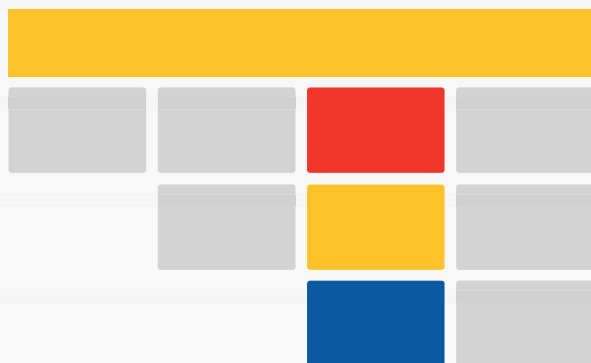




EUROJUST Report

# 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 Operations 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 28 of the TCM covers the period **January – April 2017**. 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 judgement issued by the District Court of Rotterdam and concerning a returnee from Syria, who had been part of the Free Syrian Army. The Topic of Interest chapter presents some highlights of the recently adopted Directive (EU) 2017/541 on combating terrorism.

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. Brief Summaries of Court Decisions

## 1. Terrorism Convictions/Acquittals per Member State

January - April 2017

### Austria

#### February 2017

A 23-year-old Syrian asylum seeker was convicted of **terrorism** and sentenced to three years by the court in Salzburg. He had been arrested after one of the witnesses in the trial reported him to the refugee camp authorities. According to the witnesses, he had told others in the camp about crimes he had committed in Syria. Those included killing pro-government soldiers, including by injecting them with diesel. During the investigation, ISIL propaganda material was found on his mobile and tablet.

*Source: Daily Mail/WBNews*

A 25-year-old Chechen man was found guilty of **membership in a terrorist organisation** and **training for terrorist purposes** and sentenced to a 30-month prison term. He had been accused of fighting in Syria for a sub-organisation of ISIL between October 2013 and March 2015 and of training on the use of firearms for terrorist purposes. He admitted he had been involved in the hostilities in Syria but claimed he did not know that he had been fighting on the side of a terrorist group.

*Source: Yahoo*

In Graz a 51-year-old national of Bosnia and Herzegovina was sentenced to seven years and five months in prison after the court found him guilty of **participation in a terrorist organisation** and **participation in a criminal organisation**. The man had become very radicalised with ISIL ideology and had an active role in the religious community of Graz. He had travelled from Bosnia to Turkey, with the intent of joining ISIL and becoming an ISIL fighter. However, he had not succeeded, as he had been sent back to Bosnia and arrested when trying to enter Croatia. He had also made ISIL propaganda on social media. In March 2016, the man had been convicted of these offences by the Court of Criminal Matters of Graz and sentenced to serve eight years in prison. The decision of the Higher Court is final.

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



### March 2017

At the Regional Court of Linz a 33-year-old defendant appeared before the court on charges of **membership in a terrorist organisation, membership in a criminal organisation, illegal possession of firearms and embezzlement**. The man had made propaganda for ISIL by distributing videos of radical Islamist preachers and beheadings prepared by ISIL via his mobile devices and by hanging the ISIL flag out of his balcony. He had become radicalised, possessed weapons illegally and intended to travel to Syria with his family. The court found him guilty as charged and sentenced him to 18 months in prison, 15 of which suspended.

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

## Belgium

### January 2017

A group of 14 people were convicted of **falsifying identity documents** used by Islamist militants and sentenced to prison terms of three to eight years. The group are said to have made around 2,000 fake documents – including Belgian, Spanish and Danish identity cards - and had them delivered across Europe.

*Source: Reuters*

The Criminal Court of Brussels ordered a 30-month suspended prison sentence to a 25-year-old man found guilty of **participation in the activities of a terrorist group**. On the day of the terrorist attacks in Brussels of 22 March 2016 he had taken photos of symbolic locations in the Belgian capital city to which he had added comments in Arabic praising the perpetrators of the attacks. He had been arrested on the same day after police had been alerted by people on the street, who had seen him taking photos of the big synagogue and acting suspiciously. Later, the police had found in his possession photos of ISIL executions and of French policemen at a Paris train station taken on 13 November 2015, the day of the terrorist attacks that hit the French capital. The man was also convicted of **making propaganda material for the ISIL**.

*Source: Het Laatste Nieuws*

### February 2017

The Criminal Court of Liege tried *in absentia* a 25-year-old man from Verviers, who had left for Syria in August 2014. He had told his parents he would visit Disneyland in Paris and appeared to have arrived in Syria a few days later. Telephone data analysis showed that he had also been in Iraq. The man, a chemistry student, had shown interest in Sharia4Belgium and got involved in terrorist networks via social media. He is known to have had good connections in the terrorist circles. He had been seen in the company of a fighter suspected to have committed a suicide attack in Iraq in June 2014 and had contacts with one of the jihadists, who had claimed responsibility for the Brussels terrorist attacks of 22 March 2016. The court found the defendant

guilty of **participation in the activities of a terrorist group** and sentenced him to five years in prison and a fine of EUR 6,000.

Source: *Het Laatste Nieuws*

Seven members of the Salafist group Way of Life were sentenced by the Criminal Court of Antwerp to prison terms of up to five years. The court found them guilty of **(attempted) participation in the activities of a terrorist group** (ISIL). Six of them got effective prison sentences of four to five years, as they did not appear to have de-radicalised or renounced the jihadist ideology; the seventh had made an effort to re-integrate in the Belgian society and got a suspended four-year sentence. The court found that three of the defendants had formed the core of Way of Life, the new jihadist group that adopted the ideology of the banned Sharia4Belgium. They had tried to recruit young men via the non-profit organisation *De Overgave*, a foodbank for underprivileged youth. Four of the defendants had unsuccessfully tried to reach Syria, while a fifth one and his wife managed to reach the conflict zone and are believed to still be there. Another one had also travelled to Syria together with his wife and children in May 2015 and had returned to Belgium in the autumn of the same year. An eighth defendant, suspected to have been arrested at the Slovenian-Croatian border, was acquitted by the court.

Source: *Het Laatste Nieuws*

A 25-year-old Syrian national arrested in July 2014 at the Charleroi airport with a stolen passport was sentenced to one year imprisonment. He had been detained after a customs control upon his arrival from the Greek island Rhodos. The man had been on his way to Sweden. The control had revealed that he had a passport that had been stolen in France some time before. He had also been in possession of a USB-stick with material related to the terrorist group Jabhat al-Nusra. The court heard that he had also tried to get hold of 15 tons of weapons coming from Syria.

Source: *Het Laatste Nieuws*

A 24-year-old Belgian national was sentenced to 28 years in prison for **murdering** a prisoner while fighting with jihadist groups in Syria. Before going to Syria, the defendant had been part of Sharia4Belgium. He had returned to Belgium in 2013 after being wounded in the conflict. His victim had been murdered because his family had not been able to pay the ransom. The matter came to light after the man had admitted the killing while talking on the phone to his then girlfriend. He had first admitted the killing, but had later retracted his confession. However, he had produced a video of the murder. The judge found that it was proven that the man had shot from close range on two occasions and that he had tried to film the crime, which constituted premeditated murder.

Source: *Reuters*

A 39-year-old woman was found guilty of **involvement in three murders** in Turkey in 1996 and sentenced to 15 years in prison. She has been on the run and did not attend her trial. The woman was a member of the far left group DHKP-C that backed the creation of a communist regime in Turkey. In 1996 the organisation killed two businessmen and a secretary in Istanbul. The defendant is believed to have masterminded the killings. She had back then worked at the company where the killings had taken place and is thought to have let the killers in. Even though she had been arrested in Belgium in 1999, she had later managed to escape. Her whereabouts remain unknown.

Source: *De Redactie*

### March 2017

A 48-year-old woman was convicted of **participation in the activities of a terrorist group** and was given a four-year prison sentence, two of which suspended. In 2013 she had left for Syria with her husband and daughter to join ISIL there. However, she had returned to Belgium. In January 2016, she had tried to leave for Syria again with her daughters and two grandchildren. They had been prevented from leaving by the authorities. One of her daughters was also given a two-year suspended sentence. The other daughter, who is still in Syria, was sentenced *in absentia* to five years in prison.

Source: *De Redactie*

The Court of Appeal of Brussels reduced the prison sentence of a man from Verviers, who was the only one of the three suspected terrorists that had survived the police action in January 2015. The court ordered him to serve 12 years in prison, instead of the 16 years he had been given by at first instance, as it ruled he had **participated in the activities of a terrorist group** as a member, and not as a leader. The court found he had planned attacks and made false identity documents. In the apartment the police had targeted in January 2015, the authorities had discovered weapons, police uniforms and explosives (*for further details, please see TCM, issue 26*).

Source: *Het Laatste Nieuws*

## Czech Republic

### February 2017

A 22-year-old man was convicted of terrorism and sentenced to three years and three months in prison for trying to take up arms for ISIL. He had secretly converted to Islam, started learning English and Arabic, and searching for information about ISIL. In 2016, he had bought a flight ticket from Prague to Turkey and reserved a car at a local rental agency so he could drive to the Syrian border. He had been stopped by Turkish police officers, detained and returned to the Czech Republic. He had been arrested after admitting that he wanted to join ISIL. The man faced 12 years to life in prison for **supporting terrorism**, but psychiatrists who evaluated his mental



health said he had schizoid personality disorder, which significantly lowered his ability to control his own actions. The sentence imposed by the court includes mandatory psychiatric treatment.

*Source: New York Times*

## Estonia

### April 2017

The Supreme Court considered the appeal submitted by the defence of two men found guilty of **terrorist financing** by the Harju County Court in January 2016. The two had financed the first Estonian resident, who had joined the terrorist organisation ISIL in 2013. One of them was also convicted of **morally aiding the membership in a terrorist organisation**. The main evidence presented at first instance was information gathered on the basis of the Security Authorities Act. The court had admitted the evidence and considered also that there had been sufficient evidence regarding the elements of the crime (*for further details, please see TCM, issue 25*). The two denied the charges and submitted an appeal against the conviction. The Supreme Court confirmed the guilty verdicts of the two men and the prison sentences of two and three years respectively. The court held that a concrete terrorist act was not necessary – it was sufficient that the two men had collected money and had been aware that the money could be used to commit terrorist offences. Furthermore, in the opinion of the court, it was not necessary to refer to a concrete terrorist organisation, its membership, structure or durability.

