



Internal EUROJUST Report

Terrorism Convictions Monitor

Issue 32 December 2018 10/L/2018

EUROJUST LIMITED





EUROJUST LIMITED – The distribution of this document is strictly limited to:

- Officials of judicial and law enforcement authorities in the Member States;
- Officials of Member State ministries and permanent representations responsible for justice and home affairs, including delegates to meetings of the Council of the European Union and its preparatory bodies;
- Officials of the Secretariat General of the Council of the European Union and of the European Commission;
- Members and officials of the European Parliament;
- Post-holders of Europol;
- National correspondents for Eurojust for terrorism matters;
- Officials of authorities of third States that have concluded a cooperation agreement with Eurojust;
- Post-holders of organisations that have concluded a cooperation agreement with Eurojust: international organisations and their subordinate bodies governed by public law, other bodies governed by public law which are based on an agreement between two or more states.

Please do not distribute to recipients other than those mentioned above.

Eurojust LIMITED documents must not be published on sites available from the Internet or web-based platforms.

Contents

Introduction.....	4
I. Brief Summaries of Court Decisions.....	5
1. Terrorism Convictions/Acquittals per Member State	5
2. Other Court Decisions of Interest.....	27
II. Amendments in Legislation.....	29
1. EU	29
III. Legal Analysis.....	31
IV. Topic of Interest.....	36
V. The Way Ahead	43



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 Department 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 32 of the TCM covers the period May-August 2018. 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 of Varsinais-Suomi District Court of 15 June 2018. The judgement concerns a terrorist attack in Turku, Finland, in which two persons were killed and eight injured. Eurojust provided assistance to the Finnish authorities in the pre-trial phase of the case. The Topic of Interest chapter presents a judgement from the Netherlands concerning retweets with terrorist content and the assistance provided by Eurojust in the trial phase.

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

May - August 2018

Austria

May 2018

The Regional Court of Salzburg sentenced a Moroccan national to *nine months' imprisonment* for **obstructing two prison officers in the performance of their duties**. At the same time, the individual was acquitted of the charge **membership in a terrorist and criminal organisation**. The judgement is final.

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

The Regional Court of Wiener Neustadt found two persons guilty of **membership in a terrorist and criminal organisation**. An 18-year old Russian born individual was sentenced to *two years of imprisonment and admitted to an institution for mentally deranged offenders* for the above crime and for **attempted coercion**. The other indictee, a 14-year old Austrian national, was sentenced to *six months of conditional imprisonment with a probationary period of three years*. The judgement handed down in March 2018 became final in May.

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

June 2018

The Regional Court of Klagenfurt sentenced an individual to *six years of imprisonment* for **membership in a terrorist and criminal organisation**. The 26-year-old refugee from Afghanistan shared Taliban propoganda via social media and in several chat groups. The judgement is final.

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

An Austrian court ordered the *life imprisonment* of a 27-year-old Palestinian individual found guilty of **incitement to murder and membership in a terrorist organisation**. The court found that the indictee was a member of the terrorist organisation Hamas and used social media to call on others to kill Jews in Jerusalem (*for further details, please see TCM, issue 30*). The offender had previously been convicted for terrorist offences and sentenced to nine years in prison in Israel. The decision of the Austrian court has been appealed by the defence. The judgement of the second instance, handed down by the Regional High Court of Vienna in April 2018, rejected the appeal and the verdict (imprisonment for life) became final.

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

July 2018

The Regional Court of Innsbruck found an individual guilty of **membership in a terrorist organisation** and sentenced the Iraqi national to *two and half a years of imprisonment*. The 20-year-old was found to be guilty of having been involved in street battles and carried out guard duties for a terrorist militia in Iraq in 2016. The judgement handed down in September 2017 became final in July 2018, as all related appeals were meanwhile withdrawn.

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

An Austrian court sentenced a 16-year-old minor to *ten months of imprisonment with a probationary period of three years*. The Serbian national was indicted for **membership in a terrorist and criminal organisation**, as well as for the **endorsement of terrorist offences**. The crimes were committed by actively participating in chat groups disseminating jihadist propaganda and setting up plans to travel to Syria in order to join ISIL. The judgement is final.

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

Belgium

May 2018

The Court of First Instance of Hainaut, Mons division, found one defendant guilty of **participation in the activities of a terrorist group** and sentenced her to *18 months in prison and a fine of EUR 600*. The court found that the defendant, who was a Kazakh national, had been involved in **ISIL propaganda by inciting jihad, providing advice, information and moral support to its fighters**. Material found in her computer and mobile telephone showed that she had developed a sustained interest in ISIL. The court ruled that her acts were **not limited to mere adhesion to ISIL ideology**; she disseminated information, links and images related to this group or its ideology via her Twitter account and has thus contributed to glorifying ISIL. The court held that she had spread propaganda of the armed jihad advocated by ISIL and she was aware of the terrorist nature of the organisation. The decision of the court is final.

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

The Court of First Instance of Brussels found one defendant guilty of **participation in the activities of a terrorist group** and sentenced her to serve *five years in prison* and pay a *fine of EUR 16,000*. The defendant was convicted for having travelled to join a man in Syria. The court held that the defendant knew about the activities carried out by this man in Syria, i.e. that he was a fighter with Jabhat al-Nusrah. The couple got married religiously and lived together in Syria. The court held that providing **logistical support** by taking care of the household and the food, as well as providing **moral support, constituted indispensable assistance** enabling the fighter and, through him, the group to commit terrorist acts.

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

June 2018

The Court of First Instance of Brussels convicted a man to serve *five years in prison* for **participation in the activities of a terrorist group**. In the course of the investigation, it was confirmed that the convicted had radicalised over the last years. The house searches carried out by the police resulted in the discovery of **images of the man holding a weapon in ISIL territory**. Also **propaganda material** was found on the phone of his son. The court found it proven that the convicted participated actively in the activities of a terrorist organisation.

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

The Court of First Instance of Charleroi is the first Belgian Court that sentenced a person by taking away the Belgian nationality. The defendant, a man with both the Belgian and Serbian nationality, was instructed to commit terrorist attacks in both France and Belgium. Next to the *deprivation of his Belgian nationality*, the defendant was sentenced to a *prison sentence of ten years* and a *fine of EUR 30,000* for **participating in the activities of a terrorist group**. After he serves his sentence in Belgium, the man will be returned to his home country Serbia. In the past, it was also possible to deprive terrorist convicts of their Belgian nationality, but this deprivation happened through a separate procedure.

Source: HLN

The Court of First Instance of Brussels sentenced two persons to imprisonment terms of *30 months* and *five years*, respectively, for **participating in the activities of a terrorist group**. In addition, the defendants were to *pay a fine of EUR 6,000* and *EUR 9,000*, respectively. With regard to the second defendant, the court found that an **aggravating circumstance** applied: **luring a minor into or using a minor for committing crimes**. These minors were under 16 years of age and the second defendant was their father. The first defendant admitted to having assisted the wife of the second defendant in her efforts to travel to Syria to join the fighters of ISIL. Her assistance was confirmed through telephone interceptions, and analysis of her tablet computer and Google+ account showed that she acted with full knowledge of the facts. By **providing important assistance to enable a person to join ISIL**, the first defendant participated in the activities of this terrorist group. As regards the second defendant, social media conversations showed that he wished to join his wife in Syria together with their children. The defendant had taken measures to make travelling to Syria possible and did not deny having used an organised route from Turkey to Syria. From the moment he profited from the help of an organisation, the exclusive aim of which was to enable people to join ISIL, the second defendant was considered to have joined a terrorist group. Evidence showed that the second defendant had an important position and authority within the organisation. The court recalled that all assistance to a terrorist group is illegal and, thus, such assistance is not limited to fighting or rendering assistance to terrorist fighters.

