



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 27 of the TCM covers the period **September – December 2016**. It includes an overview of the concluded court proceedings in the reporting period, a selection of upcoming and ongoing trials as well as an update on relevant legal developments. The analytical part of the report contains an analysis of a judgment issued by the Italian Supreme Court of Cassation and concerning an alleged terrorist cell dedicated to the indoctrination and recruitment of potential jihadists to join terrorist organisations abroad.

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 present issue is sent for information only as the reported court decisions have already been verified with the National Desks at Eurojust and used in the drafting of Eurojust's Contribution to the EU Terrorism Situation and Threat Report (TE-SAT) 2017. A summary of the contribution is also included in the Topic of Interest chapter of the present report.

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

September - December 2016

Austria

September 2016

The St. Pölten Criminal Court found two defendants guilty of **sharing ISIL propaganda material**. The two men had used Facebook and WhatsApp to share ISIL propaganda material and persuaded others to join the terrorist organisation ISIL. One of the men was also found guilty of **belonging to a terrorist organisation** and **giving false evidence in court**, while the other was also convicted of **assault** and **illegal possession of firearms**. The court ordered both men to serve six months in prison. The decision of the court is final.

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

At the Vienna Criminal Court one individual, who had created and shared his own propaganda videos of ISIL on Facebook, was sentenced to two years in prison. The court found him guilty of **membership in a terrorist organisation** and **supporting ISIL with propaganda material**. The man was further convicted of **illegal possession of firearms**. The decision of the court is final.

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

The Innsbruck Criminal Court sentenced one person to two years' imprisonment after it found him guilty of **membership in a terrorist organisation**. The court heard that the man had travelled to Iraq, where he had joined the armed group Asa'ib Ahl al-Haqq and fought in its ranks.

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

A man, who had **created and shared his own propaganda videos of ISIL** on Facebook, was ordered to serve ten months in prison. The sentence was imposed after the Higher Court of Linz found him guilty on 22 September 2016.

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

October 2016

The Graz Criminal Court heard the case of two ISIL fighters, who had participated in operations carried out by the terrorist organisation. The court heard that one of them had also acted as Sharia-police officer in the ISIL-controlled areas, while the other had formed part of the group Harakat Ahrar al-Sham al-Islamiyya. The court found both men guilty of **membership in a terrorist organisation** and sentenced them to three and three and a half years' imprisonment.

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

Four defendants appeared at the Vienna Criminal Court on charges of membership in a terrorist organisation. All four had attempted to travel to Syria to join the terrorist organisation ISIL. One of them had been arrested in Bulgaria before he could reach the conflict zone. The court heard that he had also spread ISIL propaganda, tried to recruit ten-year old children and threatened numerous persons with death. The court found him guilty of **membership in a terrorist organisation** and **making threats** and sentenced him to 30 months' imprisonment. The same penalty was given to one of his co-defendants, who had been stopped from leaving for Syria by his father. The man had tried to overpower his father by attacking him, and later also two police officers. He was found guilty of **membership in a terrorist organisation, making threats, grievous bodily harm** and **resistance to the police**. The other two defendants had also been involved in attacks on people. They were sentenced to 21 and 18 months' imprisonment respectively. In addition to **membership in a terrorist organisation**, the first one was also found guilty of **bodily harm**, and the other of **robbery**.

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

Belgium

September 2016

A 24-year old Belgian national appeared before the Court of First Instance of Antwerp on charges of **participation in an activity of a terrorist group** and **travel abroad for the purpose of committing a terrorist offence**, as provided for in Article 140 *sexies* of the Belgian Criminal Code. The man had allegedly left Belgium to travel to Libya, with the intention to join IS-fighters there. While on his way to Libya, he had been arrested in October 2015 in Sudan on suspicion of involvement in terrorist activities. The court found the defendant guilty as charged and sentenced him to five years' imprisonment and a fine. In December 2016, the Court of Appeals of Antwerp confirmed the guilty verdict for the two offences and the imposed sentence. The ruling has been appealed to the Court of Cassation.

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

October 2016

The Court of Appeals of Antwerp confirmed the guilty verdict issued by the Court of First Instance of Antwerp against a person, who had travelled to Syria to join the terrorist group ISIL. The man had left for the conflict zone on 3 December 2013 and had returned to Belgium in August 2014. He had been arrested on 15 January 2015 and admitted to have travelled to Syria, upon request and under the guidance of two known Belgian jihadists within the ranks of ISIL. They had helped him get in contact with smugglers facilitating his entry into Syria. He had been supposed to join a training camp. However, his knowledge of Arabic and the Islam had been assessed as insufficient and he had to improve those first. According to his statements, he had to undergo an abdominal surgery in Syria and decided to return to Belgium in view of the challenging recovery. The Court of First Instance of Antwerp had found the defendant guilty of **participation in an activity of a terrorist group** and sentenced him to four years' imprisonment and a fine in January 2016 (*for further details, please see TCM, issue 25*). The sentence was confirmed by the Court of Appeals. The decision of the court is final.

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

The Court of First Instance of Brussels heard the case of two men charged with terrorist offences. They had been part the Brussels motor club *Kamikaze Knights*, some of whose members were linked with Sharia4Belgium. The two had been arrested on suspicion of planning a terrorist attack, similar to the one carried out in Paris in November 2015, but it was later established that there was not enough evidence to prove that. One of them was sentenced to six years' imprisonment and a fine after the court found him guilty of **participation in an activity of a terrorist group as a leader and recruitment for terrorism**. He had been in possession of a large amount of jihadist propaganda, some of which he had posted on his Facebook page. His co-defendant received a three-year prison term and a fine for **participation in an activity of a terrorist group**. The court heard that he had travelled to Malaysia and had been preparing a trip to Thailand, both of which are believed to be used by terrorist groups as logistical bases. The court found the two not guilty of other offences they had been charged with, including providing training or instructions on how to use explosives and weapons or other methods and techniques in view of committing a terrorist offence. The decision of the court is final.

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

Five members of a terrorist cell appeared at the Court of First Instance of Charleroi charged with **participation in an activity of a terrorist group**. A sixth co-defendant, suspected to have committed a suicide attack at the Iraqi-Jordanian border, was tried *in absentia*. Some of the cell members had allegedly been involved in helping him, while others would have helped recruit potential fighters for Syria/Iraq. Three of the accused received five-year prison sentences, the others were given four years and one year respectively. The decision of the court is final.

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



November 2016

The Court of First Instance of Brussels acquitted one defendant charged with **participation in an activity of a terrorist group**. The man had been prosecuted for his alleged role in the so-called Verviers cell, members of which had been prosecuted for planning an attack in Belgium or have been linked to the Paris and Brussels terrorist attacks. It had been planned that the defendant would give his identity card to another cell member in order to return to Belgium, however, the two did not look alike. The court did not consider it proven that he had been involved in terrorist activities, as charged. The decision of the court is final.

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

December 2016

At the Court of First Instance of Brussels one defendant was handed a three-year prison sentence and a fine after he was found guilty of **participation in an activity of a terrorist group**. The execution of the sentence was suspended for a period of five years, under specific conditions determined by the court. The man had stayed in Syria in the period September 2013 – February 2014. He claimed to have done humanitarian work; however, according to the prosecution he had joined the terrorist organisation ISIL. During the investigation, the authorities had found a photograph of the man wearing a military uniform and sharing the company of a well-known French jihadist, and another one where he posed with an ISIL flag. The decision of the court is final.