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

## France

### February 2017

Two men aged 37 and 26 were convicted and sentenced to jail for **taking hostage to fund terrorism** in France. Armed with a knife and a Taser, the men had stormed the Paris home of a post office teller back in 2013 and had taken his pregnant wife and son hostage. One of the men had then dragged the post office teller to his workplace and taken more than EUR 2,000 in cash from the safe. The wife and the child had been released unharmed. The two men were sentenced to 25 years and 13 years respectively. Their names have been added to France's national database of terrorist offenders.

*Source: Express*

### March 2017

A 17-year-old Turkish teenager of Kurdish origin was convicted and sentenced to seven years in prison for attacking a Jewish teacher in January 2016. Using a machete, the teenager had wounded the teacher, who had been wearing a traditional Jewish skullcap, while walking to



school. Shortly after the attack, the teenager said he had acted in the name of ISIL. He had been charged with **attempted murder in connection with a terrorist attack**, with the aggravating factor of anti-Semitism. Because the attacker was still a minor (15 years old) at the time of attack, he was tried by a French juvenile court. It was the first time in France that a minor under the age of 18 was tried for a jihadist attack.

*Source: Reuters*

A 67-year-old Venezuelan man was given a third life sentence for the 1974 **grenade attack** on a Paris shop. The man is one of the most notorious political terrorists of the 1970s and 1980s, who had been fighting in the name of the Palestinian cause. The court ruled that he was responsible for throwing a grenade into a shopping area killing two and injuring 34 others. The man is already serving two life sentences for murdering two secret agents and a confidant and for a series of bomb attacks in France in 1970s and 1980s: two on trains, one in a car and one at the train station. He had been arrested in Sudan in 1994 and has been imprisoned since then.

*Source: Guardian*

### Germany

#### January 2017

A 16-year-old German-Moroccan girl was convicted of **attempted murder and supporting ISIL** and sentenced to six years in prison. The teenager had stabbed and seriously wounded a female police officer at a train station in Germany. According to the prosecution, she had travelled to Turkey in 2016, where she had met members of ISIL who had planned to help her enter Syria. After she had been brought back to Germany by her mother, she carried out the attack. In addition, a 20-year old man who was aware of her trip to Istanbul and about the plan to kill the policewoman, but failed to inform the authorities, was sentenced to a prison term of two and a half years.

*Source: Reuters*

#### February 2017

A 29-year-old local far-right politician was sentenced to a prison term of eight years for an **arson attack** on a sports hall in Nauen intended to house refugees in August 2015. The convicted also received an additional sentence of 18 months for other xenophobic crimes. No one was injured but the hall was completely destroyed. An accomplice was sentenced to seven years in prison. Four others were given suspended sentences of varying lengths. The court said that the convicted clearly acted on right-wing extremist beliefs.

*Source: The Local*

## March 2017

Three 17-year-old German-born teenagers were convicted of **carrying out a bomb attack**. They had placed a home-made bomb – a fire extinguisher filled with explosive chemicals – outside an entrance of a Sikh temple in Essen in 2016. Two of the teenagers were convicted of **attempted murder** and **bodily harm** and were sentenced to spend seven years and six years and nine months respectively in a juvenile detention centre. The third one had not been on the crime scene, but was convicted of **conspiracy to murder** and given a six-year sentence. The court said their act was motivated by hatred of other religions and that they had been in contact with ultraconservative Muslims known as Salafists. However, no immediate contact with ISIL was proven.

*Source: DW*

Three men, aged 58, 41 and 31, and a 24-year-old woman were convicted of **forming a terrorist organisation** with racist and anti-Semitic aims and of **planning to bomb attack asylum shelters**. They had been arrested in 2015. According to the court, all four of them were part of the 'Oldschool Society', whose members pursued racist, anti-Semitic and anti-Muslim goals. For the attack they had wanted to use modified pyrotechnic explosives covered with a layer of nails, the prosecutor had said. The authorities had learned the details from chat logs and phone intercepts. They were sentenced to three to five years in prison.

*Source: Reuters*

## April 2017

A 29-year-old German man was found guilty of **attempted murder** and sentenced to life in prison for plotting a failed bomb attack in December 2012. He had planted a home-made pipe bomb at a train station in Bonn. The defendant and the three others were also found guilty of **forming a terrorist organisation** and of **plotting to murder** the leader of anti-immigrant group. They had been arrested in March 2013, shortly before the planned murder. Two of the other defendants, a 28-year-old Turkish-German man and a 46-year-old Albanian man, received prison terms of 12 years. The third one, a 27-year-old German, was given a nine-and-a-half-year prison term.

*Source: The Local*

A 16-year-old Syrian refugee was convicted of **planning to carry out a bomb attack** and was sentenced to two years in a youth detention facility. The boy had been arrested in 2016 at a refugee centre near Cologne. During the raid, the police had found a battery carrier with wires, sewing needles and a small butane gas canister in his possession. The court said the plan was in a very early stage and there was no concrete threat to the public. However, the court found enough evidence that the boy had declared himself willing to carry out an attack. The teenager had also received instructions on how to make a bomb from a person with ties to ISIL. The court



noted that the boy had become radicalised due to loneliness at the refugee centre and spending most of his time online and with chat contacts.

Source: *DW*

### Italy

#### February 2017

A Moroccan man and his wife were convicted of **terrorism charges** and sentenced to prison terms. The man was given a six-year prison term, his wife a five-year one. They had been arrested in 2016 after police had wiretapped their conversations and had concluded that they had been preparing to leave for Syria to join ISIL. The man was allegedly recorded saying he would be willing to mount an attack on the Vatican.

Source: *The Local*

#### April 2017

A 26-year-old Slovenian man was convicted of **recruiting fighters** for ISIL and sentenced by the Court of Venice to four years and three months in prison. He had been arrested in Slovenia based on the EAW issued by the Italian authorities.

Source: *STA*

A 39-year-old German-born man and a 30-year old Slovenian were convicted of **recruitment** for ISIL and were sentenced to prison terms of 56 months and 40 months respectively. The police had begun looking into the men's activities during an investigation into another man, who had reportedly left to join ISIL in 2013. A third man is believed to have also been part of the recruitment cell and will be judged in May 2017.

Source: *The Local*

### The Netherlands

#### February 2017

The District Court of Amsterdam acquitted one suspect of **threatening to commit terrorist crimes** and gave him a 10-week prison sentence for burglary. He had been arrested for burglary, stealing EUR 450 and causing damage in a store. During the trial, he threatened to commit terrorist crimes. In order to prove that it was a threat to commit terrorist crimes, it must be proven that there was an intent to instil fear in (a part of) the population. The court needed to examine further in what context the threats were made. In this case, the suspect had said it during his trial as he was mad at the reporting officers and wanted to harass them. To prove the threat to life in any offence, it must be proven, *inter alia*, that the threat is such and under such

circumstances that the threatened has reasonable fear that the offence could be committed. The court held that the threat was not specifically targeting the reporting officers and it was not mentioned during the trial that they felt threatened. Therefore, the court acquitted the defendant of the offence of the threat of a crime against life.

Source: [Rechtspraak.nl](https://rechtspraak.nl)

The Court of Appeal of 's-Hertogenbosch found one defendant guilty of **recruiting a person to join the terrorist fight**, under Article 205 of the Criminal Code. The court ordered a 12-month prison sentence, with three months suspended, and two years' probation. The cases involved the recruitment of three under-aged asylum seekers to join ISIL. The suspect had held a 10 minute conversation with an individual, in which he had tried to recruit him. The suspect was partially acquitted as the conversations held with the other two asylum seekers were found to be insufficient as one of them did not speak Dutch and could not understand what was being said, and the other only understood the term ISIS and had no idea what the conversation was about. In the judgement, several terms within Article 205 of the Criminal Code were further clarified.

Source: [Rechtspraak.nl](https://rechtspraak.nl)

The District Court of The Hague sentenced a 23-year-old man to 31 months in prison, of which 12 months suspended, for the **attempt to participate in a criminal terrorist organisation and preparing for murder, manslaughter, and arson with a terrorist aim**. The suspect had attempted to reach Syria twice to join jihadist groups. He had travelled through several countries, together with another person, en route to the Turkish-Syrian border. Both times he had been caught and deported to the Netherlands by the Turkish authorities. There was significant evidence in this case, *inter alia*, WhatsApp messages with a fellow Dutch jihadist in Syria, documents referring to the 'cause', tablets with videos of terrorist acts, and a conversation the defendant had with his father about wanting to join the jihad. The judgement included defining the offences deemed as terrorist under Article 83 of the Criminal Code, the history of the Syrian Civil War, reaffirmed the definitions of "jihadist fighting groups" and "participation in a terrorist organisation," as found in its decision of 10 December 2015. The court ordered also some special conditions to be applied. They included: participate in identity checks, cooperate with the probation officer, report to the probation office, cease all contact with four other persons, stay away from international airports in the Netherlands and the Dutch border, remain in his residential home during specified hours, and work with an external expert on Islam.

Source: [Rechtspraak.nl](https://rechtspraak.nl)

The District Court of Gelderland convicted one suspect of **attempted extortion and preparation of an explosion**, and ordered him to serve three years in prison. The court heard that he had urged a co-suspect to commit a robbery. The suspect had been instrumental to the planning and execution of the robbery, as he had supplied the clothing, the plans and maintained contact with the co-suspect during the robbery. The court heard also that the suspect had been found in possession of substances able to make an explosion that could cause injury. The



terrorist purpose of the explosion was not proven, as there was not enough evidence and there were indications that the suspect had different motives, born out of person revenge.

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

### March 2017

The Court of Appeal of the Hague confirmed the two-year prison sentence of a man previously found guilty of **financing of terrorism, violation of the Sanctions Law of 1977 and complicity in document forgery with the purpose of supporting a terrorist crime**. 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. The man, convicted last year by the District Court of Rotterdam, had sent approximately EUR 17,000 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 against the defendant had been launched on the basis of a report by the Dutch Financial Intelligence Unit. According to the available information, he had sent a request for provisional assessment to the Tax Office in which he had deliberately provided wrong information. As a result, he had received a sum of about EUR 10,000, which he had sent to his brother using a middle man in Turkey (*for further details, please see TCM, issue 25*). Unlike the District Court, the Court of Appeal did not consider that the terrorist objective of falsifying the provisional assessment was proven. In its ruling, the court detailed the provisions pertaining to terrorist financing. It defined “intentional”, as stated in Article 421 of the Criminal Code. The court held that by providing financial support to a person whose involvement in terrorism was known to the suspect, the suspect consciously accepted the significant possibility that these funds be used for the purpose of committing terrorist offences. The suspect was well aware of the actions of his brother and that of ISIL in Syria. Fourteen months of the prison sentence ordered by the court were suspended and a three year probation period was set.

