and U.S. intelligence services, he is assumed to be the true perpetrator of the Paris attacks of 13 November 2015, but also of the shooting at the Jewish Museum in Brussels. The tribunal sentenced him to 15 years’ imprisonment, even though the prosecution requested 18 years’ imprisonment. The six other defendants were sentenced to six up to nine years’ imprisonment for **joining the terrorist group Jabhat al-Nusrah**.

Source: [France24](#)

February 2016

A 25-years-old military serviceman was convicted on 15 February to one year but was granted suspension. The Tribunal correctionnel de Pau found him guilty of **glorification of terrorist acts**. When controlled by policemen while being drunk, the young man declared that ‘people are joining ISIS because of this kind of police officers’. He had been discharged from the army since April 2016.

Source: [Le Monde](#)

Italy

April 2016

The Italian Supreme Court considered and rejected the appeal presented by a defendant against his conviction for having participated in the international terrorist group ISIS – an offence punishable under article 270*bis* of the Italian penal code. The defendant, a foreign national, had arrived in Italy on board of a ship together with about 500 migrants of various nationalities. On the two mobile phones he was carrying at the time of his arrival to Italy, the investigators found a picture of him bearing military weapons, and various propaganda documents, related to the activities of the “Martyrs of Daraa” group, which is connected to ISIS. Further analysis of his mobile phone revealed 71 files depicting passports and 199 contacts amongst the defendant and individuals with previous criminal records in Jordan, Libya, India, Pakistan, Tunisia, Syria, Saudi Arabia, Switzerland and Germany. In its ruling, the Supreme Court confirmed the jurisdiction of the Italian authorities, by holding that the activities of the terrorist organization which the defendant participated in also extended to the Italian territory.

Source: *Information provided by the Italian authorities and the National Desk of Italy at Eurojust*

The Netherlands

January 2016

The Supreme Court considered the case of a person formerly convicted for her participation in the so-called 'Hofstad' group. In March 2014, she had been found guilty of **participation in an organisation, which had the objective to commit terrorist crimes**, and **violations of the Weapons Law** and sentenced to three years' imprisonment by the Court of Appeals of Amsterdam. The ruling of the Appeals Court came after the Supreme Court had annulled previous judgments and sent the case back for re-trial. As part of the 'Hofstad' group and in preparation of terrorist acts, the woman had sought information on the addresses of politicians from her sister, who used to work in a pharmacy. According to the court, the woman had been aware of the fact that the group had intended to commit terrorist acts and she had carried out activities within the group. Having considered all argument presented by the defence, the Supreme Court confirmed the verdict pronounced by the Court of Appeals of Amsterdam.

Source: [Rechtspraak.nl](#)

February 2016

At the District Court of Rotterdam one defendant was accused of **conspiring to prepare terrorist crimes, participation in a terrorist organisation** and **financing of terrorism**. He held extremist jihadist views and possessed jihadist material. He had researched how to travel to Syria and join Jabhat al-Nusrah and followed lessons in Arabic. He had made several money transfers and sent a telephone, laptops/computers to jihadist fighters in Syria. The defence claimed that the defendant had gone to Syria to start up a transportation company. The court found the defendant guilty as charged and sentenced him to 42 months' imprisonment, of which 12 suspended for a period of three years. In its judgment, the court also determined the conditions to be met by the person in order to apply the sentence, as pronounced. Those included general and special conditions, inter alia, that he should not commit another offence; that he should have no contact with other suspects, with fighters in Syria and/or Iraq, with persons placed on the terrorism sanctions list; that he should stay away from the airports of Amsterdam, Rotterdam/The Hague, Groningen, Eindhoven and Maastricht, from Western Union offices, from the borders with Belgium and Germany; that he should remain in the Netherlands and join a re-integration programme and cooperate, if necessary, with the Dutch Institute for Psychiatry and Psychology, etc.

Source: [Rechtspraak.nl](#)

The District Court of Rotterdam found another defendant guilty of **financing of terrorism** and sentenced him to 12 months' imprisonment, of which six suspended for a period of three years. The court considered it proven that he had collected and sent funds to a jihadist fighter in Syria. The defence claimed that the money was intended for personal purposes and the acts could, therefore, not be considered as financing of terrorism. The court ruled, however, that providing financial support to jihadist may lead to increased availability of funds, which may be used for terrorist purposes. The court pointed also out that the content of the exchanged chat messages

showed that the defendant was aware that the person receiving the money was a jihadist fighter. When determining the sentence, the court set out some general and specialised conditions for the suspension of the imprisonment. Those included, inter alia, that he should not commit another offence; that he should have no contact with other suspects; that he should stay away from the airports of Amsterdam, Rotterdam/The Hague, Groningen, Eindhoven and Maastricht, and from the borders with Belgium and Germany; that he should remain in the Netherlands and discuss about Islam and his ideas about his future role in the society with an expert appointed by the probation office, etc. The probation office is to ensure electronic oversight on the whereabouts of the convicted person.

Source: [Rechtspraak.nl](#)

At the District Court of Zeeland-West-Brabant one defendant faced charges of **recruitment for terrorist purposes**. He was suspected of having contacted underage asylum seekers in February and March 2015 and tried to recruit them to join the terrorist organisation ISIL. During the house search at his home, the police had found a video with an execution of seven persons carried out by ISIL and other materials with terrorist content. In addition to the terrorism charges, the defendant was accused of social security fraud and laundering of EUR 56325, which the police had found on him during a check at Schiphol airport. The court found the defendant guilty and sentenced him to 18 months' imprisonment, of which six suspended for a period of two years. The conditions for the probation included, inter alia, supervision from a probation officer.

Source: [Rechtspraak.nl](#)

March 2016

The Court of Appeal of Arnhem-Leeuwarden handed down a prison sentence of 18 months, of which 12 suspended, to a person, who had earlier been acquitted by the Regional Court of Gelderland. The Court of Appeal found him guilty of **preparing to join an organisation, which has the aim to commit terrorist crimes**. The first instance non-guilty verdict of a second person was confirmed. Both men had been arrested in August 2013, as they had just crossed the border with Germany. In their car, the police had found survival gear, balaclavas, communication devices, huge amounts of cash, AK-47 manuals, videos and articles about the jihadist ideology. Prior to their departure, they had applied for new travel documents and changed address. They had also signed up for several mobile phone subscriptions and taken out loans. The prosecution believed that these facts may have indicated that the two men had prepared for the commission of criminal acts. In February 2015, the Regional Court of Gelderland acquitted both men, as it did not consider the charges against them to be proven (*for further details, please see TCM, issue 22*).