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

The Liege Court of Appeal overturned the acquittal of four persons who were suspected of **participating in the funding of the activities of the terrorist group PKK**. Police observations

and wiretappings showed that the defendants approached various Kurdish families to participate in their fundraising for the PKK in 2012. The court handed down a *suspended three-year sentence and a fine of EUR 3,000, half of which suspended*, to the main instigator of the fundraiser. Two of the remaining defendants were each given a *suspended sentence of 12 months and a fine of EUR 3,000, half of which suspended*. The fourth defendant was sentenced to a *suspended sentence of six months and a suspended fine of EUR 1,500*.

Source: RTBF

The Court of Antwerp acquitted a suspected of **participation in activities of a terrorist group**. He was prosecuted for financing of terrorist activities by transferring money in 2014 to his cousin, a convicted foreign terrorist fighter in Syria. The suspect was acquitted as in 2014 it was not evident that his cousin indeed had joined a terrorist group. The suspect transferred the money in 2014 because he believed to provide humanitarian help to his relatives.

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

The Court of First Instance of Brussels sentenced a person to *five years' imprisonment* for **participation in the activities of a terrorist organisation**. The convicted left for Syria in 2014 to join her husband, an ISIL fighter. She supported her husband in his activities by providing logistical support, e.g. taking care of the household, providing food and moral support, which is an indispensable aid for fighters to commit terrorist offences. Furthermore, she also played an active role in encouraging her sister and nieces to watch ISIL propaganda videos.

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

The Court of Charleroi convicted an individual to *three years and one month prison* for **participation in the activities of a terrorist group**. The defendant made and broadcasted **propaganda videos and photos from various terrorist groups active in Syria, including ISIL and Jabhat al-Nusrah**. He was also charged, but *acquitted*, for threatening to destruct or cause massive damage to infrastructure(s), transportation system(s) and/or a public or private property.

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

The Court of First Instance of Brussels convicted one person of **participating in the activities of a terrorist group** and sentenced her to an *imprisonment sentence of 40 months*. The court also imposed a *fine of EUR 6,000* on the defendant. The defendant admitted to having travelled to Syria to join ISIL, but held that the mental element of the crime was missing, due to her mental problems at the time. The court rejected this argument and found that that defendant knew that ISIL was a terrorist group and was aware of the illegality of the acts committed by this group. By deciding to join this group, she knew that she would render such assistance to a terrorist group that contributed to the commission of crimes by this group.

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

The Court of First Instance of Liège convicted a person for **participating in the activities of a terrorist group** and sentenced him to serve *ten years in prison* and to *pay a fine of EUR 30,000*. Additionally, the court decided that the defendant would be deprived of his Belgian nationality.¹ The court found that the defendant had acted as the leader of the terrorist group. He had **recruited or attempted to recruit others for the *jihadi* cause** and had made an effort to travel through Europe, to obtain false documents to facilitate the travel of others who were candidates for this cause and to stay in contact with persons who were ready to take up arms in Europe and commit terrorist attacks.

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

August 2018

The Court of Appeal of Antwerp confirmed the guilty verdict and the sentence issued by the first instance court in the case of a Belgian national, who had tried to join a terrorist group in Syria. The man had left Belgium but was detained by the Turkish authorities before he could reach the conflict zone. The Court of Appeal accepted the motivation of the first instance court to convict the man of **participation in the activities of a terrorist group** and confirmed the penalty of *37 months of imprisonment*. The decision of the court is final.

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

Denmark

June 2018

Two young men and a woman were *deprived of the Danish nationality* after their conviction for **attempting to promote the activities of ISIL**. All three had dual nationality in respectively Morocco, Algeria and Afghanistan. The two men and the woman, accompanied by a fourth, minor woman, met at the airport in Copenhagen with the intention to reach Syria to support ISIL. The minor woman could not leave the country since she had no passport. The other three were arrested during their travel through Turkey. They were all convicted to *three years of imprisonment*. Their appeals are pending.

Source: Berlingske

¹ Further to the prison term and the fine, the court imposed also a prohibition to exercise civil and political rights, which is a common measure in terrorism cases. In this case, however, the period of prohibition is 20 years, which is significantly higher than the standard of five to ten years given for the offence of participation in the activities of a terrorist group.



Finland

June 2018

The District Court of Varsinais-Suomi sentenced a man to *life imprisonment* for **committing a terrorist attack**. The defendant, who was illegally residing in Finland and used a fake identity, **stabbed two women to death and wounded eight other people in the Finnish town Turku**. He claims that he committed the attack on behalf of ISIL, but so far the terrorist organisation has not confirmed its involvement in his actions (*for further details, please see Chapter III Legal Analysis*).

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

France

July 2018

The Paris Court of First Instance convicted a man to *four years of imprisonment* for **associating with a terrorist movement**. The defendant, who has Belgian and Tunisian roots, was the main person behind the **creation of the French jihadist website** Ansar Al-Haqq. Besides him, three other administrators of the website were condemned to *three and four years of imprisonment* respectively. The website was used to recruit people for armed combat and to incite the jihad.

Source: Le Monde

August 2018

The Court of Nice found one defendant guilty of **incitement to terrorism** and sentenced him to *three years of imprisonment*. The man was tried and convicted following the immediate referral procedure.

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

Germany

May 2018

The Higher Regional Court of Munich found an Afghan national guilty of **membership in a foreign terrorist organisation**. He was *convicted to four years and ten months juvenile detention*. In two out of three cases he was convicted for attempted murder. He was found guilty of membership in the Taliban in 2013 – 2014 and participation in armed battles between the Taliban and US security forces in the autumn of 2013 and beginning of 2014.

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

The Higher Regional Court of Celle sentenced a Turkish national to serve *one year and ten months in prison* for **membership in a foreign terrorist organisation**. The convicted was found guilty of being a leader/ manager in the PKK in the Salzgitter area from March 2014 until the annual change of leadership in June 2015.

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

The Higher Regional Court of Munich found one Austrian national guilty of **supporting a foreign terrorist organisation** and *sentenced him to two years and nine months' imprisonment*. He was found guilty of **handing out combat clothes** to Junud al-Sham in October 2013. Additionally, he was convicted of **recruiting supporters** in Weiden between November 2013 and March 2014.

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

The Higher Regional Court of Munich *acquitted* a Turkish national, accused of **supporting a foreign terrorist organisation**. The man was prosecuted for having allegedly supported Junud al-Sham 2013 and 2014.

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

The Higher Regional Court of Munich sentenced two Bosnian nationals for **supporting Junud al-Sham in Syria**. One of them was *sentenced to one year and ten months' imprisonment* and the other to *three years* for providing seven terrain vehicles to the terrorist group in 2013. They were also convicted for using weapons without a permit. The accused were armed a rifle of the type AK 47 during their stay in Syria.