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

The Court of Cassation considered the appeal in the case of a suspect, who had donated money to the Islamic Jihad Union/Islamic Jihad Group (IJU) and Deutsche Taliban Mujahideen (DTM). It had to consider the question whether giving financial support to a terrorist organisation is enough to qualify as **taking part in a terrorist organisation**. The court considered the two requirements for the participation in a criminal/terrorist organisation, under Article 140a of the Criminal Code, and held the opinion that although the suspect had done a lot of research into the organisations, it cannot be concluded that she was a member or belonged to IJU and/or DTM. In the court’s opinion, she, as an outsider, had sent money to intermediaries who were affiliated with the organisations. The court declared the case inadmissible, as the judgement does not indicate an error of law and is not incomprehensible and sufficiently motivated.

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



The Supreme Court considered the appeal in cassation in the case of a man, who had allegedly attempted to join ISIL. Together with another man, he 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. A year later, 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 **participation in a terrorist organisation** and **preparing to commit a terrorist offence (murder or manslaughter)**. The first instance non-guilty verdict of the second person was confirmed (*for further details, please see TCM, issues 22 and 25*). The Supreme Court sent the case back for re-trial in appeal. It ruled that it could not be proven that the man had participated in a terrorist organisation. It found also that the man had planned to join the fighting in Syria but held that it could not be proven that he had planned to commit murder or manslaughter.

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

The District Court of Rotterdam convicted one man of **threatening with a crime against life**, **threatening with a terrorist crime**, and **insulting an official**. He had threatened with a terrorist offence, threatened with death and insulted four officials of the Royal Marechaussee, and spat on one of them. This had occurred at the port and led to the partial evacuation of the site, causing hours delay. The man was sentenced to 47 days in prison, of which 27 suspended, and a two-year probation period with special conditions. Those special conditions included reporting to the probation office for as long as deemed necessary, undergoing ambulatory treatment and intercultural psychiatry. He is also to pay EUR 300 to one of the victims.

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

The District Court of Rotterdam sentenced one man to serve 18 months in prison after it found him guilty of **participation in a terrorist organisation** (ISIL), as described in Article 140a of the Criminal Code. The court found that the man had travelled to Syria and/or Iraq to join ISIL. The court took into account the evidence, *inter alia*, emails, flight information and phone taps, when sentencing. It found that there was a lack of indications that he had played a role in combat, as after he had gained insight into ISIL he had decided to leave, and there were no indications that he would commit a crime in the Netherlands. The court described in detail what is meant by the phrase “participation in a terrorist organisation,” outlined that ISIL is deemed terrorist organisations and looked into previous jurisprudence on this matter.

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



The District Court of Rotterdam handed a three-month imprisonment sentence to a man who had threatened his neighbours and others with a terrorist crime. He was partly acquitted of the charges, as it could not be ascertained that he meant to impose fear into society. He was found guilty of **threatening one or more people with offences against the life**, as he caused fear and contributed to the feelings of unrest and insecurity in the society. He received a three-month prison sentence due to the severity of the offence, as well as his previous conviction of an offence of a violence nature and his refusal to cooperate.

*Source: Rechtspraak.nl*

The District Court of The Hague acquitted one suspect charged with **attempting to join a terrorist organisation, and planning an attack or murder with a terrorist purpose**. The suspect had been reported missing by her two sisters, who had thought that she had run away to join the jihad. She had later been arrested. It was found that she had met a guy online, had gotten married in an Islamic ceremony and planned to go to Turkey for their honeymoon. She was acquitted, as there was not enough evidence linking her with a jihadist group. Whereas there was evidence to suggest that this was the case for her husband. The court did not find sufficient indicators that the suspect knew of the husband's plans, especially since he had lied to her. He had not told her that he had already been married and had two kids. The phone and laptop, on which there was evidence linking to jihad, were used by both the suspect and her husband.

*Source: Rechtspraak.nl*

### April 2017

The appeal submitted by five members of the LTTE was rejected by the Supreme Court. On 30 April 2015, they had been convicted of **participation in an international criminal organisation** that had the objective to commit terrorist crimes and the **participation in a national criminal organisation with the same objective**, by the District Court of The Hague. The court ruled that the Additional Protocol I of the Geneva Convention was not applicable as Sri Lanka is not party to that Protocol, only the Convention. The court concluded that in the period noted in the judgements, there was a non-international armed conflict in Sri Lanka between the Sri Lankan government forces and the LTTE fighters targeting people who were not directly participating in the hostilities. The claim that the fighters could be defined as "combatants" cannot be supported under international humanitarian law. In light of Article 3 of the Geneva Convention, the court's decision that the suspects participating in the organisation whose objective was to commit terrorist crimes can therefore be prosecuted and sentenced under Dutch criminal law is just and comprehensible.

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

At the District Court of North-Holland one defendant was acquitted of **threatening to commit a terrorist crime**. He was sentenced to serve two weeks in prison for **cursing at officials**, as he had previously been convicted of threatening an official. When being taken into custody for



disorderly conduct and public drunkenness, he had threatened the officers with terrorist offences and exclaimed that he was pro-ISIL and pro-Al Qaeda. Taking into account the threats and the overall situation, the Court found that the threats were not real, as the defendant just wanted to hurt the officers. Additionally, the officers did not feel threatened. The judgement delved into the explanatory memorandum of the Law on Terrorist Offences, which points out that a threat has to cause wide spread fear within society and that has to be believable.

*Source: Rechtspraak.nl*

The District Court of The Hague handed a six-month prison sentence to a man who made **multiple threats to commit terrorist crimes**. While in detention in Ter Apel, the suspect, who is a refugee, had on numerous occasions threatened the staff and threatened to kill a Dutch person, a European or a Westerner upon his release. Along with these threats, he had used hand gestures to mime the attack. The personnel felt reasonable fear that the suspect would carry out these threats upon his release. When weighing the evidence, the court also took into account his further radicalisation during his detention.

*Source: Rechtspraak.nl*

The District Court of Rotterdam acquitted a man suspected to have **participated in a terrorist organisation**. The court ordered 18 months imprisonment and three years' probation for the offences of **theft, threatening with abuse, violence against three police officers, threatening to commit a crime causing danger to the general public, and a violation of the Arms and Ammunition Act by attempting to purchase a firearm**. The evidence presented by the prosecution regarding the terrorist charge stemmed from two sources: a Ministry of Foreign Affairs Country Report and a hard drive found in Syria which contained a form that might have held the personal data of the suspect and other forms of possible people who had gone to Syria. The people specified in the other forms had also been mentioned in a news article. The court found, however, that the source of the news article and that of the Country Report could be the same and that it was unreliable. The Court did not find the evidence to be concrete and conclusive, thus acquitted the suspect of that offence.

*Source: Rechtspraak.nl*

## Portugal

### February 2017

The Court of Appeal of Lisbon considered the appeal submitted by the prosecution in the case of a Dutch national sentenced by the Criminal Court of Lisbon in May 2016. At first instance, the man had been charged with membership and support to terrorist organisations, attack on air transport with a terrorist purpose, possession of a weapon and penetrating a restricted area. He had converted to Islam and become radicalised, had travelled to Syria in March 2014. According to his statements, he had gone to Turkey to help refugees, from where he had travelled to Syria



with the same humanitarian purpose. While in Syria, he had been part of a group, which had split due to internal fighting. In his room at the hostel where he had been staying the authorities had found a notebook linking him to some known jihadists. The notebook contained also information on a two-week training he had attended in Syria. However, it was not established whether the training was of terrorist nature. Having spent some time in Syria, the accused had returned to Turkey from where he had been sent back to the Netherlands. On 29 June 2014 he had travelled from Luxembourg to Lisbon by train. On 2 July 2014 he had entered the restricted area of the Lisbon airport and hidden himself in an abandoned radar building from where he could monitor the movements and the work of the airport staff. On the next day, he had approached an airplane bound to Angola carrying a 33 cm kitchen knife and had been arrested by the Portuguese authorities. During the investigation the police had seized documents and obtained statements linking the accused with jihadists groups. The man was also believed to have been involved in the planning of terrorist attacks, mainly in Europe. Based on the available evidence, the judge at the Criminal Court of Lisbon had not considered it proven that the facts were related to terrorism. The accused had been acquitted of the terrorism charge and sentenced to four and a half years in prison for the other charges (*for further details, please see TCM, issue 26*). Having heard the case, the Court of Appeal confirmed the guilty verdict on **attack on air transport** and sentenced the man to three years and six months in prison. The Court of Appeal acquitted him of **possession of a prohibited weapon** and confirmed the rest of the Criminal Court's decision.

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

### Spain

#### January 2017

The Audiencia Nacional sentenced one defendant to a prison term of 18 months after it found him guilty of **glorification of terrorism**. The man had posted various comments and videos, via his Twitter account, including an image combining the symbols of the terrorist organisations ETA and IRA, photos of ETA members, etc. The man had previously been convicted of a terrorist offence in June 2005.

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

The Supreme Court found a man in his 50s guilty of **glorification of terrorism or humiliation of the victims of terrorism** and sentenced him to one year in prison. The man is a singer and song writer of several Spanish rap groups. He has published several novels and appeared in cinema and TV productions as actor, director, screenwriter and producer. The lyrics of his songs contain references to terrorist events and are considered quite provocative, ironic and sarcastic. The man had also used his Twitter account to make comments mentioning assassinations and kidnappings carried out by ETA. In July 2016 he had been acquitted by the Audiencia Nacional (*for further details, please see TCM, issue 26*). The decision of the Supreme Court is final.

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

## February 2017

A prison sentence of eight years was handed to a 23-year-old Moroccan national convicted of **recruitment and self-indoctrination** by the Audiencia Nacional. The man had published on Facebook numerous messages and images of one of the ISIL leaders, as well as some having jihadist content. He had used a photo of the same jihadist leader as his profile photo. The man had been arrested in Germany and surrendered to Spain in execution of a European Arrest Warrant issued by the Spanish authorities. The decision of the court has been appealed by the defence counsel.