Source: [Rechtspraak.nl/Rechtspraak.nl](#)

At the District Court of Rotterdam one defendant was charged with **financing of terrorism** for having allegedly sent approximately EUR 17000 to his brother, who had been fighting in the ranks of ISIL in Syria and who had been sentenced *in absentia* in December 2015 for terrorist

offences. The criminal proceedings had been launched on the basis of a report by the Dutch Financial Intelligence Unit. According to the available information, the defendant had made several transfers via Western Union and MoneyGram, to a middleman in Turkey. The court found the defendant guilty of financing of terrorism, as well as **violation of the Sanctions Law and complicity in document forgery with the purpose of supporting a terrorist crime**. He was sentenced to 24 months' imprisonment, of which eight suspended for a period of three years. The conditions for the probation included, inter alia, that he should not commit another offence; that he should undergo an ambulatory treatment at a mental health institution, appear regularly at the probation office, pay off his debts, etc.

Source: [Rechtspraak.nl](#)

The Court of Appeals of The Hague acquitted one person, who had been found guilty of **preparing a terrorist offence** by the District Court of Rotterdam in June 2015. The man had been identified as a member of ISIL by a friend who stood trial in Belgium for having travelled to Syria. The Dutch Intelligence Service had also tapped several telephone conversations, during which he had frequently mentioned the Syrian civil war and a potential terrorist attack on a Dutch politician. The District Court of Rotterdam had found that the defendant had been planning to commit a robbery and use 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 had ruled that criminal activities supporting the jihad constituted a serious terrorist offence (*for further details, please see TCM, issue 23*). The Court of Appeals of The Hague found him guilty of **preparing an armed robbery and possession of an illicit firearm**. It did however not consider it proven that the robberies had been intended to provide money for the jihad in Syria and Iraq.

Source: [Rechtspraak.nl](#)

The Court of Appeal of The Hague heard the case of a 29-year old woman, who had been convicted by the District Court of Rotterdam in July 2015 for having transferred EUR 2000 to a person in Turkey, who in turn had sent it to the Islamic Jihad Union (*for further details, please see TCM, issue 23*). The defendant's lawyer claimed that this was not his client's intention and that she had in fact intended to support orphans and widows of Islamic fighters. At the appeal, the defence claimed also that there had been a violation of Article 6, paragraph 1 of the European Convention on Human Rights, based on the fact that the woman had been first questioned in 2010 and only brought to court in 2015. The Court of Appeal found the woman guilty of **violating the Sanctions Law** and acquitted her of **participation in a terrorist organisation**. It also reduced her sentence due to violations of the reasonable time for trial. She was handed down a prison sentence of 12 months, 11 of which would not be served unless she commits another offence within the probation period of two years.

Source: [Rechtspraak.nl](#)

Spain

January 2016

On 5 January 2016 the Audiencia Nacional sentenced a 40-year-old man to one year in prison for **glorification of the terrorist group ETA** as provided for by Article 578 of the Spanish Criminal Code. On 31 March 2013 the defendant showed on a sign his full support to an ETA member codenamed "Thierry", deceased in a French prison. This decision of the court is final.

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

A 23-year-old man was sentenced by the Audiencia Nacional to one year in prison for **glorification of the terrorist group ETA**, as provided for by Article 578 in conjunction with Article 579.2 of the Spanish Criminal Code. The defendant had broadcasted images and comments aiming at supporting and justifying the activities of ETA on Twitter in 2013 and 2014. He admitted the charges brought up against him before the court. The decision of the court is final.

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

The Audiencia Nacional tried 35 men and women, who were charged with **participation in a terrorist organisation**. Thirty-five Basque pro-independence activists, including two French, accused of having fought on the 'political front' for the ETA 2005 to 2008, have instead claimed their contribution to peace in the Basque Country at the opening of their trial near Madrid. They were all convicted, as provided for by Articles 515.2 and 516.2 of the Spanish Criminal Code, to 18 months' to two years' imprisonment.

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

A 25-year-old defendant was tried for **glorification of the terrorist group ETA** and sentenced to two years in prison by the Audiencia Nacional. Between November 2012 and August 2014 she posted messages insulting the memory of ETA victims on social network Twitter. The decision of the court has been appealed.

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

February 2016

The Supreme Court dismissed the appeal against the June 2015 conviction of a 32-year-old defendant – who had been found guilty of **committing a terrorist attack resulting in death, possession of arms for the purposes of terrorism and causing damage for the purposes of terrorism** – and sentenced him to 32 years' imprisonment. The court had heard that on 7 March 2008 he had shot a former city councillor from the ruling Socialist Party, who had later passed away as a result of his injuries. In April 2008, ETA had claimed the attack. The court sentenced

him to 34 years in prison on 2 February 2016 (*for further details, please see TCM, issue 23*). The decision of the court is final.

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

Four Spanish nationals and one Swiss national were tried before the Audiencia Nacional for **collaboration with terrorist group** ETA, as provided for by article 576 of the Spanish Criminal Code. They were part of a unit, whose alleged purpose was to provide funding to the terrorist group, especially by benefiting of public subsidies. On 3 February 2016, the court found the five of them not guilty for the charges brought against them. The decision is final.

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

The Audiencia Nacional acquitted four defendants charged with **participation in a terrorist group, attempted terrorist assassination and possession of weapons with terrorist purposes**. They were on trial accused of making three attempts to shoot down the plane of an ex-prime minister using a surface-to-air missile. The court established that they could only prove that the chief defendant belonged to ETA and that there was no evidence of the participation of the three other defendants in the alleged plans. The charges brought against the first defendant were declared inadmissible by application of the *ne bis in idem* principle, as he had already been convicted for the same charges in France where he has been serving time for the past eight years. The decision of the court is final.

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

A 21-year-old man was convicted on 4 February 2016 to one year and three months' imprisonment for **glorification of the terrorist group** ETA. Between 2013 and 2014, the defendant posted messages and images on several social networks to show his support to the terrorist group, mostly by justifying all actions that had been undertaken and humiliating its victims. The decision of the court is final.

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

At the Audiencia Nacional a 33-year-old defendant was found guilty of **glorification of the terrorist group** ETA, as provided for by Article 578 of the Spanish Criminal Code. The defendant is the owner of a Facebook page, through which he posted messages and images supporting the activities of the terrorist group. The court sentenced him to one year in prison on 16 February 2016. The decision of the court is final.

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

The Supreme Court dismissed the appeal against the July 2015 conviction of a 23-year-old man for the **glorification of terrorism**. He had been arrested for having painted graffiti of an anagram used 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 had sentenced him to one year in prison (*for further details, please see TCM, issue 23*). The decision of the court is final.