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

The Court of First Instance of Brussels dismissed the case against the **leader of a terrorist group** that had recruited, indoctrinated and facilitated the travel to Syria of potential fighters. The court referred to the *ne bis in idem* principle and concluded that the man had already been convicted for the charged acts. Together with 30 other co-defendants, he had been tried at Court of First Instance of Brussels. In July 2015, he had been given a 12-year prison sentence, which had been increased to 15 years by the Court of Appeal of Brussels in April 2016. One of the group members sentenced *in absentia* is believed to have played a major role in the attacks that took place in Paris on 13 November 2015. He was reported dead following a police action in the aftermath of the attacks. Another one, also sentenced *in absentia* and suspected to have been plotting terrorist acts, was arrested in March 2016 in France (*for further details, please see TCM, issues 24 and 25*).

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

Thirteen alleged members of a terrorist group were brought before the Court of First Instance of Bruges on charges of **participation in an activity of a terrorist group**. Some of them were also charged with violations of the Weapons Law or document forgery. The thirteen, all of Chechen origin, were suspected to be linked to the armed groups Caucasus Emirate and Jaish al Muhajireen wal Ansar. The latter had been fighting the Syrian government forces in the northern

part of Syria. It had been created in 2012 under the name of Katibat ul-Mujahirin and had merged with the terrorist organisation ISIL in 2013. The court established that some of the group members had travelled to Syria to join the fighting, while others had provided support to them. The leader of the group was given a ten-year sentence, while eleven other co-defendants were sentenced to prison terms between two and eight years; one person was acquitted. Three of the convicted men had previously been found guilty of other offences. Several appeals have been submitted.

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

Denmark

September 2016

The Copenhagen City Court acquitted four men of **complicity in a terrorist act**. The four had been prosecuted for having allegedly aided the man, who had carried out the attack on the Copenhagen synagogue in February 2015. The attack resulted in the death of one civilian and the injury of two police officers. The court did not consider it proven that the four had been involved in the complicity of the act but found two of them guilty of **disposing of the weapon used in the terrorist act**.

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

France

October 2016

The Paris Juvenile Court found a 20-year old man guilty of **criminal association with the purpose of committing terrorist acts** and sentenced him to four years' imprisonment, of which two suspended. In December 2013, when he was still a minor, he had left France, together with an adult, to join ISIL in Syria and fight the jihad. Upon arrival there, he had enrolled in a religious formation and in military training. He had later performed military guarding duties and taken part in the fighting in the ranks of the terrorist group. He had returned to France in April 2014.

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

Germany

October 2016

The Higher Regional Court of Düsseldorf sentenced one man to six years and nine months' imprisonment. The 23-year old German national was found guilty of **membership in a foreign terrorist organisation**. The court heard that the man had travelled to Syria and sworn

allegiance to the ISIL leader there. As part of the terrorist organisation, he had taken part in fighting. Due to injury, he had returned to Germany in 2014.

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

October 2016

Four men appeared before the Higher Regional Court in Stuttgart on charges of **supporting terrorism**. According to the prosecution, the four had provided thousands of boots, parkas, shirts and second-hand worth EUR 133,000 to the Syrian terrorist organization Ahrar-al-Sham. Alongside Jabhat al-Nusra, Ahrar-al-Sham is the major force of the Islamist alliance Dschaisch al-Fatah. The court found the defendants guilty as charged and handed down sentences ranging from 21 months to three and a half years' imprisonment, some of which suspended. The decision of the court is final.

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

October 2016

The Higher Regional Court of Stuttgart found a former high-ranking PKK official guilty of **membership in a foreign terrorist organisation** and sentenced him to three and a half years' imprisonment. The court found that the man had collected thousands of euros over a number of years, which had been channelled to the PKK's financial office. He had also distributed propaganda material. The decision of the court is final.

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

A 24-year old woman was charged with **financing of terrorism** at the Higher Regional Court of Düsseldorf. She had been prosecuted for collecting money, which had been passed on to ISIL fighters in Syria. The court found her guilty as charged and pronounced an 18-month prison sentence, some of which suspended. The decision of the court is final.

November 2016

Three returnees from Syria were found guilty of **membership in a foreign terrorist organisation** by the Higher Regional Court of Düsseldorf. In September 2013, the three had travelled to Syria, where they had joined the group Junud al-Sham. One of them had later joined the ranks of ISIL. All three had come back to Germany a few months later. One of the men, who sought to return to Syria, was sentenced to four and a half years' imprisonment, while the other two received prison terms of two years and nine months each. Appeals have been submitted.

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

Hungary

December 2016

A 40-year old man of Syrian origin was sentenced to 10 years' imprisonment for **committing a terrorist offence** on the basis of the new anti-terrorism legislation adopted in Hungary. The Criminal Court of Szeged heard that the man had stirred up violence when several dozen migrants had tried to enter Hungary from Serbia in September 2015, just a day after the border had been sealed. During the incident, Hungarian police had used tear gas and water cannons against migrants, who had been throwing stones, sticks and bottles. As a result, 15 police officers and more than a 100 immigrants had been injured. According to the prosecution, the Syrian had committed a violent act of coercion against representatives of a government agency, which was to be classified as an act of terror. He will be expelled from Hungary after serving his sentence.

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

The Netherlands

September 2016

The District Court of Midden-Nederland heard the case of a 19-year old man, who had tried to travel to Syria to join the ISIL. He had sought contact with persons in Syria to gather the necessary information and prepared his journey to Syria. The court found the young man guilty of **attempted participation in a terrorist organisation** and acquitted him of **preparation of a terrorist offence**. The court held that the alleged prepared terrorist offence was not concrete enough. The court applied juvenile law, as the defendant was a minor during most of the incriminating period. The court ordered a 12-month juvenile detention, of which eight conditional, and 120 hours community service. The conditions specified by the court include wearing an ankle bracelet, ban on having contacts with certain people or approaching airports or border areas.

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

October 2016

The appeal submitted by five members of the LTTE was rejected by the Supreme Court. In October 2011, they had been convicted of **participation in an international criminal organisation that had the objective to commit terrorist crimes** by the District Court of The Hague. The conviction had been confirmed by the Court of Appeals in April 2015. In its judgment, the Court of Appeals had considered it proven that the LTTE had as objective, *inter alia*, to commit war crimes and crimes against humanity in the meaning of the Law on International Crimes. The Court of Appeals had ruled that the conflict in Sri Lanka was a non-international armed conflict. It had rejected the claim that LTTE had been fighting against a racist regime and that it enjoyed combatant status under international humanitarian law, ruling that national criminal law was applicable with regard to the proven offences. The Supreme Court



confirmed the sentences given by the lower court, which ranged between 19 months and six years and three months. The decision of the court is final.

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

Prison sentences of four years were handed down to five men from Enschede, who had thrown Molotov cocktails at a mosque in the city. The incident had taken place in February 2016. The District Court of Overijssel established that the men had intended to use violence to instil fear within the Muslim community and the local administration of Enschede so that no refugee centres would be built in the city. The court ruled that the act constituted a **terrorist offence** as it had been carried out with a terrorist purpose. The court ordered the men to serve two years in prison and set the remaining two years of the prison sentence as conditional with a probation period of three years.

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

November 2016

The District Court of Amsterdam found one defendant guilty of **preparation of a terrorist offence** and **training for terrorism**. The court found that the man had planned to travel to Syria to join ISIL. He had collected EUR 1,850 and had researched ways to get to Syria. He had been in possession of outdoor equipment, as well as various jihadist materials. He had also searched online how to build an AK-47. The court convicted the man of the two charges and acquitted him of **incitement to commit terrorist crimes**. It ordered a 63-day prison sentence, as well as 13 months conditional sentence with two years' probation. The decision of the court is final.

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

Spain

September 2016

The Audiencia Nacional found two defendants guilty of **glorification of terrorism** and sentenced them to 18 months' imprisonment. One of them, who had been illegally residing in Spain, would be expelled from Spanish territory upon completion of two-thirds of the prison sentence. The court found that both had posted videos, images and comments on Facebook, which praised the terrorist organisation ISIL and its activities, showed executions, contained instructions on how to make explosives, etc. The decision of the court has been appealed.