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

The Spanish prosecution had pressed charges against a Spanish song writer, whose songs supported the terrorist organisations GRAPO and ETA and their members, justifying their existence and praising their acts. Some of the songs targeted the king and the royal family, as well as government officials. The accused had performed the songs at concerts, recorded CDs and spread his music via the internet. The Audiencia Nacional found him guilty of **glorification of terrorism and humiliation of its victims, slander and grave damages to the crown and making threats**. Together with his guilty verdict he received a prison sentence of three years and six months.

*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 humiliation of the victims of terrorism** and sentenced him to two years in prison and a fine. The man had used his Twitter account to post, on a regular basis, a series of messages and images that praised and justified the acts of the terrorist organisations ETA and GRAPO, humiliated their victims and incited the commission of terrorist acts. The posts had been public and published without any limitation of access. He had also posted multiple photos of an ETA member, justifying his violent acts.

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

## March 2017

A man, who had used his Twitter account to publish comments in support of the terrorist organisation ETA, its members and terrorist acts, was found guilty of **glorification of terrorism** and sentenced to serve 18 months in prison. The Audiencia Nacional heard that his Twitter profile was public and had 2,958 followers.

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

A one-year prison sentence was handed by the Audiencia Nacional to a defendant accused of **glorification of terrorism**. The court found him guilty as charged after it heard the man had used his two Facebook profiles to post images, showing the motto of the terrorist organisation



ETA, its anagram, photos of deceased or imprisoned ETA members, as well as others related to the terrorist organisations IRA and Terra Illure, etc. The decision of the court is final.

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

The Audiencia Nacional sentenced one defendant to serve three years in prison after it found him guilty of **glorification of terrorism** and **terrorist self-indoctrination**. The man, who is a Moroccan national, had been arrested in Badalona, where he had recruited and indoctrinated new fighters for ISIL. He had engaged in propaganda and proselytism in social media using multiple profiles. He had also organised meetings with radicalised young men, showed them videos of ISIL with the objective to indoctrinate them to support the ISIL cause. The decision of the court is final.

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

A 20-year-old Moroccan woman was ordered to serve five years in prison after the Audiencia Nacional found her guilty of **collaboration with a terrorist organisation**. The court did not consider proven the charges of membership in a terrorist organisation, self-indoctrination and attempted travel to a foreign territory controlled by a terrorist organisation and acquitted her of those. The court found that the woman had become radicalised since 2015 and had shared her religious and political views in social media. She had posted messages supporting ISIL and the jihad. She had planned to travel to the conflict zone controlled by ISIL and marry a mujahedeen. She had posted photos and videos of ISIL fighters and executions via Facebook, Twitter and YouTube. She had also accessed chat rooms used and managed by ISIL members.

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

A sentence of one year and one day in prison and a fine was passed on a defendant charged with **glorification of terrorism** at the Audiencia Nacional. The man had been prosecuted for having used his Facebook account to post a message praising the terrorist organisation ETA. The sentence is in conformity with what the prosecution had pleaded.

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

At the Audiencia Nacional a 30-year-old defendant appeared before the court charged with **glorification of terrorism**. He had been prosecuted for having used his Twitter account to post messages related to the terrorist organisation ETA, its members and terrorist acts. The court did not consider it proven that the messages glorified the terrorist organisation and acquitted him of the charge. The prosecution has submitted an appeal.

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

A prison sentence of three months and one day was given by the Audiencia Nacional to a man found guilty of **humiliation of the victims of terrorism**. The man had created an account with

Google and YouTube, which he had used to post comments referring to victims of ETA. In January 2017 he sent a letter to the family of an ETA victim mentioned in his posts and to the Association of the Victims of Terrorism, in which he apologized for his acts, which he called the biggest mistake of his life.

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

The Audiencia Nacional acquitted one defendant charged with **glorification of terrorism**. The man had been prosecuted for having published on his Twitter account a series of messages and images of GRAPO members. The postings had no access limitations and the account had 29,000 followers. The court, however, did not consider it proven that the acts constituted glorification of terrorism.

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

## April 2014

The Audiencia Nacional found a Moroccan national guilty of **glorification of terrorism** and sentenced him to one year imprisonment. In the period between October 2014 and March 2015 he had used his Facebook account to publish, without any access restrictions, messages and images praising the radical violent jihad and the groups and organisations that embraced it. Among those, there had been postings related to the Charlie Hebdo attack of 7 January 2015. The decision of the court is final.

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

## Sweden

### February 2017

A 34-year-old man appeared at the Malmö District Court charged with **having urged others to finance ISIL** via Facebook. The court heard that he had posted a message asking for help to supply weapons to those fighting “at the front”. The message contained also the names of two men who should be called to receive a bank account where money could be transferred. One of those two men is on the UN and EU list of terrorist financiers. The court heard that the post could be accessed by anyone, even without a Facebook account. The defendant denied the charge and claimed he had taken over the Facebook account from a stranger. The court, however, found him guilty and ordered him to serve six months in prison. The case is reported to have no precedent in Sweden.

*Source: The Local*



### United Kingdom

#### January 2017

Three Kurdish men appeared before the court charged with terrorist offences. The first one, aged 21, had been fighting extremists in Iraq alongside the PKK. He had been sent to the UK by his family to keep him safe. In the UK he had become radicalised by the second defendant and decided to fight for ISIL. He had been found in a mosque in Birmingham after he had fled his home in Sheffield and bought a flight ticket to Iraq. In his possession the police had found extremist material. The youngster was sentenced to three years in prison. The second defendant, a 27-year old man, was jailed for seven years for **having tried to join ISIL, for assisting another in commission of terrorist acts and for possession of fake documents**. A third man, aged 19, was sentenced to 18 months for **failing to alert authorities** about the planned plot.

*Source: BBC*

#### February 2017

A 20-year-old man from Birmingham was sentenced to a prison term of nine years for **dissemination of terrorist material and attempting to travel to Syria for terrorist purposes**. In 2015, he had flown to Turkey to join ISIL but was refused to enter. His co-defendant, a 20-year-old man, was sentenced to 21 months for **distributing extremist literature**. According to the court, both shared graphic images and videos via social media, WhatsApp and other apps to promote ISIL.

*Source: West Midlands Police*

Following an undercover police operation, the authorities identified five men suspected to have been supporters of the jihadi terrorist group al-Muhajiroun. The men had attended meetings in June and July 2015 at a church in Luton and a marquee in Rahman's back garden, where four of them had delivered incendiary speeches to around 50 to 70 people at a time, including children. The group praised ISIL and encouraged others to support it, including by travelling to Syria to fight. The five were convicted of **organising and delivering terrorist speeches** and received sentences of two and a half to six and a half years.

*Source: Metropolitan Police*

Two British men in their early 20s were convicted of terrorism charges. The first one was found guilty of **distribution or circulation of a terrorist publication** and was sentenced to five years and two months in prison. The second one pleaded guilty to **publishing a statement to encourage others to commit an act of terrorism**. He was sentenced to two years in prison. Both men had been arrested while trying to leave the UK in 2015. The investigators had not been able to establish their exact destination or intentions.

*Source: BBC*



A 32-year-old Muslim convert was convicted of **preparation of terrorist acts**, namely attempting to travel to Syria. He had been stopped at the Gatwick Airport while trying to board a plane to Turkey. His intention to continue on to Syria and join ISIL had been revealed from the devices he had in his possession. He had also kept a diary on his mobile phone detailing his plans, including his plan to buy a nine-year-old slave girl.

*Source: Daily Mail*

A 45-year-old right-wing extremist was convicted of **terrorist offences** and sentenced to serve five years in prison for his racist postings on social media. He had called to arms against Muslim, homosexual and Jewish people and kept a "White Resistance Manual 2.4". The manual contains details of shotguns, improvised weapons and explosives and harassment and could be used by terrorists. According to the court his actions showed links to and support for various groups, such as the neo-Nazi organisation Combat 18, National Action and Aryan Strikeforce.

*Source: Mirror*

### March 2017

A 28-year-old British Muslim convert, who planned to travel to the Philippines to fight with a banned terrorist group, was sentenced to eight years in prison. He was convicted of **preparation of acts of terrorism** and **possession of a document used in preparing an act of terrorism**. When arrested in 2016, he had been in the advanced stages of planning his trip to the Philippines to join the terrorist group Abu Sayyaf, which is affiliated with ISIL. He had booked flights and accommodation in the Philippines. He had booked a return ticket so that it would seem like he had been going on holiday. At his home, the police had found military and camping equipment and extremist material, including bomb-making instructions and videos showing beheadings of hostages.

*Source: Independent*

A 57-year-old woman appeared before the court charged with **spreading a terrorist publication**. According to the prosecution, she had re-tweeted an ISIL military speech. Her Twitter account had been monitored following her husband's arrest on suspicions of terrorism. The woman had denied posting the link and claimed that her account had been used by somebody else. The court found her guilty as charged and handed a 21-month suspended sentence. It held that she did not appear to have spread radical views on any other occasion and that she had not tried to radicalise others. She has joined a government run counterterrorism programme.

*Source: The Telegraph*



A 22-year-old woman was convicted of **disseminating terrorist publications** and sentenced to serve 20 months in prison. She had been arrested in 2015 after pro-ISIL and anti-Western comments had been made in social media posts.

*Source: North East Police*

A 22-year-old man, who had attempted to join ISIL in Syria, was charged with **preparation of terrorist acts**. In 2015 he had been detained by at the Turkish-Syrian border while en route to the conflict zone. Upon return to the UK, he had changed his name and unsuccessfully attempted to apply for a passport under his new identity in order to evade the authorities. The court found him guilty as charged and sentenced him to serve nine years in prison.

*Source: Metropolitan Police*

A married couple was convicted of terrorist offences and ordered to serve time in prison. The court heard that the man, aged 29, had become radicalised after his wife's brother had been killed while fighting for ISIL. He had decided to join ISIL himself and had been arrested at the airport before he could leave the UK. The court found him guilty of **preparation of terrorist acts** and handed him a five-year prison sentence. His 28-year-old wife was sentenced to two years and 11 months in prison for **aiding and abetting** her husband's activities.

*Source: Mirror*

A 22-year-old man from London was sentenced to four years in prison. He had been arrested after **posting extremist content on social media** in 2016. The postings included a video of a gloved hand holding a knife and machete making stabbing motions. During a search of his home the police had recovered items, including a machete and gloves that featured in the online video. They had also seized media devices that contained ISIL images and videos. Detectives had discovered numerous Twitter accounts encouraging and supporting ISIL, which had been attributed to the man.