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

A 24-year-old man was found guilty of **glorification of the terrorist group ETA** by the Audiencia Nacional on 23 February 2016. Between August 2013 and November 2014, the defendant had posted messages and images aiming at showing support to the activities undertaken by the terrorist group. He was sentenced to one year and six months in prison, as provided for by Article 578 of the Spanish Criminal Code.

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

The Supreme Court considered the appeal submitted by the defence of one person sentenced to 37 years' imprisonment in June 2015. Together with another co-defendant, he had been found guilty of **causing damage by a terrorist attack** that was concurrent with the offences of **attempted terrorist assassination involving the use of explosives, participation in a terrorist organisation, and of unlawful possession and manufacture of explosives**. The two had been arrested for producing explosive devices and leaving them in backpacks in different locations of a local television and mobile telephone station. One device had exploded in the early morning on 16 January 2009 causing material damage to the station. The two others had been deactivated by an explosive disposal unit. The members of ETA's *EZUSTE* command had claimed responsibility for the attack. In its ruling, the Audiencia Nacional handed down sentences of a total of 375 years of imprisonment to each defendant (*for further details, please see TCM, issue 23*). The Supreme Court acquitted the appellant of **causing damage by a terrorist attack** that was concurrent with the offences of **attempted terrorist assassination**. It dismissed the appeal of the other appellant. The decision of the court is final.

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

A 48-year-old woman was tried before the Audiencia Nacional for **glorification of the terrorist group ETA**. Between 2013 and 2014 the defendant had posted via Facebook images and messages aiming at justifying the activities of the terrorist group. The court sentenced her on 26 February 2016 to one year in prison. The decision of the court is final.

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

March 2016

On 1 March 2016 the Audiencia Nacional sentenced a 59-year-old man for **glorification of the terrorist group ETA**. The defendant, arrested in May 2015, supported the actions undertaken by the terrorist group on Facebook in 2013 and 2014.

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

At the Audiencia Nacional one defendant was charged with **glorification of the terrorist group ETA** and humiliation of the victims of terrorism. In 2010 on Facebook, and then between 2011 and 2014 on Twitter, the 29-year-old man posted messages supporting the activities of the terrorist group. The decision of the court is final.

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

On 10 March 2016 the Audiencia Nacional sentenced a 35-year-old man to one year in prison for **glorification of the terrorist group ETA**. The defendants posted from 2010 to 2014 messages supporting the group's activities on Facebook.

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

The Audiencia Nacional was confronted to the case of a 55-year-old Spanish national who **glorified the activities of terrorist group ETA**. Images and messages showing his support to the group were regularly posted via Facebook. The court sentenced him to eight months in prison on 14 March 2016. The decision of the court has been appealed.

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

A Spanish national was acquitted by the Audiencia Nacional of the charges of **attempted terrorist assassination, theft with violence and intimidation, holding hostages**. The defendant was suspected of having tried to kill two officers from the Guardia Civil by means of a car bomb in January 2000 in Bilbao, following ETA's decision to break the truce. As there was no proof of his involvement in the facts, the court decided to acquit him.

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

April 2016

The Audiencia Nacional found five defendants guilty of **belonging to a terrorist organisation** and sentenced them to two years' imprisonment each. The defendants were linked to several ETA-affiliated groups, e.g. EKIN, SEGI, Batasuna, Askatasuna, etc. Those groups and their members used several restaurants (so-called tabernas) to meet. During the house searches at the defendants' homes, the police found multiple documents and other items related to ETA and its affiliated groups, as well as photocopies of IDs, social security cards, etc. The defendants admitted their participation in the described facts.

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

A prison sentence of seven years was handed down to a member of ETA, who in the period between 2008 and his arrest in June 2010 had participated in its activities or made himself available to carry out tasks for the terrorist organisation. His alias appeared in several agendas and notebooks of leaders and members of ETA commands, including the leader of ETA's military apparatus. Surveillance activities of the Spanish and French police had confirmed the identity of

the defendant. After spending some time in the French town of Castres, he had returned to Spain in August 2009. The court found him guilty of **participation in a terrorist organisation** and acquitted him of two counts of **conspiracy to commit a terrorist assassination**. It did not consider it proven that the defendant had participated in the preparation of the planned assassination of two public figures.

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

Sweden

March 2016

On 30 March 2016 the Court of Appeal for Western Sweden confirmed the verdict of the Gothenburg District Court which found two returnees from Syria guilty of **terrorist crimes** and sentenced them to life imprisonment in December 2015. The two men were suspected of travelling to Syria back in 2013 and of committing at least two murders. The accused came as children from Syria and Iraq and obtained Swedish citizenship. The police found videos during the house searches carried out. The videos, which constituted the main evidence against the accused, showed the execution of two Syrian nationals done for propaganda purposes. According to the court, the two accused took such an active part in execution-like killing that they should be regarded as perpetrators of that crime, regardless of the fact that the actual killing was done by other persons. The court ruled that the murders were to be considered a terrorist offence as they were intended to instil fear and intimidation (*for further details, please see TCM, issue 24 and 25, Chapter III. Judicial Analysis*).

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

United Kingdom

January 2016

A 26-year-old British woman was tried in January for **participation in terrorist activities**. She is the first woman from the United Kingdom to return from Syria to be convicted of the offence. Before the court, she argued joining ISIL and said she only wanted to live under Sharia law with her child, but the court was shown photos of her posing with an ISIL flag, evidence of her support to the terrorist group. She was also convicted of **encouraging acts of terrorism** via social media. The defendant first had self-radicalised on the internet, before leaving the United Kingdom. For the prosecution, the defendant had clear intentions when she left the United Kingdom, using social networks for encouraging the public to commit acts of terrorism here. After three months in Syria, she changed her mind and left Syria through Turkey. She was finally arrested last year by counter-terrorism officers when she returned to Britain. She has been sentenced to six years' imprisonment for belonging to the jihadist group ISIL.

Source: Huffington Post

Two Islamist militants affiliated to the terrorist group al-Muhajiroun were sentenced to 2 years in prison on 8 January 2016 for **breaching the Terrorism Act by leaving the UK illegally**. They left the country by hiding in a car and crossed the channel at Dover. They were arrested in a train departing to Romania and handed over to the UK by Hungarian authorities. They both had a criminal record for funding and inciting terrorism.

Source: National Desk of the United Kingdom at Eurojust/BBC

The Old Baily convicted two men of **promoting ISIS** in Oxford Street, the shopping avenue in London. They had installed a stall next to a store where they were distributing leaflets. A search had been conducted at their home addresses and the computer seized revealed images or information useful to terrorists and proving their support to the terrorist group.