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

A man, who suffers from a mental health disorder, was brought before the Audiencia Nacional on charges of **glorification of terrorism** and **humiliation of the victims of terrorism**. The court heard that he had published multiple messages and comments on Twitter in the period April 2012 – November 2013. The content of the messages and comments hailed the terrorist

organisation ETA and humiliated its victims. The court found the defendant guilty as charged and sentenced him to one year imprisonment. The court ruled that his mental condition was not a ground for not holding him liable for his acts. The decision of the court has been appealed.

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

A young man, who had posted multiple comments praising the terrorist attack against the French satirical magazine Charlie Hebdo, was found guilty of **glorification of terrorism** and sentenced to 18 months' imprisonment. The man had used his Facebook account to upload messages hailing the terrorist acts and humiliating the victims of the attack.

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

The Audiencia Nacional ordered a two-year prison sentence to a man found guilty of **glorification of terrorism** and **possession of prohibited weapons**. The court heard that the man had been very active in various social media outlets. He had uploaded photographs, articles, comments and videos, justifying and glorifying violence and extremism of jihadist groups, as well as ETA, GRAPO and other terrorist organisations. He had also shared videos and texts praising Al Qaida, including videos and speeches by its leaders that incited violence. At his home, the police had also discovered various radical materials. The man, who was an armed security guard, had been trained to use arms and explosives and possessed a professional weapons licence. The decision of the court is final.

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

Nine members of the so-called *Al Andalus* Brigade appeared before the Audiencia Nacional. One of them was charged with **leadership of a terrorist organisation** and **forgery of official documents**, while the other eight were accused of **membership in a terrorist organisation**. The *Al Andalus* Brigade had been established in Madrid as a platform for the recruitment, radicalisation and indoctrination of aspiring jihadist fighters, who had later been sent to join Al Qaida. The alleged leader of the brigade had been detained by the American forces in the Middle East in 2001 and then sent to Guantanamo Bay prison, where he had stay until his hand-over to Spain in 2005. He had been very active in the gatherings the brigade held in Madrid and Avila. Other members of the brigade had also assisted with those gatherings, or collected funds to support the travel of others to Syria or other conflict areas, or had intended to travel themselves. The court found the nine defendants guilty as charged. It sentenced the leader of the brigade to a prison term of 11 years and six months, while the members of the brigade got eight year imprisonment terms.

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

The Audiencia Nacional acquitted one defendant of 145 counts of **attempted terrorist assassination** and one count of **causing terrorist destruction** and ordered his surrender to France, where he is to serve a prison sentence. The man had been investigated in relation to a

terrorist attack carried out by ETA's *Otazua* Command in Burgos in July 2009. The attack had targeted the local Guardia Civil barracks and had resulted in the injury of 160 persons and in serious material damage. When ruling on the cases, the court did not consider it proven that the defendant had been the person, who had given orders to the three perpetrators of the attack. The three had already been convicted for their role in the terrorist act.

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

October 2016

The Spanish prosecution withdrew the charges pressed against a 31-year old man, suspected to have been involved in an arson attack against a city bus in Donosti in December 2006. The attack had been planned by the ETA-linked group Segi and carried out by some 20 young men wearing hooded coats. In conformity with the plea of the prosecution, the Audiencia Nacional acquitted the man. The decision of the court is final.

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

The Audiencia Nacional acquitted one defendant of **glorification of terrorism**. The man, who is a former military officer, he had been prosecuted for having allegedly used his Facebook account to post, without any access restrictions, numerous messages and images related to jihadist terrorist organisations. At his home in La Coruña the police had found various images of weaponry, fighters, etc., as well as other similar items. The court, however, did not consider it proven that his activities constituted glorification of terrorism. The prosecution has submitted an appeal.

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

November 2016

At the Audiencia Nacional one defendant appeared before the court on charges of **collaboration with a terrorist organisation**. The man, who is a Moroccan national, was part of a jihadist network active in several countries, including Morocco and Spain. The network was involved in propaganda, recruitment and sending of fighters to join the terrorist group ISIL. The accused had compiled and distributed propaganda material and provided logistical support to the rest of the network; he had also become more radicalised himself. During the house searches at his home, the police had found evidence of his Facebook contacts with fighters in Syria and Iraq, as well as huge amounts of terrorist propaganda related to ISIL and Al Qaeda. The court sentenced the man to five years' imprisonment and a fine and ordered him to stay under supervision for eight years upon release. The decision of the court is final.

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

The Audiencia Nacional found one defendant guilty of **glorification of terrorism** and sentenced him to one year imprisonment. The court found that the man had used his Facebook account to

disseminate, in a regular manner, images and comments related to the terrorist organisation ETA and its activities. The images included, among others, ETA's anagram, a photograph of imprisoned GRAPO members, a photograph of a group of hooded persons setting the Spanish flag on fire, etc. The defence has submitted an appeal against the conviction.

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

The Supreme Court rejected the appeal submitted by a 49-year old ETA member, who had been convicted in May 2016 by the Audiencia Nacional. He had been sentenced to a total of 79 years and a half for the charges of **conspiring an offence against the crown, murder of a police officer and possession of arms as part of a terrorist organisation, forgery of an official document, illicit possession of a small arm, illegal detention with a terrorist purpose and coercion**. He had been involved in the conspiracy to kill the king of Spain at the opening of the Guggenheim Museum in Bilbao in October 1997. The *Katu* Command, that he belonged to, had been supposed to place a large amount of explosives in the vicinity of the museum's main entrance. Members of the command had been caught by the police when placing some of the explosives at the planned location. Having fatally shot one of the police officers, the defendant had managed to escape (*for further details, please see TCM, issue 26*). In February 2004 the Spanish authorities had issued a European Arrest Warrant for him. In July 2012 he had been surrendered to Spain [REDACTED]. The man had also been sentenced to imprisonment in France in 2006 and in 2011 for collaboration with a terrorist group.

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

The Audiencia Nacional acquitted one person accused of **glorification of terrorism**. The 58-year old man had been prosecuted for having publicly posted on Twitter texts and images related to ETA and Askatasuna. The texts and images included the logo of Askatasuna, photographs of ETA members, texts in Spanish and in Basque justifying the violence. No further activities had been detected and the man had subsequently closed his Twitter account.

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

Three persons charged with **glorification of terrorism** were acquitted by the Audiencia Nacional. The three had been arrested in relation to a gathering of 25 persons in the streets of Bilbao in September 2015, carrying posters and banners with text and images of imprisoned ETA members. Based on the rulings of the Supreme Court, dated 17 February 2016 and 2 November 2016, the prosecution dropped the charges that it had initially pressed against the three persons.

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

The Audiencia Nacional acquitted one person charged with **glorification of terrorism**. He had been prosecuted for his alleged involvement in an incident that had taken place in Lekeitio in October 2015. The police authorities had then found a poster hung on the wall of a public

building and a plate glued to a stone monolith, as well as some flags. Those items had been placed there by unidentified persons; they had also carried a photograph of an ETA member. The court did not consider it proven that the defendant had been involved in the incident. The decision of the court is final.