*Source: Metropolitan Police*



## 2. Other Court Decisions of Interest

January - April 2017

### Sweden

#### February 2017

On 16 February 2017 a Swedish court found one person guilty of **violating international humanitarian law** and sentenced him to life imprisonment. The investigation was launched following the publication of a video by the New York Times showing the execution of seven soldiers. One of the perpetrators was a Syrian national, who arrived from Italy and sought asylum in Sweden in 2013. The man admitted committing the killings but claimed those had been carried out in execution of a death sentence pronounced by a court. Among others, the Swedish court needed to establish the legitimacy of the court that allegedly sentenced the seven soldiers, the fairness of the trial, the motivation of the execution, etc. The court heard that there were less than two days between the capture and the execution of the soldiers. The Swedish court concluded that such a short timeframe does not allow for a fair trial. Furthermore, the requirement for an impartial and regularly constituted court was also not met. The court held that the evidence showed that the act was not in execution of a sentence of a court but was in fact an act of revenge. Following the guilty verdict issued by the Swedish court, the defence submitted an appeal.

Source: *The Local*

### Norway

#### April 2017

At the District Court of Oslo a 20-year-old Norwegian national was found guilty of **trying to travel abroad for the purpose of joining a terrorist group**. He was arrested by the police at the gate of the airport when he had planned to go to Syria. He was sentenced to imprisonment for two years and ten months. Another 32-year-old Norwegian was in the same trial sentenced to imprisonment for nine years for **participation in a terrorist organisation, recruitment for terrorism, supporting terrorism by providing gloves, a backpack and some sweaters for using in a terrorist offence, and financing of terrorism**. He had never left Norway himself, but he arranged contact between persons who would travel to Syria to join ISIL and other ISIL-sympathizers, he provided equipment and organized their travel. He was also convicted for possession of an electric weapon and for threatening a witness.

The judgement is final for the 20-year-old. It is not final for the 32-year-old.

Source: *Liaison Prosecutor of Norway at Eurojust*



A 24-year-old and a 46-year-old Norwegian national appeared before the Borgarting Court of Appeal charged with **making alliances of terrorism**. They had travelled to Syria and participated in ISIL training and recruitment program, training with firearms and movement of troops. The 24-year-old was acquitted for making alliances, but was sentenced for **participation in a terrorist organisation**. He was sentenced to imprisonment for four years. The 46-year-old was convicted for his participation in both Syria and Norway, because after returning to Norway he had used his Facebook account to post sympathizing comments on ISIL and he was planning on returning to Syria with battle equipment. He was also convicted for **false statement**. He was sentenced to seven years and six months in prison.

The judgement is not final.

*Source: Liaison Prosecutor of Norway at Eurojust*

### Court of Justice of the European Union

#### January 2017

A case was brought before the Court of Justice of the European Union (hereinafter CJEU or 'the court') through a 267 preliminary reference procedure from the Council of State, Belgium. The request has been made in proceedings between the Belgian Commissioner General for Refugees and Stateless Persons ('the CGRA') and an applicant, a Moroccan man, concerning the question whether he should be excluded from being a refugee on the ground that he was guilty of "acts contrary to the purposes and principles of the United Nations".

In 2006 the applicant was given a six-year prison sentence for participation in the activities of a terrorist group - namely the Belgian cell of the 'Moroccan Islamic Combatant Group' ('the MICG') – as a member of its leadership, as well as for criminal conspiracy, use of forged documents, and illegal residence. The Belgian court found in particular that the applicant was guilty of 'active participation in the organisation of a network for sending volunteers to Iraq'. The fraudulent transfer of passports was described as 'an act of participation in the activities of a cell providing logistical support to a terrorist movement'. In this sense, the applicant was convicted of participation in activities of a terrorist group but not of committing actual terrorist acts.

In 2010 the applicant applied to the Belgian authorities for refugee status, but was rejected *inter alia* on the grounds of his participation in the terrorist organisation that contravenes the principles of the United Nation, as defined in the international law. The Belgian Council for asylum and immigration proceedings granted him the refugee status on the basis that none of the acts of which he had been convicted reached the required degree of gravity to be categorised as "acts contrary to the purposes and principles of the United Nations". The CGRA appealed the case to the Council of State, which referred the case to the CJEU for a preliminary ruling on the interpretation of the exclusion from international protection provided for in the Qualification Directive ('the Directive') on the grounds of his participation, possibly as a leader, in a terrorist organisation. The Council of State sought, in particular, to ascertain under what circumstances an applicant for asylum can be excluded from refugee status for 'acts contrary to the purposes

and principles of the United Nations' where he has been convicted in a criminal court of participation in the activities of a terrorist group but has not himself committed a terrorist act.

The CJEU noted, first, that it is clear from the file that the applicant did not personally commit terrorist acts, or instigate such acts, or participate in their commission. Nonetheless, the concept of 'acts contrary to the purposes and principles of the United Nations' is not confined to terrorist acts. The court noted in particular that, in Resolution 2178 (2014), the UN Security Council expressed its 'grave concern over the acute and growing threat posed by foreign terrorist fighters' and its concern with regard to the international networks established by terrorist entities enabling them to move between States fighters of all nationalities and the resources to support them. Among the measures to be adopted to counter this phenomenon, States must ensure the prevention and suppression of activities consisting in the recruitment, organisation, transportation or equipment of individuals who travel to a State other than their States of residence or nationality for the purpose of, *inter alia*, the perpetration, planning or preparation of terrorist acts. The court ruled that participation in the activities of a terrorist group can cover a wide range of conduct, of varying degrees of seriousness. Consequently, application of the ground for exclusion of refugee status laid down in the Directive cannot be confined to the actual perpetrators of terrorist acts, but can also extend to the persons who engage in activities of recruitment, organisation, transportation or equipment of individuals who travel to a State other than their States of residence or nationality for the purpose of, *inter alia*, the perpetration, planning or preparation of terrorist acts.

The court stated that the final assessment of an application for international protection is the task of the competent national authorities, subject to review by the national courts. However, the court noted, among the factors to be taken into consideration that the applicant was a member of the leadership of a terrorist group operating internationally which was registered, on 10 October 2002, on the United Nations list identifying certain individuals and entities that are subject to sanctions and which has continued to be named on that list, as updated since that date. The applicant's logistical support to the activities of that group has an international dimension in so far as he was involved in the forgery of passports and assisted volunteers who wanted to travel to Iraq. In the opinion of the court, such acts can justify exclusion from refugee status. Further, the fact that the applicant was convicted of participation in the activities of a terrorist group and that that conviction has become final is, in the context of the individual assessment that must be undertaken by the competent authority, of particular importance.

To sum up, the Court ruled that acts constituting participation in the activities of a terrorist group may justify exclusion of refugee status, even though it is not established that the person concerned committed, attempted to commit or threatened to commit a terrorist act. For the purposes of the individual assessment of the facts that may be grounds for a finding that there are serious reasons for considering that a person has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that the person was convicted by a court of a Member State on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that that person was a member of the leadership of that group, and there is no need to establish that the person instigated a terrorist act or otherwise participated in it.

Source: CJEU

### March 2017

A case was brought before the CJEU through a 267 preliminary reference procedure from the Council of State, the Netherlands. The request has been made in proceedings between the Netherlands authorities and four applicants, concerning the question whether actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, may constitute 'terrorist acts'.

According to the Dutch authorities, the applicants were involved in collecting funds for the 'Liberation Tigers of Tamil Eelam' ('the LTTE'), an entity which fought a civil war against the Sri Lankan Government and which has been categorised as a terrorist organisation by the EU for approximately 10 years.

The Dutch authorities placed the applicants among the persons subject to restrictive measures with a view to combating terrorism resulting in freezing of their financial resources. In that context, the Dutch authorities concluded that the LTTE was a terrorist group, taking into account an implementing regulation of the Council of the European Union of 2010, which maintained the LTTE on a list of groups involved in terrorist activities and subject to restrictive measures.

In their action before the Dutch courts, the applicants have argued that that regulation is invalid on the ground that the activities of the LTTE were not terrorist acts. In their view, the LTTE was in fact a non-State armed force engaged in a non-international armed conflict in Sri Lanka. Consequently, its activities were governed only by international humanitarian law and not by the EU and international rules on combating terrorism. It follows that the EU was incorrect to regard the attacks and kidnappings carried out by the LTTE between 2005 and 2009 as 'terrorist acts' justifying its inclusion in an EU list concerning groups involved in terrorist acts.

The Council of State asked the Court of Justice for clarification regarding the definition of 'terrorist acts'. In particular, it sought to ascertain whether possible inconsistencies between that definition in EU law and in international law may affect the validity of the implementing regulation in question. According to the Council of State, there is an international consensus regarding the fact that actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, are not to be regarded as terrorist activities.

The Court referred, first of all, to its case-law according to which a regulation providing for restrictive measures must be interpreted in the light of its historical context. The acts of the EU are chiefly intended to prevent terrorist acts by means of measures for the freezing of funds in order to hinder, *inter alia*, the financing of persons and entities liable to carry out terrorist acts. In that context, the designation of the persons and entities who are to be included on the list does not constitute a sanction, but rather a preventative measure. Furthermore, the court considered that customary international law does not prevent actions by armed forces during periods of armed conflict from constituting 'terrorist acts'. It emphasised in that regard that international humanitarian law pursues different aims from EU law. In addition, although some of the international conventions to which the Council of State made reference exclude from their scope actions by armed forces during periods of armed conflict within the meaning of international humanitarian law, they neither prohibit the State Parties from classifying some of those actions as terrorist acts, nor preclude them from taking steps to prevent the commission of such acts.

Consequently, the Court found that actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, may constitute ‘terrorist acts’ for the purposes of EU law.

Source: *CJEU*

## European Court of Human Rights

### March 2017

The European Court of Human Rights (‘ECtHR’) has unanimously declared depriving a suspected terrorist of his citizenship was lawful under the Convention. The applicant was suspected of taking part in terrorism-related activities in Somalia. In 2010, he was deprived of his UK citizenship and barred him from re-entering the country. The applicant claimed that these decisions had violated his right to respect for private and family life and had been discriminatory.