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

June 2018

The Higher Regional Court of Düsseldorf found a Syrian national guilty of **membership in a foreign terrorist organisation (Owais al Qorani and ISIL) and of murdering a soldier of the Syrian Army** that took place in February 2013. The man was convicted to *seven years of imprisonment*.

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

The Higher Regional Court of Berlin convicted a Syrian national in three cases. In two cases he was found guilty of **membership in foreign terrorist organisations**, Jabhat al-Nusra in the second half of 2012 and ISIL in 2014. He was also found guilty of membership in Owais al Qorani at the end of 2012 and beginning of 2013 for willingly participating in armed battle. He was sentenced to *four years and six months imprisonment*.

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



The Higher Regional Court of Berlin found a Syrian national guilty of **membership in the foreign terrorist organisation Owais al Qorani and the deliberate use of violence in an armed battle** from September 2012 to November 2013. He was sentenced to serve *two years and nine months in prison*.

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

July 2018

The Higher Regional Court of Munich handed down a *life sentence* to a woman involved in a Neo-Nazi movement called NSU. Together with two other men, who were also part of the NSU, she was **involved in multiple shootings** between 2000 and 2007 **which led to the death of a German policewoman, as well as nine Turkish and Greek immigrants**. The partners in crime **also committed two bombings and various bank robberies**. The woman was sentenced alone insofar since both of the men committed suicide after a failed bank robbery in 2011. Alongside, one man was convicted of **aiding to the murder** for procuring the murder weapon and given a *ten-year prison sentence*. Others were convicted of **support for a terrorist group**. Their appeals against the sentences are pending.

Source: The Local, Zeit Online

A 36-year-old German male was convicted because he **helped individuals with leaving Germany to fight in Syria** as part of Jamwa, an armed movement which is closely linked to ISIL. He also **raised funds in Germany to buy military equipment** for the movement. The Higher Regional Court of Düsseldorf sentenced the man to *five years and six months of imprisonment*. The convict plans on appealing the judgement.

Source: New York Times

In Düsseldorf a 52-year-old male was *acquitted* of charges relating to **a bombing which injured ten Eastern European migrants** with Jewish ties. The Regional Court of Düsseldorf ruled that the defendant was not guilty since there was no sufficiently reliable evidence to prove his involvement in the crime.

Source: The Local

Ireland

July 2018

The Waterford Circuit Criminal Court sentenced a man *to two and a half years of imprisonment*. The 26-year old defendant was convicted for **sending money to a contact person of ISIL** in Bosnia and Herzegovina and for **attempted fundraising for the terrorist organisation**. The judge initially wanted to give the man a higher sentence of four and a half years, but decided to

suspend two years of the sentence on condition that the man follows a deradicalisation programme.

Source: *The Irish Times*

Italy

June 2018

The Court in Napoli issued a sentence against a Tunisian national of *eight years of imprisonment* for **membership in a terrorist organisation, related to receiving, sharing and disseminating Islamist propaganda via social media**. In particular, the convicted spread messages of encouragement of antisemitism via pictures on his social media accounts, as well as ISIL propaganda. Further to the prison sentence, he has to *pay a fine of EUR 136,000*.

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

The Appeal Court in Milano has confirmed the convictions issued by the Court of First Instance of Milano on 19 December 2016 against a group of five people. The group was convicted of **participation in a terrorist organisation (ISIL), radicalisation, training and recruitment of foreign fighters for ISIL**. The five individuals were sentenced to respectively *ten, nine, eight and four years of imprisonment*.

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

The Appeal Court in Milano has confirmed the sentence of a Syrian national, convicted in October 2017 by the Court of Milano for joining the Al-Qaida linked terrorist organisation Jabhat al-Nusrah for the purpose of **committing acts of violence and sabotaging of essential public services by committing terrorist acts**. He was sentenced to *three years of imprisonment*.

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

The Netherlands

May 2018

The Hague Court of Appeal considered the conviction of a man sentenced to *six years of imprisonment* for his involvement in a criminal organisation that also had the intention to commit **terrorism offences, as well as his partaking in encouraging terrorism crimes on social media and distributing relevant publications**. On the procedural level the Court of Appeal came to the conclusion that mistakes had been made in the investigations relating to the defendant, but these mistakes were not sufficient to harm the right of defence. Substantively, the court decided that the man did not insult a certain group of people in association with others, but confirmed all the other facts that were brought before the Court of First Instance. However, since the appeal against the judgement in first instance had not been treated within a period of two years, the court concluded that the defendant had not been brought to justice within a



reasonable time. Taking into account all of the above, the Court of Appeal decided to hand down a prison sentence of five years and six months.

Source: *Rechtspraak*

A 33-year-old man of Moroccan origin was sentenced to *five years and six months of imprisonment* for **taking part in a criminal organisation which has the intention to commit terrorist offences, as well as preparing terrorist acts**. The defendant went to the conflict zone in Syria, followed a training camp and took part in the jihadist war. The sentence of the Hague Court of Appeal was somewhat surprising. In first instance the defendant only received a sentence of five years and *the prosecution only demanded a sentence of 46 months* in appeal since the process had not taken place in due time.

Source: *Rechtspraak*

The District Court of Limburg sentenced a man to a *15-month prison sentence, of which four months provisional*, for **recruiting individuals to take part in armed conflict and a terrorist organisation**. The man was also accused of being part of a terrorist organisation himself, but the court found that there was insufficient evidence to sustain this allegation.

Source: *Rechtspraak*

June 2018

The Dutch Court of Cassation was confronted with an appeal against the judgement of the Hague Court of Appeal which ruled that **housekeeping and taking care of the possessions and children of a foreign terrorist fighter cannot be considered as recruiting a person for armed conflicts**. The Court of Cassation stated that the judgement of the Court of Appeal was sufficiently motivated and legally correct since the recruiting of a person for armed conflicts requires a direct involvement in the armed conflict.

Source: *Rechtspraak*

July 2018

Pride Cases

Up to date, the prosecution has presented **20 foreign terrorist fighter** cases to the District Court of Rotterdam, the so called **Pride-cases**. The hearings started on 23 March 2017 and were postponed several times to grant opportunity to the suspects to attend their hearing.

The suspects were summoned to court by social media, presumably because they would still be at the battlefield. Although none of the suspects appeared for the hearing, the court believes they were informed of the hearing and did not use their right to attend the court session.

So far, the Court has ruled in 13 cases. The judgements in the first two cases were pronounced in January and April 2018, respectively. On 3 July 2018 the court ruled in four other cases. One

foreign terrorist fighter was sentenced to serve *seven years in prison*, two to *six years each* and one was *acquitted*.

On 19 July 2018 the District Court of Rotterdam ruled in **seven cases against foreign terrorist fighters**, accused of travelling to Syria and Iraq to **participate in terrorist organisations**. Three men were sentenced to *six years of imprisonment* and another man *to four years*. In the remaining three cases, not enough evidence was found for conviction and the suspects were *acquitted*.

Seven other cases are postponed. Two suspects, currently being in Syrian camps, have requested, via their lawyers, to be able to be present at their hearing. In two other cases the prosecutor has asked to postpone the hearing in order to have more time for investigation. In the three remaining cases, it is presumed that the defendants are deceased. The court will deal with these cases at a later stage.