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

The Spanish prosecution pressed charges of **possession of explosives, illicit possession of weapons** and **repeated forgery of official documents**. The accused had been suspected of returning to Spain from France, where he had been hiding, to take part in a series of terrorist attacks during the Spanish Presidency of the Council of the EU. The court heard that, as part of ETA's *Basauntza* Command and together with another ETA member already convicted for the offence, the accused had used a vehicle to transport explosive devices to a hideout. The explosive devices were to be activated in several locations along the coast. A few days later the vehicle had been detected by the police. It had raised suspicions due to its outdated registration plate. A member of the *Basauntza* Command had been arrested in the vicinity of the vehicle, carrying a weapon, a cartridge, numerous forged identification documents, a watch, a map, etc. The police had then managed to locate 120 kilograms of material used to make explosives. The accused had managed to escape to France, where he had been arrested in 2003 and convicted of terrorist activities carried out on French territory. He had then been surrendered to Spain, where he had also been convicted of other terrorist offences in 2000. In the present case, the Audiencia Nacional found the man guilty as charged and sentenced him to a total of 13 years' imprisonment. The decision of the court has been appealed.

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

A 34-year old Moroccan national was brought before the Audiencia Nacional charged with **belonging to a terrorist organisation**. The woman had been suspected to have been involved in the indoctrination and recruitment of other women with the purpose of joining ISIL in Syria. She had become radicalised as a result of her social media contacts. She had been in contact with ISIL members via telephone, Facebook, WhatsApp and Skype. The court heard also that she had attempted to travel to Syria from Barcelona but had been arrested in Turkey and sent back to Spain. The court found the woman guilty and ordered a prison sentence of five years and two months and supervision for a period of ten years upon release. The decision of the court is final.

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

A 37-year old man was acquitted of the charge of **humiliation of the victims of terrorism** by the Audiencia Nacional. The man had been brought before the court for having posted messages on Twitter that had referred to victims of the terrorist organisation ETA and to the Spanish prime-minister. The decision of the court is final.

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

The Audiencia Nacional sentenced a 20-year old man to six months' imprisonment and a fine after it found him guilty of **glorification of terrorism**. The man had used his Twitter and Instagram accounts to re-tweet and re-send seven messages containing images and texts praising terrorist organisations in Spain. Those included photographs of ETA members, texts concerning ETA victims or Spanish politicians, etc. The decision of the court is final.

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

The Audiencia Nacional handed down a one-year prison sentence to a defendant found guilty of **glorification of terrorism**. The court heard that he had used his Facebook and Twitter account to distribute messages, photographs and texts praising the terrorist organisation ETA and justifying its actions. The material had been publicly distributed, without any restrictions on accessing it, in the period June 2013 – January 2015. The decision of the court became final in January 2017.

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

The Audiencia Nacional ordered a one-year imprisonment sentence to a 20-year old woman, who had been charged with **glorification of terrorism**. The court heard that she had published numerous images and comments on her Twitter page referring to the terrorist organisation ETA and its victims. The decision of the court is final.

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

A 24-year old Moroccan national was sentenced to two years and six months' imprisonment after the court found him guilty of **passive terrorist indoctrination (self-indoctrination)**. The court found that he had used his Facebook account to access radical jihadist content linked to the terrorist organisation ISIL. He had also saved and published, without any access restriction, videos and images of alleged violence against Muslim all over the world, of the Syrian president covered in blood, of dead bodies of women and children, etc. His telephone contained 14 nasheeds, songs and prayers of radical jihadist nature. 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

December 2016

A 35-year old man appeared before the Audiencia Nacional on charges related to his alleged involvement in ETA-related street violence (*kale borroka*). Together with some other individuals, he had been suspected to have thrown inflammatory devices at the vehicle of a local government employee in November 2001, causing serious material damage. He was also believed to have participated in similar acts targeting the post office in Alegria and a city bus in Tolosa in January 2002. The court heard that the acts had not imposed a concrete threat to the life or physical integrity of the affected victims. However, the court found the man guilty of

causing terrorist damages and sentenced him to two years' imprisonment. The decision of the court is final.

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

The Audiencia Nacional found a 31-year old man guilty of **passive terrorist indoctrination (self-indoctrination)** and sentenced him to three and a half years' imprisonment and supervision for a period of four years upon release. The court established that the man, who is an Algerian national, had used his Facebook account to post comments in Arabic, which praised ISIL and criticized the USA, Israel and their allies. The comments were publicly accessible, without any restriction, and were largely multiplied. His mobile telephone contained images of ISIL armed members, executions, dead bodies, etc., as well as various documents in Arabic. The material seized with the man matched the material used by ISIL for recruitment and indoctrination for the jihad.

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

The Supreme Court dismissed the appeal submitted by an appellant against his conviction of **glorification of terrorism**. In March 2016, he was found guilty by the Audiencia Nacional and sentenced to one year imprisonment. The court heard that in the period 2010-2014 the man had posted messages supporting the terrorist group ETA and its activities on Facebook (*for further details, please see TCM, issue 25*). The decision of the court is final.

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

Several years after the assassination of an ETA victim in Azpeitia, his family had received a MMS message containing a photograph of ETA's anagram. The investigation had revealed possible links between the telephone number used to send the MMS and a 46-year old man. He had been charged with **humiliation of the victims of terrorism**; however, the court did not consider it proven that the man had been involved in the incident and acquitted him of the charge.

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

The Audiencia Nacional found seven Spanish and Moroccan nationals guilty of **terrorist indoctrination**. Directed by the terrorist organisation ISIL, the seven had formed a terrorist cell that managed a number of social media accounts. The accounts had been used to disseminate terrorist propaganda, glorify the jihad and praise ISIL. They had also been used to recruit persons, who would later join ISIL in Syria and Iraq or commit terrorist acts in Spain. The accounts had attracted a lot of followers, who sympathised with ISIL and its terrorist activities. Some of those followers had been selected as 'most suitable' and had been brought in contact with a cell member located in Turkey, who would help them reach Syria or Iraq, or collaborate with ISIL in another manner. All seven cell members were handed down prison sentences ranging from three and a half to seven and a half years. The decision of the court became final in

January 2017 with regard to five of them; the defence of the remaining two has submitted appeals.

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

A former drug dealer had been investigated on allegations of **glorification of terrorism and collaboration with a terrorist organisation**. The police had found that he had been using multiple social media accounts, including on Facebook, YouTube, Google, Taringa, Twitter, Microsoft and Skype, to collect and post jihadist materials (images, videos, music, etc.). The materials related mostly to the terrorist group ISIL, martyrdom, etc. The Audiencia Nacional acquitted the man of collaboration with a terrorist organisation but found him guilty of glorification of terrorism. It handed down a two-year prison sentence.

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

A 12-year prison sentence was ordered by the Audiencia Nacional against a person found to have been involved in the **storing of weapons and possession of explosives**. The court heard that, together with other members of ETA's *Nafarroa* Command, he had transported explosive material to an apartment in Arraiza. Some of it had later been moved to another apartment in Fuente. A few months later, in October 1993, the defendant had escaped in France, while other members of the command had been arrested by the Guardia Civil in Spain. As a result of the searches in the Arraiza apartment, the police had uncovered dozens of kilograms of explosive material, detonators, weapons, etc. The defendant had been surrendered temporarily to Spain by the French authorities for the purposes of the present trial. In France, he had been convicted of criminal association with a terrorist purpose in 2006 and sentenced to 17 years' imprisonment.

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

Sweden

December 2016

The Court of Appeal for Western Sweden confirmed the not guilty verdict of a young Swede, who had been accused of **having tried to travel to Syria with the purpose of joining a terrorist group and commit acts of terrorism there**. The man had been arrested in Turkey in April 2016, shortly after new legislation entered into force in Sweden criminalising travel for terrorist purposes. He had been suspected to be on his way to Syria to join the ranks of the terrorist group Jabhat al-Nusrah. He had already been acquitted by the Attunda District Court in Stockholm, as the court did not consider it proven that he would have been able to reach Jabhat al-Nusrah controlled areas and he would have been allowed to join the terrorist group.