The case concerned a man of Sudanese origin who became a naturalised UK citizen. In 2009 he was arrested and charged with a public order offence, but, before he was required to surrender his bail, he left the UK. In 2010 he was deprived of the UK citizenship and was excluded from the UK, on account of his terrorism-related activities and his links to extremists. In the UK, the applicant challenged both of these decisions. A challenge of the decision to exclude him was dismissed and upheld by the UK Court of Appeal. The citizenship issue came before the Special Immigration Appeals Commission (“SIAC”). The applicant claimed he could not defend against the terrorism-related allegations because he remained in Sudan and asserted that he feared that his communications were subject to surveillance by the Sudanese authorities and that communicating about his case would expose him to a risk of harm from them. SIAC proved this argument false. In 2015 SIAC found that there was “conclusive” evidence that the applicant had established associations with known extremists and that he had travelled to Somalia in the company of extremists to engage in terrorism-related activities. The British court concluded that the decision to deprive the applicant of his British citizenship had been fully justified and dismissed the appeal.

The applicant complained to the ECtHR that the UK had violated his rights under Article 8 (right to private and family life). He further complained under Article 14 (prohibition of discrimination), read together with Article 8, that he had been treated differently from British citizens considered a threat to national security who did not hold a second nationality; and from non-national residents who enjoyed a suspensory appeal against the revocation of leave to remain in the United Kingdom.

On the alleged violation of Article 8, the ECtHR noted that an arbitrary denial or revocation of citizenship might in some circumstances raise an issue under Article 8, because of its impact on the private life of an individual. The ECtHR considered whether the revocation was arbitrary, and what the consequences were for the applicant. The ECtHR ruled that the removal of the applicant’s citizenship was not arbitrary because, firstly, it was done “in accordance with the law”; secondly, the authorities had acted swiftly and diligently: the applicant had left the UK in



October 2009 and engaged in terrorist-related activities in Somalia; and the authorities had deprived him of his citizenship in June 2010; and thirdly, the ECtHR noted that the applicant had enjoyed sufficient procedural safeguards in relation to the decision. The ECtHR ruled that even though the applicant was not located in the UK, he could and in fact did challenge the decision to revoke citizenship. An out-of-country appeal does not, according to the ECtHR, necessarily make a decision “arbitrary”, and Article 8 cannot be interpreted so as to impose a positive obligation on States to facilitate the return of every person deprived of citizenship in order to pursue an appeal against that decision. The ECtHR also noted the reason why the applicant had had to make the appeal from outside the UK was his decision to flee the country before he was required to surrender his bail.

As for the consequences of the revocation of citizenship, the ECtHR noted that he would not be left stateless by the loss of UK citizenship (as he had Sudanese citizenship), and the interference to his private and family life was limited. In these circumstances, the deprivation of citizenship had been lawful under Article 8.

Regarding the decision to exclude the applicant from the UK, the ECtHR noted that it had interfered with his private and family life, but in light of the limited nature of the interference and SIAC’s clear findings concerning the extent of his terrorism-related activities did not find it disproportionate with the legitimate aim of protecting the public from the threat of terrorism. The ECtHR therefore held that this part of application was also manifestly ill-founded.

On the alleged violation of Article 14 ECHR (prohibition of discrimination), read together with Article 8, the ECtHR ruled the applicant failed to exhaust the domestic remedies available and that the argument was misplaced, respectively.

*Source: ECtHR*



## II. Amendments in Legislation

January - April 2017

### 1. EU

#### European Parliament and Council of the European Union

##### March 2017

Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combatting terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA was adopted. The Directive consolidates existing EU legislation and international standards on the criminalisation of terrorist offences and incorporates "new" terrorism-related offences, such as terrorist financing and travelling abroad to commit a terrorist offence or to participate in a training camp – as well as returning from such activities, providing or receiving training. The Directive includes also provisions to meet the specific needs of victims of terrorism with information, support and protection (*for further details on the Directive, please see chapter IV. Topic of Interest*).

*Source: Official Journal of the European Union*

#### European Commission

##### January 2017

Commission Implementing Regulation (EU) 2017/142 of 26 January 2017 amending for the 258<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations was adopted. The Regulation amends Annex I to regulation (EC) No 881/2002 by amending the identifying data for one entry under the heading 'Natural persons'.

*Source: Official Journal of the European Union*

##### February 2017

Commission Implementing Regulation (EU) 2017/221 of 8 February 2017 amending for the 259<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations was adopted. The Regulation amends Annex I to regulation (EC) No 881/2002 by deleting one entry under the heading 'Natural persons'.

*Source: Official Journal of the European Union*



Commission Implementing Regulation (EU) 2017/296 of 20 February 2017 amending for the 260<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaeda organisations was adopted. The Regulation amends Annex I to regulation (EC) No 881/2002 by amending the identifying data for four entries under the heading 'Natural persons'.

*Source: Official Journal of the European Union*

Commission Implementing Regulation (EU) 2017/326 of 24 February 2017 amending for the 261<sup>st</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations was adopted. The Regulation amends Annex I to regulation (EC) No 881/2002 by adding four entries under the heading 'Natural persons'.

*Source: Official Journal of the European Union*

### **March 2017**

Commission Implementing Regulation (EU) 2017/494 of 21 March 2017 amending for the 262<sup>nd</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations was adopted. The Regulation amends Annex I to regulation (EC) No 881/2002 by deleting one entry under the heading 'Natural persons'.

*Source: Official Journal of the European Union*

Commission Implementing Regulation (EU) 2017/557 of 24 March 2017 amending for the 263<sup>rd</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations was adopted. The Regulation amends Annex I to regulation (EC) No 881/2002 by amending the identifying data for two entries under the heading 'Natural persons'.

*Source: Official Journal of the European Union*

### **April 2017**

Commission Implementing Regulation (EU) 2017/630 of 3 April 2017 amending for the 264<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaeda organisations was adopted. The Regulation amends Annex I to regulation (EC) No 881/2002 by amending the identifying data for one entry under the heading 'Natural persons'.

*Source: Official Journal of the European Union*



Commission Implementing Regulation (EU) 2017/637 of 4 April 2017 amending for the 265<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaeda organisations was adopted. The Regulation amends Annex I to regulation (EC) No 881/2002 by amending the identifying data for one entry under the heading 'Legal persons, groups and entities'.

*Source: Official Journal of the European Union*

Commission Implementing Regulation (EU) 2017/700 of 18 April 2017 amending for the 266<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations was adopted. The Regulation amends Annex I to regulation (EC) No 881/2002 by deleting one entry under the heading 'Natural persons'.

*Source: Official Journal of the European Union*

### III. Legal Analysis

*The analysis below has been produced in an attempt to provide an insight into a judgement concerning a returnee from Syria, who spent some time with the Free Syrian Army, while he was in the conflict zone. The analysis focuses on selected aspects of the judgement, rather than covering all issues and arguments considered by the court. It is intended to help practitioners by highlighting several issues that are of relevance in the context of the judicial response to the foreign terrorist fighter phenomenon.*

**Procedure:** District Court of Rotterdam, case file 10/960237-15<sup>1</sup>

**Date of hearing:** 23 February 2017

**Date of decision:** 21 March 2017

#### Introduction

On 21 March 2017 the District Court of Rotterdam pronounced its verdict against a returnee from Syria, who had travelled to the conflict zone in 2014. The defendant he had been deported by the Turkish authorities and arrested at the Schiphol airport upon arrival from Turkey on 29 December 2015.

It was the first case adjudicated by a Dutch court in which the defendant had joined the Free Syrian Army (FSA), which fights the terrorist organisation ISIL.

#### The charges

The charges against the defendant were as follows:

[1] Participation in a terrorist organisation in the Netherlands and/or in Belgium and/or in Jordan and/or in Turkey and/or Syria;

[2] Training for terrorism in the Netherlands and/or in Belgium and/or in Jordan and/or in Turkey and/or Syria;

[3 primary] Preparation or commitment of arson and/or causing explosions and/or murder and/or manslaughter with a terrorist intent in the Netherlands and/or in Belgium and/or in Jordan and/or in Turkey and/or Syria;

[3 subsidiary] Preparation of murder in Jordan and/or in Turkey and/or Syria.

The alleged facts had taken place in the period between 28 May 2014 and 29 December 2015.

<sup>1</sup> A copy of the anonymised judgement is available at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2017:2114>.

According to the prosecution, the evidence showed that the defendant had travelled to the conflict zone in Syria, where he had received terrorist training and prepared terrorist crimes by being a fighter within organisations linked to Jabhat al-Nusra, such as Ahrar al Sham, Jaish Islam en Jabhat al Shamiya(h). The defendant had admitted to have been part of Jabhat al Shamiya(h), which:

- is a Salafist/jihadist group;
- has the objective to establish a caliphate and destroy the fundamental political, constitutional, economic or social structure of a country (in the meaning of Article 83a of the Dutch Criminal Code);
- is part of Ahrar al-Sham;
- has its headquarters in the town of Azaz.

The group Jabhat al Shamiya(h) is to be qualified as a criminal organisation with a terrorist objective. The defendant had used the training he had received from the FSA during the period when he had been part of Ahrar al-Sham/Jabhat al Shamiya(h). Therefore, according to the prosecution, the training received from the FSA had in fact as objective the commission of terrorist crimes.

The prosecution pleaded for a guilty verdict for charges [1], [2] and [3 primary] and a penalty of four years in prison.

### The defence case

The defence counsel made several claims questioning, among others:

- The jurisdiction of the court, in particular in relation to charge [3 subsidiary], due to the lack of territorial jurisdiction and the applicability of the double criminality principle, in conformity with Article 5 of the Dutch Criminal Code;
- The principle of opportunity and the principle of equality, specifically in view of other cases concerning similar conduct;
- The criminal liability of the defendant, who, based on a statement of a spokesperson of the Prosecution Service, claimed he had been led to believe that fighting against ISIL in Syria was not a crime.

### The statements of the defendant

#### Motivation to travel to Syria

The defendant made inconsistent statements concerning his intentions, activities and involvement in several organisations in the conflict zone in Syria.

When questioned by the police on 30 December 2015, he claimed that he had thoroughly prepared his trip to Syria, where he wanted to join the jihad. He had left the Netherlands on 28 December 2013 and had to be deported back from Kuwait, via Istanbul, on 24 May 2014. In

Istanbul, he claimed, he had missed his flight to Amsterdam and two days later travelled to Brussels instead. A week afterwards he had returned to Turkey and started collecting information about ISIL, Jabhat al-Nusra and the FSA. He had then crossed the border with Syria and spent three months in a FSA camp, where he had received training in, among others, shooting and theory of the Islam. He had then joined a sniper unit, where he had used various weapons, one of which is to be seen on photos on his Facebook page. According to the defendant, he had killed 21 ISIL fighters. In mid-August 2015 he had left the FSA and about ten days later had been captured and questioned by Jabhat al-Nusra. He had then decided to join Sham-Islam, an Al Qaida branch with other Moroccan-speaking members, but had been brought back to Jabhat al-Nusra.