The cases are particular because of the evidence. Given the war situation, it is not possible to investigate in the battlefield. The suspects have not given any statements in front of the authorities. The evidence available in most of the cases comes from relatives and friends and from the media. In some cases, pictures or videos from the suspects, holding fire arms, are available or phone conversations are recorded. The court has convicted only those suspects against who evidence is available from different, independent sources. The court has not used information from the AIVD², except in one case where wire tapped phone conversations were available in which the suspect participated. In the cases in which the defendants were acquitted, the court found that sufficient evidence had not been brought forward, as the available evidence was not based on different and independent sources. Pride cases are indicated by * in the overview below.

Source: *Rechtspraak*

The District Court of Rotterdam acquitted one suspect *in absentia*, accused of **participation in the terrorist organisations ISIL and/or Jabhat al-Nusrah**. The suspect informed his family that he worked in the hospital of Mosul in February 2016, when ISIL controlled the city. The brother of the suspect stated that he joined Jabhat al-Nusrah and/or ISIL. In this case the court decided not to admit information from the AIVD as evidence, stating the suspect would have joined ISIL, regardless of the fact that the prosecutor claimed that the AIVD information was supported by a Twitter message, originating from the location where the suspect supposedly was. The court ruled that the suspect himself was the only source in the case and therefore there was not enough evidence available for conviction.*

Source: *Rechtpraak*

The District Court of Rotterdam convicted a **foreign terrorist fighter** *in absentia* to *four years imprisonment* for participating in a **terrorist organisation**. The defendant informed his mother via WhatsApp in May 2015 that he had travelled to Syria to join ISIL. In July 2015 he informed

² General Intelligence and Security Service (the Netherlands).

his parents that he was in Iraq and was working as a cook, although he received training [to fight], the defendant was presumably found unfit for this purpose, as he was autistic. Due to the lack of evidence of committing violent acts, the court pronounced a lower verdict than that requested by the prosecutor.*

Source: *Rechtspraak*

The District Court of Rotterdam convicted a suspected foreign terrorist fighter *in absentia* to *six years in prison* for **participation in a terrorist organisation**. The suspect got married under Islamic law. He and his spouse travelled together to Syria. The spouse was often in touch with her mother via WhatsApp. From these messages and statements, it was visible that the suspect was in a training camp, travelled to Homs and joined a militant organisation. Pictures of the suspect, with the ISIL flag in the back were available. The court found it proved that the suspect travelled to Syria to join ISIL.*

Source: *Rechtpraak*

The District Court of Rotterdam sentenced a man to *six years of imprisonment* for **taking part in a terrorist organisation which has the intention to commit terrorism crimes**. Based on the statements of the mother of the defendant, the court concluded that he took part in the terrorist organisation Jabhat al-Nusrah as a guard. The defendant was not present at the hearing, since he is still residing in a battlefield area in Syria. Nevertheless, the court ruled that the prosecutor had taken sufficient measures to inform the man about the trial and thus he could be convicted *in absentia*.*

Source: *Rechtspraak*

The District Court of Rotterdam ruled in an *in absentia* case that the defendant was **not guilty**. The case against the man alleged that he went to Syria to fight alongside Jabhat Fatah Al-Sham and thus **participated in a terrorist organisation which has the intention to commit terrorism crimes**. The court ruled that the simple fact that the man resides in a Syrian area which is under control of ISIL and the fact that he owns a Kalasjnikov were not sufficient to prove his involvement in the terrorist organisation.*

Source: *Rechtspraak*

The District Court of Rotterdam convicted a **foreign terrorist fighter** *in absentia* of **participation in a terrorist organisation** and sentenced him to *six years imprisonment*. Flags, similar to those used by jihadist organisations, were found in the apartment of the convicted, as well as DVDs, CDs and paperwork containing information on radicalisation. Furthermore, bank transactions indicated that the defendant used his debit card in the Turkish city Gaziantep, located near the Turkish-Syrian border. He informed his family that he joined the Caliphate in a large city in Syria and sent pictures of himself in a military uniform holding a fire arm.*

Source: *Rechtspraak*

The District Court of Rotterdam *acquitted* a **suspected foreign terrorist fighter** *in absentia*, accused for **participating in the terrorist organisations ISIL and Jabhat al-Nusrah in Syria and/or Iraq**. According to the file, the suspect travelled to Syria in February 2018 and still resides there. According to relatives, he travelled to Syria to fight, after being pushed by an imam towards jihad. According to reliable, anonymous, information received in the beginning of 2014, the suspect received combat training, belonged to Jabhat al-Nusrah and fought for them. However, this information did not contain additional details to be admitted into evidence. Furthermore, the court found that other information found on the internet, like information that the suspect would have transported chemicals, accompanied by pictures of the Turkish passport and ID of the suspect were not admissible as the mother of the suspect claimed the pictures were abused after the passport of the suspect was stolen. According to the court, the file did not contain any evidence that the suspect would have actually joined one of the before mentioned terrorist organisations.*

Source: *Rechtspraak*

The District Court of Rotterdam sentenced a **foreign terrorist fighter** *in absentia* to *six years' imprisonment* for **participating in a terrorist organisation and performing acts of terror**. He travelled to Syria in 2013 to join Jabhat al-Nusrah. The lawyer of the defendant claimed he travelled to Syria as care provider during combat. However, the evidence showed the defendant on pictures carrying fire arms while being in Syria. Furthermore, the defendant informed his lawyer that he had no intention to return to the Netherlands.*

Source: *Rechtspraak*

The District Court of Rotterdam *acquitted* a suspected **foreign terrorist fighter**, accused of **participation in a terrorist organisation**. The suspect travelled with a second suspect to Syria in February 2014. They appeared in propaganda videos with automatic fire arms, calling to use violence and to join ISIL to help the Caliphate arise. Regardless of the availability of this video, the court did not find proven that the actions shown in the video took place in Syria; furthermore, the video had no time stamp. As other supporting evidence was missing, the court ruled acquittal.*

Source: *Rechtspraak*

The District Court of Rotterdam has convicted a suspected **foreign terrorist fighter** *in absentia* to *six years' imprisonment* for **participation in a terrorist organisation**. In March 2017, the father of the suspect reported him missing and gave a DVD to the police containing a farewell message to his parents. In the message the suspect claimed he followed the call of Allah and left to defend his Brothers and Sisters. In this case, a lot of information was available from WhatsApp messages, spoken recordings, emails, video messages and a letter to the court in which the suspect claimed his stay in Syria was mainly for religious and humanitarian purpose. Furthermore, in a video message published in July 2013 on the Dutch television channel RTVOost, the suspect claimed that the charges against him were not sustained. Together with the statement of the father of the suspect that he followed a training by Jabhat al-Nusrah upon

arrival in Syria, the court found it proven that the suspect participated in a terrorist organisation.*

Source: *Rechtspraak*

The District Court of Rotterdam convicted a **foreign terrorist fighter** of performing acts of terror and sentenced him to *seven years' imprisonment in absentia*. In the course of the investigation, an ISIL propaganda video was discovered. The video showed a person preaching, who was identified as the defendant. Furthermore, pictures of the defendant in front of a Sharia court with jihadi flags were also found.*

Source: *Rechtspraak*

August 2018

The District Court of Rotterdam issued a prison sentence of *five years* to a **foreign terrorist fighter** for travelling to Syria **to support the terrorist organisation Tahrir al-Sham** (formerly known as Jabhat Fateh al-Sham and/or Jabhat al-Nusrah). The court found it proven that the defendant travelled to Syria together with other suspects and performed for a period of two years supporting, yet essential, activities for Jabhat al-Nusrah, a terrorist organisation linked to Al-Qaida.