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



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2. Other Court Decisions of Interest

September - December 2016

Bulgaria

September 2016

The Regional Court of Haskovo ruled in favour of the surrender to Germany of a person of Moroccan origin, who has been charged with terrorist offences. The man, who is German citizen, had been arrested on the Bulgarian-Turkish border when trying to enter Turkey with a false passport. The youngster is suspected to have intended to go to Syria to join an ISIL-run training camp and later take part in the fighting. He had been banned from leaving Germany and had a European Arrest Warrant issued on his name by a court in Frankfurt.

Source: UReport

II. Amendments in Legislation

September - December 2016

1. EU

Council of the European Union

September 2016

The Council adopted a legal framework which, for the first time, will allow the EU to apply sanctions to ISIL/Da'esh and Al-Qaida and persons and entities associated or supporting them, autonomously from the listings of the United Nations or by EU Member States. The sanctions include a travel ban on individuals and an asset freeze on individuals and entities that are identified as being associated with those terrorist organisations. The assets of these individuals in the EU will be frozen and EU persons and entities will be prohibited from making any funds available to listed persons or entities. The sanctions would be applicable to individuals who have participated in the planning or perpetrating of terrorist attacks or have provided ISIL (Da'esh) or Al-Qaida with financing, oil or arms, or have received terrorist training from them. The sanctions would also be applicable to persons or entities involved in recruiting, inciting or publicly provoking acts and activities in support of these organisations, or in serious abuses of human rights outside the EU, including abduction, rape, sexual violence, forced marriage and enslavement of persons. Furthermore, it will be possible to impose restrictive measures on individuals travelling or seeking to travel both outside the EU, and into the EU, with the aim of supporting, ISIL (Da'esh)/Al-Qaida or receiving training from them.

Source: Council of the EU

November 2016

In the framework of the seventh trilogue, the Council and the European Parliament reached political agreement on the proposal for a Directive on combatting terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism and amending Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences. 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 proposal includes also provisions to meet the specific needs of victims of terrorism with information, support and protection.¹

Source: Council of the EU

¹ On 16 February 2017 the European Parliament adopted its position on the proposal, which reflects the agreement reached between the institutions. If the Council approves the Parliament's position, the directive will be adopted. The relevant developments in relation to the proposal for directive, as well as details on its provisions will be presented in the next issue of the TCM.

European Commission

September 2016

Commission Implementing Regulation (EU) 2016/1641 of 12 September 2016 amending for the 252nd 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 replacing one entry under the heading 'Natural persons'.

Source: Official Journal of the European Union

Commission Implementing Regulation (EU) 2016/1683 of 19 September 2016 amending for the 253rd 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 two entries under the heading 'Natural persons'.

Source: Official Journal of the European Union

Commission Implementing Regulation (EU) 2016/1739 of 29 September 2016 amending for the 254th 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 two entries under the heading 'Natural persons'.

Source: Official Journal of the European Union

October 2016

Commission Implementing Regulation (EU) 2016/1827 of 14 October 2016 amending for the 255th 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 and amending another entry under the heading 'Natural persons'.

Source: Official Journal of the European Union

Commission Implementing Regulation (EU) 2016/1906 of 28 October 2016 amending for the 256th 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 three entries under the heading 'Natural persons'.

Source: Official Journal of the European Union



December 2016

Commission Implementing Regulation ((EU) 2016/2262 of 15 December 2016 amending for the 257th 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 one entry under the heading 'Natural persons'.

Source: Official Journal of the European Union

2. Member States

Belgium

December 2016

In addition to amendments in the legislation enacted earlier in 2016, the Law of 14 December 2016 introduced further amendments in the Criminal Code, concerning: (i) the participation in an activity of a terrorist group, making it sufficient to know or to could have known that such participation could contribute to the commission of a crime by the terrorist group (Article 140, § 1), (ii) the preparation of terrorist acts by the so-called 'lone wolves' (Article 140septies), and (iii) the provision or collection of direct or indirect material support, including financial means, for the commission of a terrorist offence (Article 141).

Source: National Desk of Belgium at Eurojust

Denmark

September 2016

Amendments concerning Article 114j the Danish Criminal Code came into force on 30 September 2016. They criminalise the travel to certain areas in Syria and Iraq without a permit from the Danish authorities. The amendments envisage a penalty of up to six years of imprisonment for Danish nationals or persons with a permanent residence in Denmark, who travel into or stay in the designated areas.

Source: National Desk of Denmark at Eurojust

Finland

December 2016

As of December 2016, new legislation entered into force in Finland. The new legislation criminalises travel to a State other than the State of residence or nationality of the traveller, if

the purpose of the travel is to commit, plan or prepare a terrorist act or to give or to receive terrorist training. The new legislation criminalises also funding of travel for the aforementioned purposes. The new legislation is based on United Nations Security Council Resolution 2178 (2014) of 14 September 2014.

Source: National Desk of Finland at Eurojust

Romania

November 2016

Law no. 535/2004 on the prevention and fighting against terrorism was amended to define travel abroad for terrorist purposes. The amendment criminalises the (attempt to) travel to a state, other than the state of nationality or residence, for the purpose of committing, planning or preparing a terrorist offence, participating in or providing or receiving instruction or training for the purpose of committing terrorism, or for the purpose of supporting in any way a terrorist entity. The law envisages a custodial sentence between five and 12 years' imprisonment and restriction of rights.

Source: National Desk of Romania at Eurojust

III. Legal Analysis

The following analysis has been produced in an attempt to provide an insight into a judgment concerning an alleged terrorist cell based in Italy dedicated to the indoctrination and recruitment of potential jihadists to join terrorist organisations abroad. 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.

The analysed judgment was issued by the Italian Supreme Court of Cassation, which acts as the court of last resort in the Italian judicial system. The Court judges on the correct application of the law and focuses on the legal aspect of the judgments only, being unable to examine the elements of the case de facto.²

1) Procedure: Corte Suprema di Cassazione, Quinta Sezione Penale

Date of decision: 14 July 2016

Introduction

Summary of the facts

In April 2013, the Special Operations Group (*Raggruppamento Operativo Speciale, ROS*) of the Carabinieri in Bari arrested four individuals allegedly running a terrorist cell based in Andria. The men were accused of being part of a criminal organisation linked to Islamist terrorism.

At the same time, the Tunisian imam of the Andria mosque was arrested in Belgium with the additional charge of incitement to racial hatred.

On 24 September 2014, the four members of the cell were sentenced to three years and four months' imprisonment for cooperating in proselytism, financing the organisation, procuring counterfeited identification documents and maintaining contacts with other members of the organisation willing to travel abroad for terrorist purposes.

In February 2015, the Ordinary Court found the imam guilty as charged and identified him as the leader of the terrorist cell. He was condemned to five years and two months' imprisonment.

The appealed judgment

The prosecution claimed that three of the accused participated in an Islamist organisation aiming at 'terrorism and elimination of the democratic order' (Article 270-bis of the Italian Criminal Code). A fourth individual was accused of directing the organisation's activities and of public incitement to hatred and violence, according to the Italian Law n. 654/2009 (Article 3, b). The organisation was allegedly operating in Andria and elsewhere in Italy from 2009, proselytising and actively looking to recruit future jihadist fighters.

² The Operations Unit would like to thank the National Desk of Italy at Eurojust for kindly providing a copy of the judgment.

The interceptions of the conversations among the accused had a crucial role in leading the prosecutor to infer the supposed cell's radicalisation activities. Those would have not only reflected the ideology of the accused, but also demonstrated the development of the cell's plan.

Indeed, the conversations focusing on the indoctrination of potential followers were considered of a particular relevance, as well as the ones referring to the availability of suitable indoor spaces belonging to the imam to be used as bases for the cell's operations. The interceptions also revealed that document counterfeiting was conducted to allow illegal immigrants' permanence in Italy. Following further investigations, it was also found that the imam had set up a call centre and had made available to the others some computers, which would have been used to browse jihadist websites and download videos and images on handling arms and explosives and suggesting how to reach conflict areas where jihadist groups were active.