At the beginning of January 2016, the defendant changed his statement and denied to have ever shot with a sniper gun or to have killed anyone. He claimed he had just bragged to be accepted. He confirmed the Facebook photos had been taken when he had followed a training with the FSA but the weapons belonged to other fighters. He claimed further that his assignment within the FSA had been to watch with a binocular the IS-controlled territory and report any suspicious activities.

During his questioning on 7 January 2016, the defendant handed a self-written note, in which he stated that, together with others, he had voluntarily left Jaish Islam in order to join Ahrar al Sha(a)m. Later, during his pre-trial detention at the prison of Vught, he stated in a letter that he was the one who steered his own (criminal) case already before boarding the plane from Istanbul to Schiphol. He wrote further that he had hoped to be arrested and he did not take chances, especially after his departure to Syria. He stated also that he had researched the consequences prior to his departure and had deliberately chosen the FSA as it was not listed in international terrorist lists.

According to a report of the probation office of 21 February 2017, the defendant had declared that the majority of his statements about Syria were not true. He withdrew his statement that he had killed others and referred to it as part of a plan he had made to get certain benefits.

The defendant claimed also that he had deliberately manipulated the inquiry carried out by the police and a specialised forensic psychiatric observation clinic so that he could challenge the charge of participation in a terrorist organisation, be acquitted and claim compensation. He had deliberately chosen to stay in the terrorist section of the prison, instead of going to a regular one, in order to be able to claim higher compensation when proven he had been unlawfully detained.

At the hearing of 23 February 2017 the defendant stated that he had been advised by his first defence counsel to lie, so that he could receive higher compensation. He had expected to be treated as a hero and be rewarded by the Dutch government if he would say he had killed 21 ISIL fighters.

## The ruling of the court

### Jurisdiction

In relation to the defence claim concerning the jurisdiction over charge [3 subsidiary], the court held that the alleged preparation of murder charged under [3 subsidiary] had not taken place in the Netherlands. Furthermore, the charge concerned a common, rather than a terrorist offence, which meant that for the period prior to 1 July 2014 Dutch jurisdiction may be established only in case the offence was committed against a Dutch national or a Dutch resident. Furthermore, since 1 July 2014 the requirement for double criminality had been introduced, which made it a pre-condition that the respective act must be punishable also in the country where it had been committed.

In the absence of relevant evidence, the court confirmed it had jurisdiction only over charges [1], [2] and [3 primary] (as the alleged acts had been committed in the Netherlands) and not over the acts charged under [3 subsidiary].

### Principle of opportunity

As provided for in Article 167, paragraph 1 of the Dutch Code of Criminal Procedure, the prosecution is to decide whether it would proceed with prosecution on the basis of a conducted investigation. According to existing jurisprudence, the decision to prosecute is to be considered contentwise by a court in a very limited number of cases. In order to terminate the proceedings, the court would need to assess the prosecution's standpoint on the importance of the criminal proceeding *versus* the circumstances, which according to the defence lead to the conclusion that the decision to prosecute violated the principle of equality.

In the case of the defendant the court held that the criminal proceeding did not violate the principle of equality. It did not consider the case to be identical to other cases, in particular that of a man who had allegedly joined the Kurdish group YPG in Syria with the purpose to fight ISIL and who, contrary to the defendant, had not been accused of participation in a terrorist organisation and training for terrorism. Based on the above, the court concluded that the case is admissible in relation to charges [1], [2] and [3 primary].

### Motivation to travel to Syria

The court found that the defendant had not travelled to Syria to join the jihad for religious and/or ideological reasons. On the contrary, he seemed an opportunist, who was driven by purely personal motivation and interest and who had hoped to be perceived as a hero upon his return to the Netherlands. As the latter did not turn out to be the case, he tried to obtain the highest possible compensation for his detention.

### Proven facts

The court considered it proven that the defendant had the intention to travel to Syria to join the jihad. He had left the Netherlands on 28 December 2013 and had to be deported back from

Kuwait (via Istanbul) on 24 May 2014. In Istanbul, he had missed his flight to Amsterdam and two days later travelled to Brussels instead. A week after that he had returned to Turkey and then again to the Netherlands. Between September 2014 and February 2015 he had lived in a mosque in Istanbul and sought information about IS, Jabhat al-Nusra and the FSA.

Having discovered that the FSA was not listed a terrorist organisation by the EU and the United Nations Organisation, he had crossed the border with Syria in March/April 2015 and spent three months in a FSA camp in the town of Azaz, where he had received training in shooting, theory of the Islam, etc. On 12 July 2015 and 20 July 2015 he had posted messages on Facebook, from which it appeared he had been in Syria at that moment. He declared during the hearing that he had used a sniper gun once when his unit had been attacked by ISIL fighters but he was not sure whether he had hit anyone.

He had left the FSA in July/August 2015 and approximately ten days later had been captured by Jabhat al-Nusra. Following his release, he had returned to Turkey where he had stayed till his deportation to the Netherlands on 29 December 2015.

The defendant's Facebook page contained photos on which he appeared wearing a military uniform, posing in a refugee camp in Syria, sitting on a bed surrounded by hand grenades, sitting in an army vehicle, holding an automatic weapon, or in the company of others also wearing military uniforms and holding automatic weapons, etc. The photos had been posted while he had been in Syria. At the hearing, the defendant stated that all photos on his Facebook page had been made in Azaz when he had been with Jabhat al Shamiya(h), which carried the FSA flag.

### Evidence

In compliance with paragraph 2 of Article 342 of the Dutch Code of Criminal Procedure, the statement of one witness is not sufficient to establish guilt. In the present case, the defendant's own statement is the only source of evidence showing that he had been part of Jabhat al-Nusra, Al Qaida, Jabhat al Shamiya(h), Ahrar al-Sh(a)am and/or Jay(h)s al-Islam.

According to the court, the file contained objective evidence that could possibly serve as supporting evidence to the defendant's statement that he had been part of Ahrar al Sh(a)am, Jaish Islam and/or Jabhat al Shamiya(h) – organisations, which according to the prosecution, were linked to Jabhat al-Nusra. However, at the hearing the defence provided explanations, which rendered this evidence no longer supportive of the defendant's statement.

The objective evidence referred to by the prosecution, namely the Facebook photos and the defendant's posts claiming he fought against ISIL, supported earlier statements of the defendant that he had deliberately chosen to join the FSA.

The objective evidence did not prove that the defendant held jihadist ideology. In fact, in his letter to the Supervision Commission he stated that he had deliberately chosen to join the FSA, prior to his departure to Syria, due to the fact that the FSA was not on the global terrorist list. In court, the defendant confirmed this was true. He referred also to a news broadcast in October 2014, in which he had heard the prosecution office would not prosecute those who leave for Syria to fight against ISIL. The court concluded that the defendant had deliberately chosen to join the FSA, as he believed he would not be prosecuted upon return to the Netherlands. He had

further stated to the probation office that he counted on an acquittal and would claim compensation.

### Verdict on the charges

The court did not consider it proven that the defendant had participated in a terrorist organisation (charge [1]) or that he had joined the training he had followed with the FSA with the intention to commit terrorist crimes (charge [2]). Neither had he prepared to commit terrorist crimes (partially charge [3 primary]; Article 96, paragraph 2 of the Dutch Criminal Code).

In relation to charge [3 primary] the court concluded that the defendant had left the Netherlands with the intention to join the jihad in Syria and had carried out preparatory acts to commit murder, which constituted an offence under Article 46 of the Dutch Criminal Code. The court established, in particular, that he had:

- A. discussed and/or planned (with others) to travel to the conflict zone, participate in training and/or fighting in Syria;
- B. sought information (including via the internet) about one or more groups/organisations, such as ISIL, Jabhat al-Nusra, Al Qaida, Jabhat al Shamiya(h), Ahrar al-Sh(a)am, Jay(h)s al-Islam and/or the FSA, which participated in the armed fighting (jihad) in Syria and/or Iraq;
- C. travelled to and stayed in Syria;
- D. participated in (combat) training and/or (by doing this) prepared to participate in the armed fighting in Syria, and
- E. been in possession of fire arm(s), munitions and combat uniform.

### Criminal liability

In view of the defence claims that the defendant had been led to believe that fighting against IS in Syria was not a crime, the court referred to a statement of the Prosecution Service made on 10 October 2014. It had been followed by another statement on 16 October 2014, entitled '*Participation in the armed conflict in Iraq and Syria is in principle punishable*'.<sup>2</sup> The latter is still available on the internet and it was the defendant's fault that he was not aware of it.

The court concluded that there were no circumstances that excluded the criminal liability of the defendant.

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<sup>2</sup> *Deelname aan gewapend conflict in Irak en Syrië in beginsel strafbaar*, available at <https://www.om.nl/vaste-onderdelen/zoeken/@86846/deelname-gewapend/>. Among others, the statement points out that active participation in the fight against ISIL in Iraq and Syria is in principle punishable. Certain acts committed in this fight could constitute war crimes, but also common offences, such as murder, manslaughter, deprivation of freedom or mistreatment. The existence or not of grounds to prosecute such common offences depends on the circumstances in which those were committed.

The statement refers also to the fact that members of a motor gang, who allegedly fought against the ISIL, fall under Dutch law and would be prosecuted in case they committed a crime.



### The penalty

When determining the severity of the penalty, the court considered the seriousness of the facts, the circumstances under which they had occurred, the personality and the personal circumstances of the defendant.

The court referred to the fact that the defendant had no criminal record of terrorist offences but had previously been convicted of property crimes. The court took also into consideration the following reports:

- a report of a psychiatrist, a psychologist and a social worker, which, among others, recommended a clinical observation in a specialised forensic psychiatric observation clinic due to possible psychiatric and personality disorders;
- a report of a psychiatrist and a psychologist of the Dutch Institute for Forensic Psychiatry and Psychology, which established cognitive disorders, lack of self-reflection, distorted perception of reality, narcissistic personality disorder;
- a report of the probation office of 21 February 2017, which established the lack of self-reflection, problem awareness and sense of reality and assessed as high the risk of recidivism of property crimes.

Based on the above, the court ordered a prison term of 36 months, of which 12 suspended, with a probation period of three years, under the following general conditions:

- not to commit an offence during the probation period;
- to cooperate with the authorities in providing his fingerprints or an identification document, as provided for in Article 1 of the Law on Identification Duty;
- to cooperate with the probation supervision, including envisaged house visits.