Source: *Rechtspraak*

The District Court of Rotterdam sentenced a person to *seven years of imprisonment* for travelling to Syria as a **foreign terrorist fighter for Jabhat al-Nusrah** (an Al-Qaida related organisation). He was also convicted as **returnee** to Western Europe, using the passport of his brother to travel and to avoid arrest. The defendant has a prior conviction for similar offences and has previously refused to cooperate with the Dutch authorities for psychological evaluation and social rehabilitation.

Source: *Rechtspraak*

The District Court of Oost-Brabant convicted a person of **trying to join ISIL** in Syria. The court found it proven that an attempt was made **to join a terrorist organisation**. The evidence presented in court proved that the convicted person left the Netherlands to join the Caliphate in Syria. She left a farewell letter to her family explaining her motivation to leave and join the jihad. She tried to cross the border between Turkey and Syria several times, but failed. In her defence, she claimed the letters she left and wrote to her family were fictive and that she was writing a book. According to the defendant, the journey she took was a religious one and not for the purposes as stated by the prosecution (to join ISIL). The court found it proven that the defendant left **to join the Caliphate** and pronounced a sentence of *413 days' imprisonment (180 days out of which suspended under special conditions) and three years' probation*.

Source: *Rechtspraak*

Spain

May 2018

The National Court found two Moroccan men guilty of **terrorist indoctrination** and sentenced them to *eight years' imprisonment each and surveillance after the period of imprisonment for ten years*. The court found that the defendants were users of social media, and that by using different profiles in Facebook and YouTube, they **promoted** and **supported ISIL activities**. During a house search, the police had found mobile phones, videos and records of ISIL propaganda.

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

The National Court found a woman **guilty of membership in a terrorist organisation** and sentenced her to *six years in prison*. The court found that the defendant was involved in activities related to the recruitment of women, using social media and distributed propaganda of the terrorist organisation. The decision of the court has become final.

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

The National Court found one woman guilty of **membership** in a terrorist organisation and sentenced her to *six years in prison*. The court found that the defendant used social media (WhatsApp, Telegram, Facebook) to recruit women for the purpose of travelling to Syria to join the terrorist organisation. The decision of the court has become final.

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

June 2018

The National Court found a man guilty of **collaboration with a terrorist organisation** and one woman guilty of **glorification of terrorism** and sentenced them respectively to *six years in prison and a fine* and *one year in prison and a fine*. The court found that one of the defendants was **leading a group of people and by using a Facebook account committed activities of recruitment and spreading messages praising and justifying the violent methods used by ISIL**. The other defendant **spread radical jihadist content via Facebook**. The decision of the court has been appealed.

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

The High Court dismissed the appeal of one man who had been convicted by the National Court for drug offences and acquitted **for terrorist offences**, and had been sentenced to *three years in prison and a fine*.

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



A *prison sentence of two years and four months* was handed down by the National Court in the case of a Moroccan national found guilty of **glorification of terrorism**. The court found that the defendant posted a number of videos in support of Izzedine Al Kassam brigades and ISIL. During the house search the police found electronic devices, mobiles, etc., which were used to transmit information related to the defendant's criminal activities. The defendant reached an agreement with the Prosecution. The decision of the court has become final.

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

The National Court found four men **guilty of public disorder** but *acquitted* them of the accounts of **terrorist offences**. The court sentenced the defendants to *imprisonment for two years*. The court found that the defendants participated in violent acts against law enforcement authorities during the demonstrations held on 11 March 2017 in Pamplona. The decision of the court has been appealed.

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

The National Court found a Moroccan man guilty of collaboration with a terrorist organisation (ISIL) and sentenced him to *six years in prison and surveillance after the period of imprisonment for eight years*. The court found him guilty of **spreading messages glorifying ISIL activities, using different profiles on the internet**. During the house research the police found electronic devices containing files with propaganda of terrorist organisations like ISIL, Al-Qaida and of their terrorist leaders. The decision of the court has been appealed.

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

The National Court found a woman guilty of **collaboration with a terrorist organisation** and sentenced her to *two years in prison*. The court found her guilty of preparing a trip to Syria to marry a man who was presumably a member of the terrorist organisation ISIL. The defendant tried to help him come back to the European Union by providing a false passport. The defendant reached an agreement with the prosecution. The decision of the court has become final.

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

A *prison sentence of four years and four months and surveillance after the period of imprisonment for four years* was handed down by the National Court in the case of a man found guilty of **terrorist self-indoctrination**. The court found that the defendant had 158,710 files related to ISIL or Al-Qaida and other groups, documents about how to make explosives and other tools, demonstrating his support to "the Caliphate". The defendant was acquitted of the offence of **glorification of terrorism**. The decision of the court has been appealed.

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

Eight men charged with terrorist offences, were prosecuted for public disorder, offences against physical integrity, intimidation and assault against representatives of the authorities. They were *acquitted* of the **terrorist offences** and *found guilty* of **public disorder, offences against physical integrity, intimidation and assault against a representative of the authorities without a terrorist purpose**. The defendants were sentenced according to their participation in the crimes, to *imprisonment between twelve years* for the defendants found guilty of assault against a police officer and offences against physical integrity, and to *one year* for the defendant found guilty of public disorder. The court found that the defendants were members of OSPA – an association promoting the expulsion of Spanish law enforcement from the Basque country. Taking advantage of their superiority in number, they attacked two members of the Spanish Guardia Civil and their relatives and injured them. The decision of the court has been appealed.

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

The National Court found a Moroccan man guilty of **membership in a terrorist organisation** and sentenced him to *eight years in prison*. The court found that the defendant after a process of radicalisation used social media to spread propaganda of ISIL and travelled to Syria, where he was trained in the use of weapons and arms and looked for new members. On 15 June 2015 the defendant was detained in Warsaw, Poland, on his way back to Spain with the purpose to commit terrorist attacks. The sentence has become final.

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

Three people were found guilty of **collaboration with a terrorist organisation and indoctrination**. One of them was sentenced to *four years in prison and surveillance after the period of imprisonment for five years*, in relation to the first crime. The other two defendants were sentenced to *two years in prison and surveillance after the period of imprisonment for one year*. The court found that the defendants were recruiting people to join ISIL in Madrid, indoctrinating and providing a group of people with military training in terrorist activities. The defendants reached an agreement with the prosecution. The court decision has become final.

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

The National Court found one man guilty of **causing explosions with the aim of destroying buildings with a terrorist purpose** and sentenced him to *sixteen years in prison*. The court found that the defendant participated with the other members of the cell in the terrorist attack against a hotel in Getxo. The defendant bought a mobile phone to call to the media, assuming responsibility for the action on behalf of ETA, and offered his house to hide the members of the cell. The decision of the court has been appealed.

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

One man was found guilty of **belonging to a terrorist organisation** and was sentenced to *eight years in prison*. The court found that the defendant travelled to Syria to participate in the



activities of ISIL. In Spain the defendant provided financial support to mujahedeen in Syria, using the *hawala* system. He also spread propaganda of the terrorist organisation via social media. The court decision has been appealed.