Source: National Desk of the United Kingdom at Eurojust/BBC

February 2016

A taxi driver was caught while planning to abandon his pregnant wife and child for a new life in Syria with a jihadi wife. He had many contacts with jihadists in Syria, and had travelled to Turkey in order to explore the border. A search at his house revealed that he was very well prepared for his next trip two days later. The court sentenced him for **preparation of terrorist acts**.

Source: National Desk of the United Kingdom at Eurojust/Daily Mail

Three men suspected of helping a teenage girl from Cardiff to reach Syria were convicted on 10 February to 4 years and 6 months up to 5 years in prison. They also expressed the desire to leave for Syria themselves in order to fight with Islamic fighters. The three of them were found guilty of **preparation of terrorist acts and funding**.

Source: National Desk of the United Kingdom at Eurojust/BBC

The Old Bailey found guilty a 20-years-old student of **preparation for terrorist acts**. He helped other teens to leave for Syria where girls could marry jihadists. The authorities found evidence in his computer and mobile of his support to the terrorist group ISIS. Furthermore, he had been in contact with friends sharing his belief abroad via WhatsApp and other social media.

Source: National Desk of the United Kingdom at Eurojust/BBC

A 29-years-old British national who joined ISIS in Syria had returned in the UK because he 'disliked the cold water'. He was arrested while crossing the border to head back to Turkey, and held in custody because he did not have any travel documents on him. At his arrival at Gatwick Airport in the UK, counter terrorism officers stopped and searched him, and found extremist materials in his possession. The Woolwich Crown Court sentenced him to 7 years for **preparing**

acts of terrorism on 10 February 2016. The defendant pleaded guilty of the charges brought by the prosecution.

Source: National Desk of the United Kingdom at Eurojust/Daily Mail

March 2016

One defendant was charged with **collection of information for terrorist purposes** contrary to Section 58 of the Terrorism Act 2000. In his possession the police found the publication 'Smashing Borders - Black Flags from Syria. Revolution 2011 - 2020+'. One of the chapters, called 'Drones - superior unmanned airpower' contained drone evasion tactics of the terrorist organisation Al Qaida in the Islamic Maghreb (AQIM). It also gave advice on how to avoid detection and attacks by drones. The defendant pleaded guilty and was sentenced by the Central Criminal Court to 15 months' imprisonment suspended for two years with two years' supervision.

Source: National Desk of the United Kingdom at Eurojust/briefreport.co.uk

April 2016

Two 22-years-old British nationals were sentenced by the Old Baily to life in prison for **plotting to kill** soldiers, police officers and civilians in the first plot to be funded and directed by ISIS in Syria. The bought guns and ammunitions through arms suppliers. One of the defendants, a medicine student known as 'The Surgeon' admitted the charges midway through the trial. His confession led to the conviction of another accomplice, who was found guilty of **conspiracy to murder and preparation of terrorist acts**.

Source: National Desk of the United Kingdom at Eurojust/Daily Mail

A 25-years-old delivery driver, supporter of ISIS, had been convicted of **plotting to kill a US airman and preparing to join IS in Syria**. The searches revealed that he received instructions on how to build a bomb and had been advised to use it against the police. He was sentenced to a minimum of 12 years in prison by a judge at London's Kingston Crown Court.

Source: National Desk of the United Kingdom at Eurojust/BBC/Mirror

A 23-years-old security guard was sentenced to 5 years in prison for **glorification of terrorist group ISIS** on social media after his attempt to join IS in Syria failed. The defendant was the owner of 42 Twitter accounts through which he posted extremist messages including ISIS propaganda. He admitted the charges brought against him.

Source: National Desk of the United Kingdom at Eurojust/The Guardian

2. Other Court Decisions of Interest

January - April 2016

Norway

January 2016

The three Norwegian citizens who were convicted of terrorism related offences by the District Court of Oslo on 8 May 2015 appealed their convictions and on 18 January 2016 the Borgarting Court of Appeal rendered its judgment in the case. The accused were mainly charged with **participating in and/or supporting the Islamic State of Iraq and the Levant (ISIL)**, a terrorist organisation. One accused was charged with breaching the Firearms Act. The Court of Appeal upheld the convictions of all accused and provided an additional discussion and insight into certain legal issues (*for further details, please see TCM, issue 23, Chapter III. Judicial Analysis*).

The Court of Appeal confirmed the finding of the District Court that both appellants A and B had participated in a terrorist organisation during the period covered by the indictment. Appellants A and B then alternatively pleaded for an acquittal due to a mistake of law, based on the argument that at the time the offences were committed, they did not know that participation in ISIL was unlawful. The Court of Appeal held that there are particularly strict requirements for the level of caution that needs to be observed for the provision on mistake of law to apply. The level of caution observed comes close to objective responsibility. A mistake of law can only lead to an exemption from punishment in very specific circumstances that will depend on an overall assessment, taking into account factors concerning the alleged perpetrator and the nature of the act. The fact that a legal provision is new, unclear or a mistake was made when the new provision was just published may be of importance when determining whether a mistake of law is excusable. In the present case, the Court of Appeal found that joining a terrorist organisation is not an everyday phenomenon, but a choice which requires serious consideration. Refraining from making any inquiries into the lawfulness of such activity was not justifiable. Had the appellants made an attempt to find out about the existence of a provision in the Norwegian Criminal Code on this issue, they would quickly have discovered that such a provision had been adopted. In this respect, the Court of Appeal concurred with the finding of the District Court that even if there had been a mistake of law on the part of the appellants, such a mistake was not excusable and thus did not exempt the appellants from punishment.

The Court of Appeal further rejected A's claim of having acted under duress as a justification for his participation in ISIL, and found that he was an engaged and loyal participant who supported the organisation during the period relevant to the indictment. His participation did not result from a situation of coercion nor was he threatened with reprisals from ISIL. The Court of Appeal explicitly stated that a finding of law according to which continued participation in a terrorist organisation is justified when there is a risk of reprisals against those who break with the organisation, would undermine the whole legal provision.



With regard to the charge of providing material support to a terrorist organisation, appellants B and C claimed that helping their brother who lost his luggage and was in a conflict area in the winter season, could not be considered unlawful. In rejecting the plea, the Court of Appeal held that while certain legal provisions may exclude criminality for acts involving relatives, e.g. giving a false statement, there is little room for such exceptions when it comes to terrorism offences. Any acts that give assistance to a terrorist organisation thus have to be considered as unlawful, despite the fact that the support provided was intended primarily for a relative. All other arguments of the appellants on this charge were dismissed and the decision of the District Court was confirmed.