The court established also the following specific conditions for the duration of the probation period:

- to appear before the probation officers, as often and as long as deemed necessary by the probation office;
- not to approach international airports in the Netherlands as long as deemed necessary by the probation office;
- to keep distance of no less than two kilometres from the border with neighbouring countries;
- to stay at his home address during certain number of hours per day determined by the probation office;
- to undergo treatment for his personality issues at an institution determined by the probation office;
- to stay in a supervised home or a social centre, if and as long as deemed necessary by the probation office, and follow the (daily) programme designed by the centre in consultation with the probation office.

In view of some of the above-mentioned conditions, the court ordered the man to be placed under electronic supervision.



## IV. Topic of Interest

### Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

#### Introduction

Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA was adopted by the Council on 15 March 2017 and was published in the Official Journal on 31 March 2017. The Directive replaces Council Framework Decision 2002/475/JHA to keep pace with new developments and emerging threats, such as foreign fighters and “lone wolves”, and also ensure that Member States comply with international obligations and standards, such as UN Security Council Resolution 2178 (2014). The Directive updates the current EU “framework” rules on terrorist offences and will help prevent terrorist attacks by ensuring that all Member States criminalise terrorism-related offences, such as travelling abroad to commit a terrorist offence, returning to or travelling within the EU for such activities, training for terrorist purposes, as well as the financing of terrorism.

#### New offences related to terrorist activities

The following acts, among others, are to become criminal offences throughout the EU:

- Public provocation to commit terrorism or advocating terrorism, either directly or indirectly through the glorification of such acts, thereby causing a danger that such offences may be committed (Article 5);
- Recruitment for terrorism (Article 6);
- Providing or receiving training for making explosives or weapons or noxious or hazardous substances. This provision also applies to “lone wolves” studying to carry out an attack on their own (Articles 7 – 8);
- Travelling abroad for the purpose of committing, or contributing to the commission of a terrorist offence or for the purpose of the participation in the activities of a terrorist group, or undertaking preparatory acts by a person entering a Member State with the intention to commit, or contribute to the commission of, a terrorist offence (Article 9);
- Organising or otherwise facilitating abovementioned travelling (Article 10);
- Providing funds to commit or contribute to terrorism. In case the funding concerns terrorist offences (laid down in Article 3 of the Directive), offences relating to a terrorist



group (Article 4) and travelling for the purpose of terrorism (Article 9), it shall not be necessary that the funds be in fact used to commit, or to contribute to the commission of, any of those offences, nor shall it be required that the offender knows for which specific offence or offences the funds are to be used. Member States would also be required to take measures to freeze or seize such funds (Article 11).

### Assistance to victims

The Directive includes provisions to ensure immediate assistance to victims and their relatives after an attack (Articles 24 - 26). For example, EU Member States should ensure that support services are in place to help families find out which hospital their relative has been taken to, and to help victims return to their home countries, if they have been caught in an attack while visiting another EU country. Assistance should also include medical and psychological support, as well as advice on legal and financial matters, such as legal procedures for making claims.

### Information exchange

The Directive is intended to improve the existing rules on exchange of information on terrorist offences and enable the taking down of online terrorist content (Article 21). It obliges Member States to exchange relevant information in relation to criminal proceedings on terrorist offences, as soon as possible if the information could be used to prevent future attacks or assist other ongoing investigations or proceedings (Recital 24, Preamble).

### Role of Eurojust

In the fight against terrorism, the Directive foresees two particular roles of Eurojust.

Firstly, in order to fight the cross-border nature of terrorism, the Directive calls for a strong coordinated response and cooperation within the EU and with relevant third countries. To that end, it calls for efficient use of the available tools and resources for cooperation and specifically refers to both Eurojust facilitated joint investigation teams and coordination meetings (Recital 7, Preamble).

Secondly, the Directive refers to Eurojust in Article 19(3) on conflicts of jurisdictions. In case of such conflicts, the Member States may have recourse to Eurojust in order to facilitate cooperation between respective judicial authorities and the coordination of their action.

### Transposition

Member States will have 18 months to transpose the Directive into national law. The UK and Ireland will not be bound by the Directive, but may notify the EU Commission of their intention to opt in, if they so wish (Recital 41, Preamble). Denmark will not be covered by the Directive either (Recital 42, Preamble).

## V. The Way Ahead

### Ongoing/Upcoming Trials

January - April 2017

*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.*

#### Denmark

A 16-year-old Danish girl was arrested in January 2016 for possessing explosives that she planned to use to bomb two schools. She will be the first female in Denmark's history to be charged with terrorism. According to the prosecution, the girl was far along in her preparations to bomb two schools. She is charged with having made preparations to make a bomb and for having planned a test explosion and faces a minimum four-year sentence if found guilty.

*Source: The Local*

#### France

Three men and a 16-year-old girl were arrested in Montpellier. Investigators found a makeshift bomb factory explosives, bomb-making materials, syringes and gloves after monitoring the girl's social media accounts. A 20-year-old man is suspected of having planned to carry out a suicide attack. They were arrested after buying acetone which is an ingredient used in the making of TATP explosives.

*Source: BBC*

Two Frenchmen who were suspected of plotting an attack ahead of France's presidential election have been charged with terrorist offences. In their shared Marseille apartment authorities uncovered an Uzi sub-machine gun, pistols, three kilogrammes of TATP explosives and a homemade grenade, as well as an ISIL flag. Police had been searching for them since the interception of a video in which they pledged allegiance to the terrorist group.

*Source: Expatica*



### Greece

A 48-year-old Greek woman, dubbed as “the No. 1 most-wanted domestic terrorist”, was arrested after years on the run. She was charged with participating in a terrorist organisation. In 2013 she was convicted of membership in the Revolutionary Struggle terrorist movement and sentenced *in absentia* to 50 years in prison. She is a partner of a self-proclaimed leader of that movement. In 2012 she disappeared while on conditional leave. In 2016 she was sentenced to another 11-year jail term for the explosion of a makeshift bomb outside the Bank of Greece headquarters in the centre of Athens.

Source: *Financial Times*

### Italy

A court in Bari ordered a 38-year-old man of Albanian origin to take part in a de-radicalisation programme, as a first time application of de-radicalisation (non-custodial) measure within judicial criminal proceedings in Italy. The man is under investigation for international terrorism and is accused of proselytising extensively for ISIL and of being in contact with a network of jihadist groups. He is suspected of plotting a terrorist attack on Rome. On his phone and computer, the police found jihadist propaganda videos, including executions staged by ISIL. The authorities believe that a video found at his home proves that he was planning a terrorist act. The man had also been spreading ISIL propaganda through his social media account. A photo of him holding an assault weapon and a video urging the conquest of Italy by ISIL were found on his Facebook page. Further to the de-radicalisation programme ordered by the court, the police has also seized his passport and put him under special surveillance for two years, during which time he may not leave the place of residence or use the Internet.

Source: *La Repubblica*

### Poland

A 22-year-old Polish man has been charged with terrorism for planting a bomb on a bus in Wrocław in 2016. The man admitted to building a home-made explosive device and planting it on a city bus but denies terrorism charges. According to the prosecution, the man had earlier called an emergency number, demanding 120 kg of gold in exchange for diffusing four bombs, which he claimed to have planted in Wrocław. He is accused of trying to kill many people using explosives, as well as of racketeering and extortion, both of which the prosecution said were acts of terrorism. If found guilty, he faces life in prison.

Source: *The News*

## Sweden

A 30-year-old Syrian man is accused of throwing Molotov cocktails at Islamic centre in Malmö on October 2016, causing smoke damage to the building. The community centre is owned by Shia Muslim organisation Aldorr. The man is a Sunni Muslim who has expressed dislike of Shia Muslims. Nobody was injured in the fire but the building was damaged. The prosecutor insists that the man is affiliated with ISIL and charged him with a terror offence, alternatively arson. According to the prosecution, the purpose of the attack was to seriously intimidate a population group, in this case Shia Muslims, in the name of ISIL. During the investigation, a description of how to make a detonator and propaganda films showing ISIL soldiers were found.

Source: *The Local*

## United Kingdom

Five teenagers from London, aged between 15 and 19, have been charged with terrorist offences. Four of them have appeared in court accused of a plot to travel to Syria to join ISIL and the fifth one, aged 15, is alleged of possessing a bomb-making video. He has been charged with collection of information and dissemination of terrorist publications. A 16-year-old has been charged with preparation of terrorist acts, while a 17-year-old faces the same charge, as well as dissemination of terrorist publications. The two remaining teenagers have been charged with preparation of terrorist acts and collection of information of terrorist organisation.

Source: *Independent*

A 43-year-old Pakistani man has been charged with possessing explosives. He was detained after he tried to allegedly smuggle a pipe bomb in his luggage through security at Manchester airport. The court heard the device was viable and that it appeared to consist of batteries wrapped in brown tape with wires sticking out.

Source: *Telegraph*

A 31-year-old Royal Marine has admitted to hoarding explosives and bombs in order to prepare a terrorist attack. He pleaded guilty to preparation of terrorist acts between 2011 and 2016. He collected numerous terrorism-related documents, instructions on how to make explosives and tactics used by terrorist organisations. He also had a stock of explosives, devices, ammunition, weapons, and tools for making bombs, which he stored in hides in England and Northern Ireland. In his possession the police found maps, plans and lists of potential targets, as well as images of an adapted Police Service of Northern Ireland (PSNI) pass card and a PSNI uniform.

Source: *Standard*

Two siblings, a 21-year-old man and a 23-year-old woman, have been charged with preparing terrorist acts in Birmingham. The man has allegedly bought a blade and has conducted research to carry out a deadly assault. He has also been charged with possessing a bomb-making guide



and an extremist document, called the 'Mujahideen Poisons handbook'. His sister has been accused of sending the extremist material, including a picture of a man holding two severed heads, to encourage terror attacks.

*Source: Daily Mail*

A 17-year-old girl has been charged with terrorism offences. She is accused of communicating with a person from ISIL, possessing a flight booking to Istanbul with the intention to travel to Syria, and self-radicalising.

*Source: BBC*

A 19-year-old man has been charged with preparation of terrorist acts between April and September 2016 and has admitted plotting a bomb attack in London. He tried to get weapons online, including a bomb vest or explosives. He was caught chatting online with officers from the British Security Service, who posed as fellow extremists who could help him acquire the weapons. Inspired by ISIL, he told an undercover officer of his desire to get bomb-making material.

*Source: The Guardian*