Consequently, both the Ordinary Court and the Court of Appeals considered obvious the imam's prominent role, which was also confirmed by his recorded hateful statements against the Jewish, as well as his conversations about documents of religious nature to be secretly sent to a friend.

The prosecution's claims were also rooted in the declarations of a cooperating witness who offered to interpret some of the words used by the group when communicating. In this sense, he upheld that the term 'group' was commonly used to refer to a terrorist cell by the people involved. He also recognised the exaltation of death and martyrs typical of Islamist extremism.

The defence case

The accused imam argued that the Court acted against the jurisprudence principles by applying a principle of 'permanency of the associative bond of terrorist nature', although his contacts with the other defendants ended well before his arrest. Indeed, the interceptions on the bases of which the Court was to issue its judgment were already five years old. According to the defendant, the associative bond would have needed to be persistent and effective to meet the jurisprudence principles. He also argued that more recently he had been contacted several times by an individual allegedly involved in terrorist activities, but that he never agreed with his words, finding them raving.

The other defendants presented an appeal to the Supreme Court claiming deficient reasoning in relation to Article 270-bis of the Italian Criminal Code concerning the participation in a terrorist organisation.

The conditions, which must be satisfied in order for the alleged crime to be established, would include the existence of a structured organisation able, in fact, to realise the criminal project, as well as participation in such organisation assuming a concrete role. Moreover, even though an ideological support existed, that would not be sufficient to meet those requirements.

For the defendants, the Court did not provide an adequate motivation within the judgment to prove the existence of the crime elements. In particular, it lacked to prove the role of the accused, the adhesion to the ideology of other internationally recognised terrorist organisations and the capacity of the organisation to carry out the radicalisation project. In these regards, the

Court also failed to demonstrate that the radicalisation had rooted deep enough to determine someone to carry out a terrorist attack.

The defendants also claimed that the Court had not only missed to mention the aforesaid elements in the judgment's motivation, but also incurred in violation of law when failing to check the very existence of the conditions suggesting terrorist objectives, as prescribed by law. It was claimed namely that there had been no certainty of the ability of the accused's acts to 'cause serious harm to a state or an international organisation, intimidate populations, force the public authorities to certain acts or destroy political institutions'.

The ruling of the Supreme Court

The appeals were found justified.

The Supreme Court noted that the offences under discussion connote crimes of abstract damage, meaning that the damage carried by the conduct does not need to be proved concretely for the offence to occur, but is intrinsic to the conduct itself. However, the Supreme Court stressed upon the necessity of the existence of a structured organisation at least capable to realise the criminal project. Moreover, a generic terrorist ideology would not confer criminal relevance to the acts of such an organisation, which must aspire to the exact goals indicated by law.

In this regard, the Ordinary Court unduly made use of the intercepted conversations to infer the existence of a common criminal plan entailing the radicalisation of Islamist followers: neither the interest for videos and materials of propaganda nor the counterfeiting activity could be considered sufficient evidence.

In accordance to what was claimed by the defendants, not only the conversations' content did not highlight the effective capability of the group to realise a terrorist offence, as defined in the Criminal Code, but also the judgment motivation itself proved incapable to support such a claim.

The Supreme Court also stressed that no attempt to commit a terrorist attack had been registered since the last interception in 2009 and that, during this time, none of the individuals contacted by the group had been convinced to leave the country to join the jihad. As a matter of fact, the incapability of the organisation to realise any offence would have been confirmed by the Ordinary Court itself when considering that events independent from the defendants' will might have occurred preventing them to carry out their plan. For the Supreme Court, indeed, this last element would have just accounted in favour of the group's amateurish structure.

Without effective operational capabilities, the mere proselytising activity could not satisfy the normative requirements. At the most, the call to martyrdom could have been relevant only to assess the presence of serious indicators for the adoption of specific measures towards the members of the cell, after the activity of the association had been acknowledged *aliunde*.

The Supreme Court added that neither the extensive disposition of Article 270-*sexies* of the Italian Criminal Code referring to 'conducts harming third States or international organisations', nor other binding international laws and conventions could confer terrorist nature to this particular group.

The decision of the Court

After a detailed assessment of the appealed sentence, the Supreme Court was persuaded of its completeness, deeming it exhaustive enough in exposing the facts and findings to the point that a new assessment of the available procedural documents would have not lead to different outcomes.

For this reason, the Court annulled the judgment, without referring, in relation to three defendants.

The judgment issued towards the imam, who was allegedly the principal organiser, was annulled with referring to a different section of the Court of Appeal of Bari in order to proceed to a re-consideration of the penalty for the crime of public incitement to hatred and violence.

Following the Court's order, all defendants were freed, if not detained on a different basis.

IV. Topic of Interest

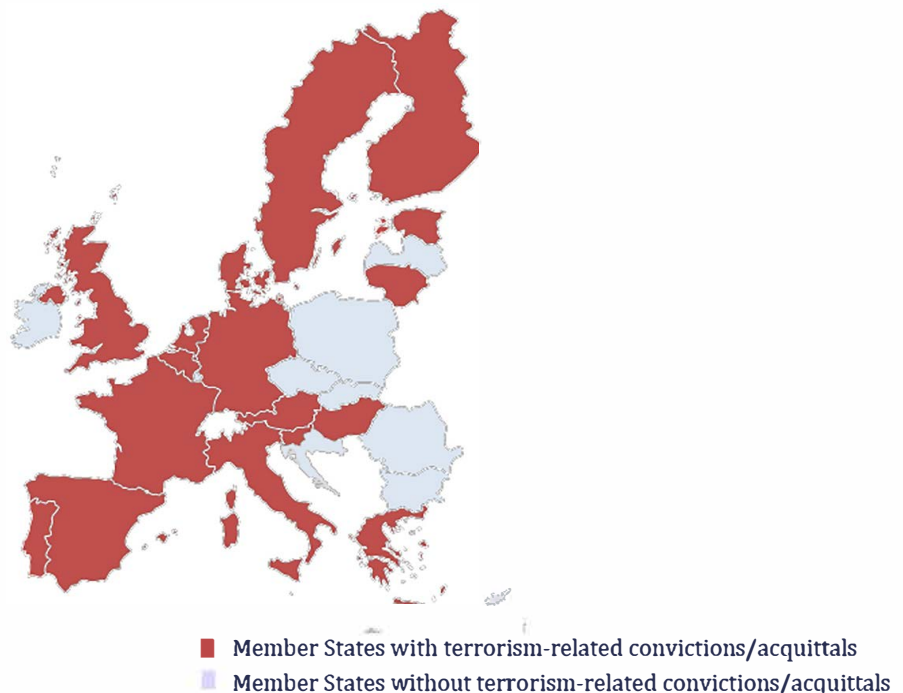
The Year 2016 in Numbers

The present chapter contains quantitative and qualitative analysis of data transmitted by Eurojust by virtue of Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences, according to which Member States shall collect all relevant information concerning prosecutions and convictions for terrorist offences and send it to Eurojust. The analysis is based on data for the entire year 2016. The analysis has also been used in preparing Eurojust's contribution to the EU Terrorism Situation and Trend Report (TE-SAT) 2017.

Court proceedings, verdicts and individuals in concluded court proceedings

In 2016, 17 EU Member States reported to have concluded a total of 275 court proceedings in relation to terrorism (please see Figure 1 below).³

Figure 1



³ Information on terrorism-related court decisions in 2016 was sent to Eurojust by Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, The Netherlands, Portugal, Slovenia, Spain, Sweden

In case a verdict pronounced in 2016 was appealed and the appeal was concluded before the end of the year, Eurojust counted the proceeding as one and reported only on the latest/final verdict.