While the Court of Appeal upheld all convictions and confirmed B's sentence of four years and nine months, it altered the sentences of A and C. The Court of Appeal did not accept a reduction of A's imprisonment sentence, his plea being based on the argument that he confessed to having been connected to ISIL. The confession was only made during the trial hearing and, thus, did not affect the investigative efforts needed, nor did it have any positive influence on the procedural costs of the trial. Furthermore, while A acknowledged his connection to ISIL, he did not confess to having participated in the activities of the organisation. Substantial evidence had to be produced to establish his tasks within ISIL. Based on these findings, the Court of Appeal changed his sentence from four years and three months to four years and six months.

With regard to C, the Court of Appeal declared his intention to sell the weapon that he illegally possessed an aggravating circumstance. His sympathies with ISIL at the time of committing the offences against the Firearms Act were also considered in aggravation of the crimes. Considered in conjunction with A's attempt to provide material support to a terrorist organisation, the Court of Appeal increased the sentence of seven months' imprisonment, as imposed by the District Court, to an imprisonment term of eight months. All defendants had a right to reduction of the time spent in custody.

Source: Liaison Prosecutor of Norway at Eurojust

April 2016

A Norwegian extremist was convicted of killing 77 people in a bomb and gun rampage in 2011. He has since then been detained in a high-security prison outside of Oslo. He sued the government, arguing that his long-term solitary confinement amounts to torture, which is prohibited under international law. The Oslo District Court ruled that the 37-year-old mass killer's treatment in prison violated the European Convention on Human Rights, prohibiting "inhuman or degrading treatment," and ruled that his conditions must be eased. The decision may still be appealed.

Source: CNN

II. Legal Update

January - April 2016

1. EU

European Commission

January 2016

Commission Implementing Regulation (EU) 2016/13 of 6 January 2016 amending for the 240th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by adding twelve entities under the heading 'Natural persons' and deleting one entity under the heading 'Natural persons'.

Source: Official Journal of the European Union

Commission Implementing Regulation (EU) 2016/47 of 18 January 2016 amending for the 241st 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 four entities under the heading 'Natural persons' and deleting one entity under the heading 'Natural persons'.

Source: Official Journal of the European Union

March 2016

Commission Implementing Regulation (EU) 2016/294 of 1 March 2016 amending for the 242nd 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 six entities under the heading 'Natural persons'.

Source: Official Journal of the European Union

Commission Implementing Regulation (EU) 2016/307 of 3 March 2016 amending for the 243rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by adding eleven entities under the heading 'Natural persons' and adding one entity under the heading 'Legal persons, groups and entities'.

Source: Official Journal of the European Union



Commission Implementing Regulation (EU) 2016/473 of 31 March amending for the 244th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by adding one entity under the heading 'Natural persons'.

Source: Official Journal of the European Union

April 2016

Commission Implementing Regulation (EU) 2016/647 of 25 April 2016 amending for the 245th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by adding five entities under the heading 'Natural persons'.

Source: Official Journal of the European Union

2. Member States

Slovak Republic

January 2016

At the end of 2015 the Slovak Parliament adopted the so-called 'anti-terror package' in response to the November 2015 terrorist attacks in Paris. As part of the package, police, prosecution offices, courts and intelligence services received new powers in the fight against terrorism. Prison sentences for those convicted of conspiracy to commit a terrorist act were extended, as the offence was included in the category of 'particularly serious crimes'. A new criminal offence of 'participating in combat operation within an organised armed group abroad' was introduced into the Criminal Code also in response to the phenomenon of foreign terrorist fighters. All changes and amendments came into the force in January 2016 (*for some further information on relevant recent amendments in the Slovak Constitution and several other legal acts, as part of the anti-terrorism package, please see TCM, issue 24*).

Source: Information provided by the Slovak authorities and the National Desk of Slovak Republic at Eurojust

Sweden

April 2016

On 1 April 2016 a new law was enforced in Sweden. In addition to public provocation, recruitment and training for terrorism, the new legislation criminalises also the act of travelling or initiating a travel to a country different from the country of citizenship, with the purpose to commit or prepare to commit particularly serious crimes i.e. terrorist crimes. The law made it an

offence to receive training, as well as to gather, supply or receive money or other property, if the money/property is to be used for supporting the travelling described above. The parliament rejected the proposal to strip convicted terrorists of their Swedish nationality.

Source: Information provided by the Swedish authorities/The Local

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:** District Court of Gothenburg (Göteborgs tingsrätt), Court of Appeal for Western Sweden (Hovrätten för Västra Sverige)¹

Date of decisions: 14 December 2015, 30 March 2016

Introduction

Two men were brutally executed north of the town of Aleppo in Syria in the period between 12 April and 2 May 2013. The murders were filmed and three videos were stored on a USB flash drive, which was discovered during a house search carried out against a Swedish citizen who had returned to Sweden after participating in the armed conflict in Syria. The videos revealed that this person X and another Swedish citizen Y, together with other unknown individuals, participated in the execution of the two, apparently civilian, men. Charges were brought against these two alleged perpetrators for terrorist offences, or alternatively, for war crimes, in conjunction with murder. The District Court of Gothenburg rendered a conviction against the accused on 14 December 2015. The judgment was appealed by both accused and on 30 March 2016 the Court of Appeal for Western Sweden confirmed the decision of the District Court.

The prosecution case

While it is well known that many Swedish citizens have joined terrorist groups linked to the Al-Nusra Front, in the present case it was not clarified whether the accused belonged to any of these terrorist organisations. The prosecution claimed that the accused had participated in the armed conflict in Syria, but the information available was insufficient to establish whether they were part of a loosely composed group or of an organised unit. The charges were thus primarily brought under the heading of terrorist offences.

To prove the terrorist acts, the prosecution relied heavily on the three videos found on the USB flash drive of X. The videos had been analysed by the National Forensic Centre in Sweden, which found them to be authentic, showing both the preparation of the executions and the actual

¹ The Case Analysis Unit would like to thank the National Desk of Sweden at Eurojust for kindly providing a copy of the judgments.

murders of the two victims. The analysis demonstrated that both the images and voices in the videos corresponded to those of the accused. While several people were shown in the videos as being involved in the killings, the accused played an important role in the planning and execution of the murders. The accused's actions and statements in the videos gave reason to assert that the murders were to be considered terrorist offences. The videos aimed at spreading fear among the so called "infidels", Christians and others who do not adhere to what is considered as "true" faith.

The prosecution alternatively charged the accused of murder as a war crime, recognising that terrorism laws were not applicable to acts of armed groups during an armed conflict that fall under international humanitarian law.