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

The National Court found an Algerian man guilty of **glorification of terrorism** and sentenced him to *two years in prison* and a *fine*. The court found that the defendant published a video teaching how to prepare a poison and to commit an attack. On his Facebook account and through other social media, he published messages and videos supporting terrorist activities. The court decision has become final.

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

The National Court found two men guilty of **membership of a terrorist organisation** and sentenced them to *eight years in prison*, and for the crime of **possession of arms and ammunition** to *nine years in prison*. The court found that the defendants got indoctrinated. During a house search the police found material used for propaganda of terrorist activities committed by ISIL, as well as firearms. The decision of the court has been appealed.

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

The National Court found two men guilty of **public disorder** and sentenced them to *three years and six months in prison*. The court found that the defendants supported a group of people who were disturbing the public order by acting against members of Spanish Guardia Civil during an operation related to the arrest of one suspect of terrorism and the search of his house.

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

July 2018

The National Court *acquitted* six defendants of the charge of **glorification of terrorism**. They had been prosecuted for their alleged support to anarchist groups via internet.

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

An Algerian man was given a *penalty of two years and two months* by the National Court after he was found guilty of **glorification of terrorism**. The Court found that the man had spread videos, photos and messages on the internet, which showed prayers and justifications of ISIL activities. In the execution of an international arrest warrant the defendant was arrested in France. The decision of the court has been appealed.

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

A *prison sentence of six, twenty-six and ten years, as well as a fine*, were handed down to a defendant found guilty of **membership of a terrorist organisation, murder and illegal possession of firearms** by the National Court. The court found that he was a member of ETA and had participated in the murder of one female police officer. Together with other members of the terrorist organisation, the defendant kept fire arms in the house where they were located. The Decision of the court became final.

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

The National Court heard the case of two men charged with **participation in the crime of public disorder, and crimes against property with a terrorist purpose**. The court found one of them guilty and *sentenced him to two years and one month in prison*. The other defendant was *acquitted*. The court found that the convicted defendant participated in the actions of public disorder against premises of political parties and financial entities that took place in Navarra in 2007. One of the defendants was arrested in Germany. The decision of the court has become final.

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

The National Court found a man guilty of **glorification of terrorism** and sentenced him to *one year in prison and a fine*. The court found that the defendant used his Twitter account for glorification the activities of ETA. The decision of the court has become final.

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

The National Court found a man guilty of **attempted murder** and sentenced him to *18 years in prison*. The court found that the defendant with other members of a cell of ETA sent a box containing an explosive to a journalist. As she did not open the box but reported it to the police, the explosive did not detonate. The court decision has become final.

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

The Appeal Court of the National Court *dismissed* the appeal of a defendant who had been sentenced to *two years and one day in prison* for **glorification of terrorism**. The Appeal Court found that the action of the defendant, repeatedly spreading messages in support of terrorist activities constituted the offence of glorification of terrorism as established in the Penal Code. The court did not find any violation of the freedom of expression or freedom of religion in the first instance decision.³ The decision has been appealed to the High Court.

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

The Appeal Court at National Court considered the appeal of the prosecutor against a decision made in first instance to acquit a defendant of the charges of **glorification of terrorism**, and

³ A copy of the decision is also available in the Spanish jurisprudence database.



sentenced the defendant to *three months in prison*. The decision has been appealed to the High Court.

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

Sweden

June 2018

The Stockholm District Court sentenced an Uzbek national to *life imprisonment* for committing **terrorist crimes**. The defendant, a 40-year old male, had stolen a truck to run down pedestrians in the centre of Stockholm. The incident led to the death of five individuals; ten others were injured. The man stated that he performed the attack on behalf of ISIL, but so far this has not been confirmed.

Source: *The Local*

United Kingdom

May 2018

Two brothers appeared before the Woolwich Crown Court as part of a group of young men planning to join ISIL. The two were found guilty of multiple terrorist offences. The first brother was charged with **preparation of terrorist acts and dissemination of terrorist publications**, contrary to the Terrorism Act 2006. After pleading guilty, he was sentenced to *three years and three months of imprisonment*. His brother pleaded guilty to **collecting information** contrary to the Terrorism Act 2000, **preparing terrorist acts**, and **dissemination of terrorist publications** contrary to Terrorism Act 2006.⁴ Prior to their trials, three of their associates were sentenced to six years and ten months in prison each after pleading guilty to multiple terrorist offences.

Source: *Metropolitan Police*

June 2018

A UK national was sentenced to *four and a half years of imprisonment* for inciting to **acts of terror and hate speech against religious groups** via social media. The 40-year-old man amongst other things tweeted that he supports ISIL and that Shia Muslims should be burned to death.

Source: *Birmingham Live*

⁴ He was sentenced to four and a half years in prison in May 2018.

The Leeds Crown Court handed down a *two year prison* sentence to a 43-year-old male. The man stated that he took part in the **disseminating of a terrorist publication** and was in **possession of another publication containing sensitive information useful for terrorist organisations**.

Source: *BBC*

June 2018

Life imprisonment, with a minimum of 16 years to be served, and a prison term of six years and nine months were ordered by the Old Bailey to a mother and a daughter who belonged to the **first female terrorist cell** in the UK. The daughter had planned to carry out a knife attack close to the Parliament building in London and was assisted by her mother. Her sister was also convicted of planning to commit another attack close to the British Museum in the UK capital and sentenced in August to a *life term, with a minimum of 13 years to be served*. She had married an ISIL fighter online and had planned to join him in Syria before she had been stopped by the security service. The mother is believed to have played a major role in radicalising her daughters. A fourth young woman was also found guilty of **possessing information about terrorist acts**.

Source: *BBC*

A 28-year-old male was sentenced to *25 years of imprisonment* for **preparing a terrorist attack**. The man was arrested whilst he was trying to commit a knife attack on members of the Parliament and police officers on Parliament Square. The man, who was a valued member of Al-Qaida, was also given *40 years of imprisonment* for **creating and detonating more than 300 bombs** in Afghanistan.

Source: *The Times & The Guardian*

July 2018

The Birmingham Crown Court handed down a *six year prison* sentence to a 16-year-old boy. The boy was convicted for the **preparation of a terrorist act, giving instructions to commit terrorist offences, possessing information to commit a terrorist attack and being involved in the dissemination of a terrorist publication**. The police was able to arrest the boy at the airport of Birmingham before he could board his flight to Istanbul, where he was supposed to meet with a member of the terrorist group Jabhat al-Nusrah.

Source: *BBC*

The Central Criminal Court of England and Wales convicted a man to *30 years jail time* for **engaging in conduct in assisting the preparation of a terrorist act**. The 20-year-old defendant planned on bypassing the security at Downing Street so that he could detonate a bomb near the Prime Minister. Whilst looking for the needed materials, he was contacted by the



MI5 who roleplayed as a supplier for the bomb. On the day of the attack he was arrested after having been given a replicated bomb.

Source: Metropolitan Police & BBC

August 2018

The Sheffield Crown Court convicted two 23-year-old males. The men **funded the actions of a Syrian fighter**, who is the brother of one of them. One of them pleaded guilty to other 15 counts of **possessing and disseminating terrorist material**. The sentence was due in September 2018.