The concluded court proceedings concerned 580 individuals, 53 of which were female. In 2016, Spain reported the highest number of concluded court proceedings and the highest number of individuals convicted or acquitted of terrorist offences. Among those, three individuals appeared before the court twice in 2016 in different criminal proceedings. In Belgium, the cases against two individuals were annulled on the basis of the *ne bis in idem* principle, as the court ruled the two had been convicted of the same facts earlier in 2015 and 2016. In France, two individuals appeared before the juvenile court and the criminal court. As a result, the total number of verdicts pronounced for terrorism-related offences in 2016 was 587.

Figure 2 – Number of individuals in concluded court proceedings for terrorist offences per EU Member State in 2014, 2015⁴ and 2016, as reported to Eurojust

MEMBER STATE	2014	2015	2016
AUSTRIA	2	29	26
BELGIUM	46	120	136
DENMARK	13	1	8
ESTONIA	0	0	2
FINLAND	4	0	4
FRANCE	36	14	66
GERMANY	11	17	30
GREECE	10	38	3
HUNGARY	0	0	2
ITALY	4	0	11
LITHUANIA	4	1	1
NETHERLANDS	5	18	42
PORTUGAL	0	0	1
SLOVENIA	0	1	1
SPAIN	191	166	154
SWEDEN	0	2	4
TOTAL	444	513	580

⁴ The data for the previous years corresponds to the data reported in the respective TE-SAT reports.

Some of the verdicts reported in 2016 are final while others are pending judicial remedy, as appeals have been submitted.⁵ A number of defendants in Belgium, France and The Netherlands did not appear before the court and were sentenced *in absentia*.

Type of terrorism

The vast majority of verdicts in the Member States in 2016 were pronounced in relation to jihadist terrorism.⁶ This confirms the findings in 2015, when for the first time since 2008 the concluded court proceedings in the EU resulted in a higher number of verdicts for jihadist terrorism offences than for separatist terrorist offences.

As evidenced in the past couple of years, the majority of the verdicts for jihadist terrorism concerned offences related to the conflict in Syria and Iraq. They involved persons who had prepared to leave for or have returned from the conflict zone, as well as persons who have recruited, indoctrinated, financed or facilitated others to travel to Syria and/or Iraq to join the terrorist groups fighting there. Also individuals and cells preparing attacks in Europe and beyond were brought before courts.

Similar to 2015, courts in Belgium rendered the highest number of verdicts concerning jihadist terrorism in 2016 (138). A large number of such verdicts were also rendered in Germany and The Netherlands. In Belgium, as well as in seven other Member States only verdicts concerning jihadist terrorism were pronounced in 2016. Those include Austria, Estonia, Finland, France, Italy, Portugal and Sweden.

Further to verdicts concerning jihadist terrorism, Spanish courts dealt with the highest number of separatist terrorism cases in the EU in 2016. The vast majority of those cases concerned the terrorist organisation ETA. Individuals charged with offences related to other separatist terrorist groups (e.g. the PKK and LTTE) were tried in Denmark, Germany and The Netherlands. Greece was the only Member State that reported verdicts for left-wing terrorist offences, while courts in Hungary, The Netherlands and Spain tried also right-wing terrorism cases. The highest number of female defendants in the concluded proceedings in 2016 was tried for separatist terrorist offences (22) and for jihadist terrorist offences (also 22).

⁵ According to Council Decision 2005/671/JHA, the information to be submitted to Eurojust is in relation to final convictions. Due to the specifics of reporting, Member States submit information on both final and not final decisions. Therefore, reference is also made to those decisions pending judicial remedy and they are included in the reported numbers.

[REDACTED]

Figure 3 – Number of verdicts in 2016 per EU Member State and per type of terrorism, as reported to Eurojust

MEMBER STATE	Jihadist	Separatist	Left wing	Right wing	Not specified	TOTAL
AUSTRIA	26	0	0	0	0	26
BELGIUM	138	0	0	0	0	138
DENMARK	6	2	0	0	0	8
ESTONIA	2	0	0	0	0	2
FINLAND	4	0	0	0	0	4
FRANCE	68	0	0	0	0	68
GERMANY	28	2	0	0	0	30
GREECE	0	0	3	0	0	3
HUNGARY	0	0	0	1	1	2
ITALY	11	0	0	0	0	11
LITHUANIA	0	0	0	0	1	1
NETHERLANDS	32	5	0	5	0	42
PORTUGAL	1	0	0	0	0	1
SLOVENIA	0	0	0	0	1	1
SPAIN	38	116	0	3	0	157
SWEDEN	4	0	0	0	0	4
TOTAL	358	125	3	9	92	587

Convictions and acquittals

In 2016, Austria, Estonia, France, Germany, Greece and Hungary reported successful prosecutions resulting in no acquittals for terrorist offences.⁸ Germany remains the only Member State where prosecutions for terrorist offences led to guilty verdicts and no acquittals in the period 2010-2016.

The year 2016 registered a record high conviction rate in the concluded court proceedings (89%). The acquittal rate of 11% is significantly lower than that in 2015 (21%) and in 2014 (24%) and continues the downward trend compared to the years before.⁹ In some cases,

⁹ The number of acquittals in 2016 includes the annulled cases against two individuals in Belgium, in which the court referred to the *ne bis in idem* principle.

defendants were acquitted of terrorist offences but convicted of other offences, such as illegal possession of firearms, forgery of documents, preparing an armed robbery, manufacture of drugs, incitement to racial hatred, etc.¹⁰

Figure 4 – Number of verdicts, convictions and acquittals per EU Member State in 2016, as reported to Eurojust

MEMBER STATE	CONVICTIONS	ACQUITTALS	TOTAL	ACQUITTALS in %
AUSTRIA	26	0	26	0%
BELGIUM	127	11	138	8%
DENMARK	4	4	8	50%
ESTONIA	2	0	2	0%
FINLAND	0	4	4	100%
FRANCE	68	0	68	0%
GERMANY	30	0	30	0%
GREECE	3	0	3	0%
HUNGARY	2	0	2	0%
ITALY	6	5	11	45%
LITHUANIA	0	1	1	100%
NETHERLANDS	39	3	42	7%
PORTUGAL	0	1	1	100%
SLOVENIA	0	1	1	100%
SPAIN	134	23	157	15%
SWEDEN	3	1	4	25%

All prosecutions for left-wing and right-wing terrorist offences resulted in convictions in 2016. Also the concluded jihadist terrorism cases had a very high conviction rate (92%), similar to that in 2015 (94%). The acquittal rate among the verdicts related to separatist terrorism decreased significantly in 2016 (18%), compared to 2015 (47%).¹¹

¹⁰ Eurojust considers it one verdict if an individual is convicted of more than one terrorist offence within the same proceeding, or convicted of a terrorist offence and acquitted of another offence. If an individual is acquitted of a terrorist offence and convicted of another offence, the verdict is included in the overview as acquittal of terrorism.

Figure 5 – Conviction and acquittal rate per type of terrorism in 2016, as reported to Eurojust

TYPE OF TERRORISM	CONVICTION RATE	ACQUITTAL RATE
Jihadist	92%	8%
Separatist	82%	18%
Left wing	100%	0%
Right wing	100%	0%

Penalties

The guilty verdicts pronounced by courts in the EU in 2016 resulted in various penalties, including imprisonment, monetary penalties, treatment in mental health care facilities, community service and restraining orders. In some cases the court imposed also restrictions on civil rights and bans on entering the national territory upon completion of the prison term, or revoked the citizenship of those convicted of terrorist offences.

The prison sentences ordered by the courts in 2016 ranged between six weeks and 397 years. In some cases (part of) the sentence was suspended or made conditional for a certain period of time. In other cases guilty verdicts were handed down but no penalty was yet ordered at the time of reporting.