The defence case

Accused X claimed that while he had been in Syria during certain periods relevant to the indictment, he had neither participated in an armed conflict, nor had he ever been in contact with Y. He further asserted that he was not one of the persons shown on the videos. With regard to the fact that the person in the videos seemed to wear clothing similar to his own, X held that people often borrowed and used each other's clothes and shoes. The reason why X travelled to Syria was to help people and had nothing to do with radicalisation. He was not aware of how the images and videos ended up on his mobile phone. The phone was given to him by a friend, who, because the memory of the phone was full, helped him to upload the content of the phone to the USB flash drive that was later seized during the house search.

The defence counsel for accused Y argued that the group which carried out the offences and which the accused allegedly participated in was not a terrorist organisation, as the composition of the group in question was not in conformity with the definition of a terrorist group. The defence further referred to the fact that Y had been shot in the head during his stay in Turkey in 2013 and since that time suffered from severe brain damage.

Findings of the District Court

The District Court of Gothenburg posed four questions to help establish the criminal liability of the accused. First, the court had to consider whether the accused were identical to those persons who the court had named X and Y and who featured in the videos showing the executions of two persons. In case one or both of them were identical to X and/or Y, the court then had to consider whether both accused could be considered as perpetrators of both or either of the murders. Thirdly, the court had to establish whether the crimes committed were terrorist offences, which required an assessment by the court as to whether the offences had caused serious damage to the state of Syria and whether the offence had been committed with the intent to seriously intimidate a population or a group of the population. Finally, in case no terrorist offence could be established, the court was to assess whether the crimes committed constituted war crimes, in conjunction with murder.

Were the accused identical to persons X and Y?

The District Court found that the only evidence to prove the murder of the two men were the three videos and acknowledged the concern of the accused that the evidence presented may not suffice to identify, beyond reasonable doubt, the accused among the individuals in the videos. However, the analysis of the videos and a comparison with the physical appearances and voices, as well as clothes, shoes and weapons of the accused clearly established that the accused were identical to persons X and Y.

Were the accused perpetrators of both or either of the murders?

It was apparent from the videos that neither of the accused physically committed the murders. According to the Swedish Criminal Code, punishment shall also be imposed on anyone who furthers a crime by advice or deed. If a person is not regarded as the perpetrator, punishment shall be imposed for instigation, or for aiding the crime if he induced another to commit the act. Where several persons commit a crime together and in consultation with each other, they are considered co-perpetrators.

The videos showed that both accused both physically and mentally supported those individuals who by using a knife cut the throat of the victims. The accused, thus, had a common intent with those who held the knives and carried out the murders. Both accused played such an active role in the perpetration of the murders that they were to be considered as co-perpetrators. The statements made in the videos, including the declaration by X that the men were to be murdered and the speeches by Y in connection to the killings, proved important for determining the role of the accused.

Were the murders terrorist offences or war crimes?

To determine whether the Act on Criminal Responsibility for Terrorist Offences (hereafter Act on Terrorist Offences) applied to the killings, the District Court first had to consider whether the crimes were committed by an armed group in the context of armed conflict, as such actions may constitute war crimes and are not covered by the Swedish terrorism legislation. The District Court concluded that the offences were not committed by an armed group in the context of armed conflict, and as such could not be regarded as war crimes. In the Court's view, to qualify as an armed group under international humanitarian law (IHL), the group must be able to exercise a level of control over the individual group members that enables – at least potentially – the respect of the applicable rules of IHL. In addition, the armed group must be subject to a command structure and act according to a military strategy, rather than carrying out sporadic acts of violence, initiated by individual group members. The Court found that, while both accused fought in the context of an armed conflict in Syria in the spring of 2013, the murders were committed by a group of people that came together only temporarily. This group bore very little resemblance to an armed group under IHL and, thus, the District Court concluded that the offences could not qualify as war crimes.

Affirming the applicability of the Swedish terrorism legislation, the District Court first confirmed that the crimes committed constituted murder, one of the crimes listed in the Act on Terrorist Offences. Secondly, the acts had to fulfil the requirement of causing serious damage to a state, as

laid down in Section 2 of the Act. While only two persons became victim to the crimes recorded in the videos, the following three components – 1) cruel, bestial murders; 2) the message that all infidels may be treated in the same way; and 3) the fact that the killings were filmed – together proved that the lives and personal health and security of many people were endangered by these acts. The crimes thus caused serious damage to the state of Syria. The fact that it was not clear whether the videos had been distributed did not affect this finding.

Finally, the District Court had to assess whether the perpetrators possessed the intent of seriously intimidating a population or a group of a population, in accordance with Section 2 of the Act on Terrorist Offences. The preparatory works to this legislative act indicated that the expected effect did not have to be attained, provided that the prosecution could establish that the perpetrator had intended to seriously intimidate a population or a group of a population, by instilling serious fear for the personal safety of the victims or the safety of their property. This provision applies both to large and small groups of a population, including for instance an ethnic minority.

The analysis of the videos demonstrated that the accused threatened all infidels with the same kind of treatment as was inflicted on the two men whose throats had been cut. In the videos, the accused expressed how delightful and fun it was to kill infidels and cheered when the second victim had been killed. They also held speeches to set out the reasons for the murders and were clearly aware of the fact that the killings were filmed. All things considered, the District Court found that the accused possessed a common intent, together with the other men in the videos, to inflict serious fear in the group of the population that does not adhere to the ‘true’ faith.

On the basis of the above, the District Court held that the criminal acts constituted terrorist offences and found the accused guilty as charged.

Findings of the Court of Appeal

Both accused appealed the decision of the District Court and requested that the charges be dismissed, based on the argument that the accused did not participate in the murders. With regard to Y, the Court of Appeal was requested to impose a sanction other than imprisonment or to shorten the imprisonment sentence. Additionally, Y claimed that his brain damage made it impossible for him to understand the charges or be heard in the case against him and, thus, he had not received a fair trial. The prosecution opposed a change of the decision of the District Court.

The Court of Appeal recognised the unquestionable right to a fair trial but ruled that this right had not been breached. Regarding the analysis of the videos, the Court of Appeal heard two additional witnesses and found that some new information had been presented in the appeal case. However, the Court of Appeal upheld the decision of the District Court to convict the accused of murder as a terrorist offence and limited its findings to clarifying certain aspects, in particular the requirement of seriously damaging a state. Reference was made to Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, which the Swedish legislation aimed to transpose, and which requires that a terrorist offence ‘might

seriously damage' a State. The Court of Appeal found that this requirement limits the possibility to impose criminal responsibility for *terrorist offences* to *very serious offence* and, thus, secures the limitative application of the Framework Decision that the Member States have agreed upon. The wording 'might seriously damage' should further be interpreted such that the act may create great hardship on the society in question. However, this prerequisite is not limited to threats that may have consequences on an entire country, but encompasses acts that might seriously damage a common interest of the citizens, such as defending an open and secure society. A decision as to which acts may fall under this provision has to be made on a case by case basis.