Source: The Star

2. Other Court Decisions of Interest

May - August 2018

Germany

July 2018

A 42-year-old Tunisian man, who is said to be one of the previous bodyguards of the former Al-Qaida leader, has been **extradited to Tunisia** on the ground of a positive decision of the German migration authorities. In the meanwhile, however, the decision was set aside by the administrative court of Gelsenkirchen which stated that **the extradition could expose the man to torture**. The man himself denies any links with Al-Qaida. He was released by the Tunisian authorities. In November, the administrative court of Gelsenkirchen lifted the temporary ban on extradition after the Tunisian authorities declared that the person was not at risk of torture. This removed the obligation to retrieve him. However, the decision only concerns the urgent application; the decision in the main proceedings is still pending.

Source: *BBC, Wikipedia*

Norway

August 2018

The Borgarting Court of Appeal handed down a sentence of *seven years and three months* to a 34-year-old Norwegian man. The man had **travelled to Syria to fight alongside ISIL militants**. Remarkably, **the man was not content with his sentence**, even though it was lower than the demand of the prosecution. According to him, his sentence should have been even lower, since he regretted his active participation in ISIL and tried to escape, but was unable to do so.

Source: *The Local*

Switzerland

August 2018

The Swiss Federal Court handed down a *prison sentence of four years and eight months* to a man who had **tried to establish an ISIL movement in Switzerland and wanted to carry out terrorist attacks in the country**. The man appealed to this judgement before the Federal Supreme Court, which reduced his sentence to *three years and eight months*. The man then attempted a second appeal before the Supreme Court in which he argued that there were issues relating to impartiality and the qualification of his crime. The Supreme Court, however, **rejected the second appeal** stating that his sentence was lawful and proportionate.

Source: *The Local*



Iraq

June 2018

The Court of Baghdad sentenced a French woman to *life imprisonment* for **membership in ISIL**. Earlier the woman had been sentenced to *seven months in prison* for **illegal entry** and **was to be deported back to France, but the Baghdad Court ordered a retrial** for her link with ISIL. The woman argued that she was coerced by her husband who wanted to join ISIL and threatened to take their children with him. Since three of the four children reside in France, the defence asked the French authorities to make her able to complete her sentence in France, but this request was refused.

Source: The Local

II. Amendments in Legislation

May - August 2018

1. EU

European Council

July 2018

Council Decision (CFSP) 2018/1000 of 16 July 2018 amending Decision (CFSP) 2016/1693 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them was adopted. The Decision amends the Annex to Decision (CFSP) 2016/1693 by adding one person to the list set out in its Annex.

Source: Official Journal of the European Union

Council Implementing Regulation (EU) 2018/999 of 16 July 2018 implementing Regulation (EU) 2016/1686 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them was adopted. The Regulation amends Annex I to Regulation (EU) 2016/1686 by adding one person to the list set out in its Annex.

Source: Official Journal of the European Union

European Commission

May 2018

Commission Implementing Regulation (EU) 2018/733 of 17 May 2018 amending for the 284th 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' and two entries under the heading 'Legal persons, groups and entities'.

Source: Official Journal of the European Union

June 2018

Commission Implementing Regulation (EU) 2018/816 of 1 June 2018 amending for the 285th 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



Commission Implementing Regulation (EU) 2018/855 of 8 June 2018 amending for the 286th 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 'Legal persons, groups and entities'.

Source: Official Journal of the European Union

Commission Implementing Regulation (EU) 2018/888 of 21 June 2018 amending for the 287th 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 two entries under the heading 'Natural persons'.

Source: Official Journal of the European Union

August 2018

Commission Implementing Regulation (EU) 2018/1138 of 13 August 2018 amending for the 289th 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

Commission Implementing Regulation (EU) 2018/1204 of 27 August 2018 amending for the 290th 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 three entries 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 terrorist attack in Turku, Finland, committed by one single perpetrator acting in the name of ISIL, killing two persons and injuring eight others. In the pre-trial phase of this case, Eurojust facilitated the execution of an MLA request from Finland to another EU Member State. The analysis focuses on selected aspects of the judgement, rather than covering all issues and arguments considered by the court. The intention is to help practitioners by highlighting issues that are of relevance in the context of the judicial response to attacks committed by 'lone actors'.

Procedure: Varsinais-Suomi District Court⁵

Date of decision: 15 June 2018

Brief description of the facts

On 18 August 2017 a man of foreign nationality residing in Finland killed two women and severely injuring eight other people in the city centre of Turku, Finland. The attack was carried out using two knives that the defendant carried in a bag. Prior to leaving his apartment in the vicinity of Turku, the defendant took a picture of himself. Having arrived to Turku, he visited a mosque, where he had a discussion in which he expressed views in favour of radical Islam. In a park in the city centre he subsequently filmed himself with his mobile phone, reading a manifest that he had written the night before, a hand written document containing Quranic texts and views corresponding to those of ISIL. He immediately shared his video message with discussion forums on the Telegram instant messaging service and later uploaded the ISIL flag on his Facebook account. Having arrived to the central market square, the defendant carried out his attack by first stabbing a woman in her back and then cutting her throat, shouting 'Allahu Akbar'. The defendant continued his attack while running through the city centre. The defendant was holding a knife to a woman's throat when the police arrived and shot the defendant in his leg, after which he was arrested.

The charges

The suspect was charged with two murders committed with terrorist intent (pursuant to Chapter 34a, Section 1(2) and Chapter 21, Sections 1 and 2 of the Finnish Criminal Code) and eight attempted murders committed with terrorist intent (pursuant to Chapter 34a, Section 1(3) and Chapter 21, Sections 1 and 2 of the Finnish Criminal Code).

⁵ The Operations Department would like to thank the National Desk of Finland at Eurojust for kindly providing a copy of the judgement.

The evidence

The Court heard the defendant, as well as victims and witnesses of the attack. The defendant admitted to killing the two women. With regard to the first victim, the defendant also admitted that his intention was to deprive her of her life. In relation to the second deceased victim, the defendant admitted killing her, however denying that the act was premeditated or committed in a particularly brutal or cruel manner. The defendant further admitted the attempted manslaughter in relation to the other eight victims, but denied the act being premeditated or committed in a particularly brutal or cruel manner. While not admitting that the intention was to kill these eight victims, he was aware that by hitting the victims with a bladed weapon, he should have realised that the likely consequence of his act would be the death of his victims.

In addition to other evidence, the Court admitted the video containing the defendant's manifest, as well as the upload of the video on Telegram into evidence. The Court also relied on other evidence found on the defendant's phone, including pictures and his YouTube viewing and search history.

The ruling of the court

The Court was faced with two main questions: first, whether the acts committed by the defendant constituted (attempted) manslaughter or (attempted) murder and, second, whether the crimes were committed with terrorist intent.

(Attempted) murder

Pursuant to Chapter 21, Section 2 (1) of the Finnish Criminal Code, four alternative provisions set out the situations in which (attempted) manslaughter is considered (attempted) murder. The Court considered two provisions for the purpose of this case: 1) whether the offence was premeditated; and 2) whether the offence was committed in a particularly brutal or cruel manner. In addition, Section 2 provides that the offence has to be considered aggravated when assessed as a whole. Based on case law, manslaughter is premeditated, for instance, when the offence is planned prior to the act and tools have been acquired for its commission. Importance has also been given to the question whether the perpetrator made any death threats before committing the crime and whether these were to be taken seriously.