In several cases in Greece, Sweden [REDACTED] the court ordered life sentences. [REDACTED]

In another case in The Netherlands the court pronounced a guilty verdict but imposed no penalty based on Article 9a of the Criminal Code. The court considered the defendant's acts as a one-time misstep and recognised the efforts he had made to re-integrate in the Dutch society.

The average prison sentence for terrorist offences in the EU in 2016 was five years. This is lower than the reported average in 2015 (seven years) and in 2014 (six years).¹² The majority (67%) of the penalties handed down with the guilty verdicts in 2016 were of up to five years' imprisonment, which is slightly higher than in 2015 (61%) and less than in 2014 (70%). The number of sentences of ten and more years' imprisonment decreased to 12%, compared to 20% in 2015.

Similar to 2015, in 2016 the average prison sentence for left-wing terrorist offences was the highest, increasing from 12 years to 28 years. Jihadist and separatist terrorist offences were

¹² For the purpose of the calculation of the average prison sentence, penalties exceeding 40 years of imprisonment and life sentences were counted as 40 years. In the cases where the court ordered a minimum number of years of the life sentence to be served, the sentence was included in the overview with the minimum number of years indicated.

punished with an average prison sentence of five years, and right-wing terrorist offences with four years.¹³

It should, however, be taken into consideration that the severity of the penalty in each case would depend on the respective offence and cannot serve any comparative purposes. Also, in some Member States the average sentence is calculated on the basis of one conviction, while in others it is based on a considerably higher number of convictions.

Figure 6 – Average sentences (excluding non-prison penalties) per Member State in 2016, as reported to Eurojust

MEMBER STATE	Average sentence in years
AUSTRIA	3
BELGIUM	5
DENMARK	4
ESTONIA	6
FRANCE	7
GERMANY	4
GREECE	28
HUNGARY	12
ITALY	5
NETHERLANDS	3
SPAIN	5
SWEDEN	28

¹³ The data provided by the United Kingdom was not broken down by type of terrorism and is therefore not included in the overview.

V. The Way Ahead

Ongoing/Upcoming Trials

September - December 2016

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

Bulgaria

In September 2016, three Syrian citizens were brought before the Specialised Criminal Court on suspicion to have intended to join the ISIL and the Muslim Brotherhood. The three have submitted a request for asylum in Germany and entered Bulgaria from Greece illegally in February 2016. The court heard that they intended to join the terrorist organisations by moving from Germany towards Syria. The trial continues.

Source: *Dir.bg*

France

A 29-year old woman has been charged with criminal conspiracy in connection with a terrorist enterprise and attempted murder in an organised group. She is suspected to have belonged to a female terrorist cell, which was dismantled after the police foiled an attack near the Notre Dame Cathedral in the summer of 2016. The woman was the first of five suspects arrested after police found an abandoned car, filled with gas canisters. Her fingerprints were found in the vehicle and she admitted to have intended to set the vehicle on fire, together with another woman. They changed their mind when they saw a man they believed was a policeman.

Source: *Politico*

Germany

The German federal prosecutor has accused a 19-year old Syrian of exploring local targets for ISIL. The suspect has already been under investigation since March 2016 on suspicion of links with the terrorist organisation. According to the prosecution, he has also served as a contact person for prospective terrorists and has expressed his desire and willingness to carry out terrorist attack on his own. The authorities believe they have evidence demonstrating his involvement in military operations in Syria. Until his arrest on 22 March 2016, the man lived as an asylum seeker in the Potsdam-Mittelmark district.

Source: *DW*

Seven men and one woman, suspected to have formed part of the so-called Freital Group, have been charged with attempted murder and the establishment of right-wing terrorist group. The charges come one year after several attacks were carried out in Freital, Saxony. The attacks targeted refugee facilities, as well as leftist politicians in Freital and nearby Dresden. They also tried to place an explosive device on the vehicle of a Left Party politician; the Freital office of the Left Party was targeted as well. Although no one was killed, the prosecution claimed the acts constituted attempted murder.

Source: DW

A 25-year-old refugee has been charged with war crimes and terrorism at the Higher Regional Court of Stuttgart. The Syrian refugee arrived in Germany in 2014 and since then he lived in Swabia. The Syrian refugee has been accused of having directly participated in the abduction of a UN employee. He is believed to have threatened the hostage and demanded ransom payment of seven million dollars. One of the other charges stipulates that the 25-year old belonged to the terrorist organisation Jabhat al-Nusrah (renamed recently into Fatah al-Sham Front). The defence counsel demanded the second phase of the trial to be held in public as initially the indictment was not read out publically. The trial is expected to last until the end of March 2017.

Source: DW

Italy

In an ongoing criminal proceeding, a first instance court has issued an order for the pre-trial detention of a defendant accused of training for (international) terrorism purposes (Article 270-*quinquies* of the Criminal Code) by carrying out activities aimed at executing terrorist acts after having autonomously obtained the needed information. The investigating magistrate (GIP) has concluded that the defendant was not merely collecting the information but in fact underwent a proper self-training process (without receiving an effective training *per se*) to execute acts that qualify as terrorism. The defence appealed the decision of the GIP alleging the *erroneous interpretation and application of the national penal law and mistakes in the contested decision's reasoning*. Firstly, the defence argued that the conduct related to the autonomous collection of information, which is criminalised by Article 270-*quinquies* of the Criminal Code, requires a conduct that can be understood as the “acquisition of instructions for the completion of acts mentioned in the first part of Article 270-*quinquies* of the Criminal Code”; such conduct must therefore clearly aim at committing terrorist acts. The mere collection of the information is not enough; there must be a real existing danger manifested through the collection of the information, which is aimed at the execution of illegal actions, as described in Article 270-*quinquies* of the Criminal Code. Secondly, the defence contested the interpretation of the defendant's behaviour (viewing videos on YouTube related to the activities of ISIL or with specific religious content; planning of a trip to the Middle East), which was not based on verified facts.

The defendants appeal was rejected by the Court of Cassation. In its reasoning the court made a distinction between *training* and *self-training for terrorism*. The *training* implies targeted

instructions, both from the person, who provides instructions aiming at the execution of acts of terrorism, and from the person, who acts as a receiver of such instructions. On the other hand, a legally punishable *self-training* refers to the activities of a person, who autonomously receives information needed for the execution of acts of terrorism and to the subsequent need to discern the use or intended use of such information. For that purpose, it is necessary that the person executes significant acts also on the material level and that he does not limit his activity only to a mere collection of information and/or that he manifests clearly his ideological beliefs. The Court concluded that the merits of the case were correctly examined and identified by the judges on the first instance. Furthermore, it is necessary that the conduct of the defendant that is inspired or guided by the collected information is uniquely focused on the execution of acts of terrorism. Reviewing this aspect, the Court also concluded that the pre-trial detention order issued by the GIP was justified by the defendant's acts.

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

A court in Catania has ordered the pre-trial detention of a 21-year old man charged with participation in a terrorist organisation (ISIL). The man arrived in Italy on a vessel together with some 500 other migrants of various nationalities. The charge against him was based on digital files and pictures found in his possession upon arrival in Italy. The man appealed his pre-trial detention to the Court of Cassation. The Court of Cassation, however, rejected his appeal and confirmed the pre-trial detention. The case continues.

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

United Kingdom

A serving Royal Marine has been charged with intending to help another carry out a terrorist act contrary to the Terrorism Act 2006. He is suspected to have made bombs and built secret caches for arms and explosives. According to information provided by the UK intelligence service, the man collected considerable amount of materials on how to make explosive substances and explosive devices, as well as on tactics used by terrorist organisations. He is also suspected to have collected substances for the manufacture of explosive material and devices.

Source: Telegraph