The sentence

Determining the appropriate sentence for the terrorist offences, the District Court first referred to the Act on Terrorist Offences, which provides for a minimum imprisonment sentence of four years and a maximum of 18 years' imprisonment, or a life sentence. However, as the accused were guilty of murder, the minimum sentence applicable was imprisonment for 10 years. According to the law applicable at the time of the crimes, life imprisonment was reserved for the most serious offences, such as multiple murders or murder in conjunction with other forms of serious criminality. Considering the circumstances of this case, together with the fact that the murders were found to be terrorist offences, the appropriate sentence was life imprisonment.

The District Court also addressed the claim by Y that due to his health situation, he should be entitled to a remission of sanction or, alternatively, no imprisonment sentence should be imposed. A remission of sanction is possible where the illness would render the execution of the sentence particularly distressing, or cause a serious deterioration of the state of health of the convicted person. While recognising that Y suffered from severe brain damage that had caused permanent disability, there were neither indications that a long period of imprisonment would cause serious deterioration to his state of health, nor that it would render the execution of his sentence particularly distressing. Considering the nature of the offences and the restrictive approach applied to alternative punishment, the circumstances of this accused were not such that they should influence the length of the sentence nor the choice of sanction imposed.

The Court of Appeal concurred with the findings of the District Court that both X and Y should be sentenced to life imprisonment. With regard to Y, the Court of Appeal referred to a statement by a doctor that the health of the accused had improved since the main hearing in the case and found no reasons to alter the decision of the District Court.

IV. Topic of Interest

Admissibility of (foreign) intelligence as evidence in criminal proceedings

On 22 and 23 June 2016, Eurojust will organize its annual tactical meeting on terrorism, “Building an effective judicial response to foreign terrorist fighters”. One of the main topics that will be addressed at the meeting is whether and under which conditions and limitations (foreign) intelligence can be admitted as evidence in criminal proceedings under national legal frameworks. The Federal Court/Supreme Court of Switzerland (Bundesgericht) has recently dealt with this delicate issue in the judgment reviewed below. The following brief analysis of the judgment focuses exclusively on the aspects of the appeals proceedings which touched upon this issue, rather than covering all issues and arguments addressed by the Court.

1) Procedure: Federal Court/Supreme Court (Bundesgericht), Switzerland²

Date of decision: 27 January 2016

Introduction

On 2 May 2014, the Federal Criminal Court (*Bundesstrafgericht*) (“Court”) of Switzerland convicted in first instance two Iraqi brothers of Kurdish ethnicity for participating in and supporting a criminal organisation³ and forgery of official foreign documents⁴ to a prison sentence of three years and three months respectively a suspended sentence of two years. Both the defendants appealed this decision before the Federal Court of Switzerland (*Bundesgericht*) (“Federal Court”) on the basis that the information used in the criminal investigation against them had been obtained illegally. The Federal Court decided to combine the two cases since the appeals lodged by each defendant concerned the same verdict and addressed, to a great extent, the same issues.

In this case, it has been the first time that in Switzerland the Swiss internal intelligence agency, the Analysis and Prevention Service of the Federal Office of Police (*Dienst für Analyse und Prävention des Bundesamtes für Polizei, DAP*) submitted a report about suspicions of criminal activities to the Office of the Attorney General of Switzerland, who then opened an investigation. The crucial question was whether a report from the DAP could serve as a basis for opening a criminal investigation and subsequently ordering coercive and surveillance measures (such as the interception of the defendants’ telecommunications), given that intelligence services are protected by law from identifying their sources. Part of the evidence had been obtained with the help of foreign intelligence services, another aspect that the both defendants took issue at.

² The Case Analysis Unit would like to thank the Liaison Prosecutor for Switzerland at Eurojust for kindly providing a copy of the judgment.

³ In accordance with Article 260ter of the Swiss Criminal Code (which is also applicable to terrorist organisations).

⁴ Article 251 in conjunction with Article 255 of the Swiss Criminal Code.

The Federal Court dismissed the appeal.

The Appeals proceedings

The appellants claimed that the report of the DAP was based on unauthorised surveillance carried out by foreign intelligence agencies or other illegal methods of collecting evidence. They argued that as it contained illegally obtained information, it should have not been used by the Office of the Attorney General as basis for opening of the investigations against them, and ordering the interception of their communications and further surveillance measures.

Opening of the investigation based on the DAP report

The Court considered that the report of the DAP would have the character of a criminal complaint. According to Article 101(1) of the Swiss Federal Act on the Administration of Federal Criminal Justice (*BstP*), then in force⁵, the Attorney General had to order the opening of criminal proceedings when there were reasonable suspicions of criminal acts falling under Federal jurisdiction. The Federal Court noted that, in this case, the DAP report contained enough indications of criminal behaviour, which resulted in a legal obligation for the Attorney General to initiate criminal proceedings.

Legality and admissibility of the evidence contained in the DAP report, including from foreign intelligence agencies

During the first instance proceedings, the appellants challenged the legality of the collection of the information contained in the DAP report and therefore requested the disclosure of its sources. In response to the defendants' request, the Federal Intelligence Service (*Nachrichtendienst des Bundes*, NDB) – the successor of the DAP – argued that the information collated in the DAP report originated from foreign intelligence agencies who were institutional partners of the NDB. The NDB refused to disclose the sources, on the ground that it could jeopardise further cooperation with the foreign Intelligence Agencies. The NDB also objected that the presumption was that the collection of evidence had been conducted in conformity with the standards imposed by the Constitution and human rights law.

The Court supported the NDB's reasoning for not disclosing the sources of the DAP report. The Court noted that, as a matter of principle, an official national report is assumed to contain information that has been legally obtained. In the instant case, the Court found that there were no indications that the DAP had obtained any information illegally, nor that the files which it had received from foreign authorities via formal mutual legal assistance channels, had been formed unlawfully. Accordingly, the Court decided to refrain from collecting further evidence on this matter.

The Federal Court confirmed the first instance ruling on this matter and held the NDB had the right to refuse to disclose the source of the information contained in the DAP report. The Federal Court stated that the NDB (and its predecessor, the DAP) was subject to Parliamentary and

⁵ Article 101(1) BstP was in force until 31 December 2010.

Administrative Control, whereby the legality of their activities are monitored⁶. The Federal Court therefore concluded that the Court rightfully presumed that the information contained in the DAP report has been legally obtained. Furthermore, the Federal Court took note of the absence, in the current case, of any concrete indications to the effect that such information was obtained unlawfully.

With particular regard to the issue of the protection of intelligence sources, the Federal Court recalled that, according to Article 29 of the Swiss Intelligence Ordinance (*Verordnung über den Nachrichtendienst des Bundes, V-NDB*), the NDB has the right to protect its sources of intelligence information. In doing so, the NDB has to balance the right to information of the affected and the interests of the source to be protected. In weighing up the individual case, the identity of a foreign Security Agency has to remain secret, unless the foreign Security Agency consents to the disclosure or the disclosure would not threaten the continuation of the collaboration with the foreign Security Agency.

Admissibility of the interception of the telecommunications

Under the applicable legal framework, the Office of the Attorney General may order surveillance measures, including the interception of telecommunications only for a limited set of criminal offences (listed offences) and if there is a strong suspicion that a listed offence has been committed.⁷ The surveillance of post and telecommunications requires the authorisation of the compulsory measures court (*Zwangsmassnahmengengericht*)⁸ and the results of unauthorised surveillance operations may not be used.⁹ In the instant case, the Federal Court was asked to review whether the evidence that the Office of the Attorney General relied upon when ordering the surveillance measures met the legal threshold. The Federal Court held that the DPA report: i) had provided sufficient information to establish the suspicion of criminal activity aimed at the commission of a listed offence; and ii) was based on lawfully acquired evidence. Based on the above, the Federal Court confirmed that the interception of telecommunication was rightly authorised and ruled that the information so gathered was admissible as evidence at trial.

The sentence

Upon the conclusion of the first instance proceedings, the Court of first instance found both defendants guilty and sentenced them to two years' imprisonment (suspended sentence) and three years and three months' imprisonment, respectively. The Federal Court dismissed the appeals and as result the penalties imposed by the Court of first instance became final.

⁶ Article 25 of the Swiss Federal Act of 21 March 1997 on Measures to Safeguard Internal Security (*Bundesgesetz über Massnahmen zur Wahrung der inneren Sicherheit, BWIS*) in conjunction with Article 26 of the Swiss Federal Act of 13 December 2002 on the Federal Assembly (*Bundesgesetz über die Bundesversammlung, ParlG*).

⁷ See Article 3(1)(a) of the Federal Act on the Surveillance of Post and Telecommunications (*Bundesgesetz betreffend die Überwachung des Post- und Fernmeldeverkehrs, BÜPF*), in the version which was in force until 31 December 2010 and Article 269(1)(a) and (2) of the Code of Criminal Procedure.

⁸ Article 7 BÜPF (in the version which was in force until 31 December 2010) and Article 272(1) of the Code of Criminal Procedure.

⁹ Article 7(4) BÜPF (in the version which was in force until 31 December 2010) and Article 277(2) of the Code of Criminal Procedure.

V. The Way Ahead

Ongoing/Upcoming Trials

January - April 2016

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.

Austria

A 17-year-old Swedish girl with a Somali background was suspected of wanting to travel to join jihadists in the Middle East. She is charged with participating in a terrorist organisation by the prosecution, as she contacted Islamist fighters and planned to join them there. Sweden did not demand her extradition, as her activities are not punishable under Swedish law, she will then face a trial in Vienna.

Source: Reuters

France

Four men from 26 to 36 years of age were charged of robbery with connection to terrorist activities. They robbed several fast-food restaurants in the area of Paris to collect money and finance their departure to Syria. The amounts of these spoils are up to EUR 4000. In custody, one of the suspect admitted that he stayed in Tunisia in 2013, as he wanted to 'practice Islam freely' and therefore join a terrorist group. He claimed that he was actually far from the field and was never a member of any terrorist group. However, further investigations revealed that he was already in charge of receiving and giving hospitality to new recruits. Because of visa issues, he was forced to leave the country and return to France.

Source: Liberation

A Belgian-born French citizen, who is charged with participation in terrorist murder and taking part in the activities of a terrorist organisation, was recently handed over to France. He was Europe's most wanted suspect since his participation in the Paris attacks of November 2015. The trial began in April 2016, but the next hearing is only set for the end of May.

Source: CNN

Germany

The founder of PEGIDA, the German anti-Islam movement, is charged with 'hate speech' by the prosecutor in Dresden. His posts on social media constitute 'an attack on the dignity of refugees', according to the court. The 43-year-old man faces between three months and five years in prison if found guilty by the court.

Source: *The Guardian*

On 8 December the Higher Regional Court in Stuttgart started the trial against four men, three of whom of Lebanese nationality. The men are suspected to have supported a foreign terrorist group in 2013, namely Ahrar al-Sham in Syria. The group played a very significant role at the beginning of the revolution in Syria. The suspects have allegedly provided funds and logistical support to the organisation, including German ambulances and military equipment for a total amount of EUR 133000.

Source: *Taggeschau*

Italy

A Slovenian national had been arrested in an anti-terror operation. He is suspected of recruiting foreign fighters for an international terrorist organisation and charged by the prosecutor in Venice.

Source: *12newsnow*

Spain

The Spanish Supreme Court is considering the appeal submitted by 11 persons convicted of terrorist offences. In September 2015, the Audiencia Nacional found two of them guilty of leadership of a terrorist organisation and nine guilty of membership; one of them was also convicted of illegal possession of firearms. The Audiencia Nacional sentenced them to ten to 12 years in prison. The men were part of a network that had been recruiting, indoctrinating and training potential foreign terrorist fighters. Members of the network had financed and facilitated the travel to Syria and Iraq and the subsequent integration of their recruits into the terrorist organisations ISIL and Jabhat al-Nusrah. At least six fighters recruited by the network had died in suicide attacks in the conflict zone (*for further details, please see TCM, issue 24*).¹⁰

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

¹⁰ The Spanish National Correspondent for Eurojust for terrorism matters kindly provided a copy of the judgment of the Audiencia Nacional of 30 September 2015. Eurojust has produced a detailed analysis of judgment, which is available as a separate document.



Sweden

Arrested in February, a 20-year-old student tried to build a bomb to commit a suicide attack. He allegedly bought six bottles of acetone, matches, steel balls, a pressure cooker, electric wire and batteries; which combined are the components used to make a bomb similar to the ones used by attackers during the 2013 Boston Marathon attack. Investigators also seized his mobile phone, whose password happened to be "jihad". The defendant made no secret of his sympathies for ISIS and wanted to leave Sweden and go to Syria to "defend women and children against the infidels". He was reported to the police by his mother. Before the court, he denied the charges brought against him. He might be sentenced to life in prison.

Source: Straits Times



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