Premeditation

When assessing premeditation, the Court noted that the prosecution and defence disagreed about when the defendant had started to adopt radical views. While the prosecution held that he had developed into this direction as of the beginning of 2017 and by the summer of 2017 was heavily engaged with ISIL ideology, the defence argued that he only had got acquainted with the topic out of interest. According to the defence, it was only the night before that the defendant, affected by strong emotions, had decided to carry out the criminal acts without further planning of the event.

The Court found that the defendant had developed the thought about some kind of act following radical Islamist methods for a longer time. The evidence showed that the defendant's behaviour started to change in spring 2017, by which time he started to present views that highlighted the infidelity of the Finns and to visit the mosque more frequently. The defendant had also discussed with a witness about the terrorist attack that took place in Barcelona in 2017, being proud of the fact that these events had taken place and showing respect for the perpetrators.

The Court further referred to the many pictures of executions, as well as of dead and wounded people, that were stored on his mobile phone together with 582 pictures of the ISIL flag, explosives and guns, among other things. The phone also contained instructions on explosives and guns, as well as on tools that could possibly be used for carrying out a terrorist act. The defendant had also used his phone to search for earlier terrorist attacks and instructions for producing a bomb on YouTube. The Court concluded that a contributing factor to the defendant's development in this direction could have been the negative decision that he received to his application for asylum in Finland.

Despite the evidence presented on this issue, the Court questioned whether the fact that the defendant had cherished these radical thoughts could qualify as premeditation for the purpose of the (attempted) murders. Instead, the Court held that the most significant factor for the decision on whether the offences were premeditated was the manifest that the defendant had written the night before the attack. The fact that the manifest mainly consisted of borrowed materials presupposed that the defendant had acquainted himself with the source materials. The manifest, thus, could be considered the climax of the defendant's radicalisation process. Presenting a manifest or a kind of testament through a video message is typical practice in the context of terrorist acts committed on behalf of ISIL and the Court found this to be an important factor when evaluating the premeditation element of the offences at hand. The fact that he had brought the knives that he used as weapons from his home, together with the publication of the manifest through the Telegram network's messaging service, showed that the defendant had decided to commit a crime in line with ISIL's mode of operation. Also the uploading of the ISIL flag on his Facebook page supported the opinion of the Court that the offences were premeditated.

The Court gave very limited evidentiary weight to the various statements of the defendant, including the statement about his intention to kill two persons and to remove the victim's head and have it photographed by a security camera. The Court further held that the events as they developed after he had attacked the first few victims could not have come as a surprise to him and, thus, all the (attempted) manslaughters were premeditated.

Particularly brutal or cruel

Having found that the crimes were premeditated, the Court considered the second provision of Chapter 21, Section 2(1) of the Finnish Criminal Code, pursuant to which (attempted) manslaughter is considered murder if the crime was committed in a particularly brutal or cruel manner. Case law indicates that when assessing the brutality of the crime, the use of different tools, several times, has been considered important to show the determination of the perpetrator and a persistent aspiration to commit the killings. When assessing cruelty,

importance has been given to whether the killing was meant to cause agony or to prolong the act to increase the agony.

The court found that the crimes committed by the defendant were committed in a manner which was both brutal and cruel. The defence expressed the view that the defendant by the end of the events had stabbed his victims only to enable him to escape. This view was not supported by the evidence at hand. The Court also noted that the defence had stated that the intention of the defendant was not to escape but to be killed by the police at the end of the events.

According to the prosecution, by shouting “Allahu akbar” during the attack the defendant wanted to induce fear. The defence, however, held that by shouting the defendant wanted to encourage himself. The Court held that whichever explanation lay behind the shouting, it could be considered as expressing such determination of the defendant that supported the finding of the crimes being committed in a particularly brutal manner.

When assessing the gravity of the crimes as a whole, the Court took into consideration the fact that the crimes were arbitrarily committed against several people, in a public space and at a busy time of the day. It subsequently concluded that based on the large number of victims, the lack of mitigating circumstances and the arbitrary choice of victims for carrying out crimes in accordance with a model corresponding to previous, similar crimes committed in Europe, the offences were to be considered aggravated crimes for the purpose of Chapter 21, Section 2 of the Finnish Criminal Code. The defendant was, thus, guilty of two murders and eight attempted murders.

Terrorist intent

The Court continued by assessing whether the (attempted) murders were committed with terrorist intent, pursuant to Chapter 34a, Sections 1(2) and 1(3) of the Finnish Criminal Code. This assessment was also based on Chapter 34a, Section 6, which defines terrorist intent, i.a. as the intent of the offender to cause serious fear among the population. By fear in this context the Court understood the general, well-founded fear among the population that private interests such as life, health, freedom and bodily integrity, or public interests, such as the constitution or the environment, are endangered. A decision as to how generally spread that fear should be is to be made on a case by case basis. The Court also referred to the fact that terrorist intent as laid down in Chapter 34a, Section 6, is a special category of intent that includes a requirement for an elevated level of intent that is higher than the general requirement for intent.

The Court built on its earlier findings and noted that the defendant perceived himself as a promoter of ISIL’s cause and an implementer of the jihad as carried out by this organisation against infidels. It further pointed to the extreme and cruel violence carried out in the name of ISIL and to the propaganda spread by the organisation, one of the aims of which was to spread fear. The defendant had prepared for the attack by publishing a manifest that expressed the ideological and political background and objectives of ISIL, as well as aspirations to promote its goals. By drafting and publishing the manifest the defendant aimed to ensure that his ideological motives became known to other people supporting the same views. By doing this, he wanted his acts to be part of a continuation of other terrorist acts committed in the name of ISIL.

Additionally, the defendant directed his acts against civilians in a random way which could have made anyone a victim. The manner in which the crimes were committed resembled the terrorist attacks carried out in Europe in the past years, including in Nice, Berlin, London and Stockholm. The Court held that the aim of such attacks is to inflict serious fear and that such fear is at least not reduced by the fact that the violence was directed primarily against women.

Keeping in mind the number of terrorist acts and the violence involved, the Court considered it well-founded that acts carried out in the name of ISIL led to a serious fear among the population that private interests related to life, health or bodily integrity would be endangered. The Court found that the defendant had specifically intended to inflict such fear and, thus, he was convicted of two murders committed with terrorist intent and eight attempted murders committed with terrorist intent.

The penalty

The defendant was convicted and sentenced to a cumulative sentence of life imprisonment. The defendant was further liable to pay damages to the victims.

IV. Topic of Interest

Retweeting a message with a terrorist content

The request to Eurojust

In December 2017, the Public Prosecution Office of the Court of Appeal of The Hague in the Netherlands requested Eurojust's assistance in relation to a specific point of law concerning public incitement to terrorism and relevant jurisprudence across Europe. The request related to a case in which an appeal was submitted against the judgement of the District Court of The Hague, dated 10 December 2015, by which eight men and one woman were sentenced to prison terms of up to six years.⁶ Six men were convicted of participation in a criminal organisation with a terrorist objective, the other two of incitement and participation in a Syrian training camp, respectively. The woman was found guilty of posting an inciting retweet and sentenced to seven days' imprisonment.

In particular, the request to Eurojust concerned the question of whether retweeting a message could be considered as endorsement of its content.

The ruling of the first instance court

When assessing the communications and files disseminated via social media, the District Court of The Hague acknowledged that *'the principle with regard to Twitter is that retweet is not endorsement. This entails that retweeting a message which in itself is considered inciting is, in principle, not punishable under Article 131 D[utch] C[riminal] C[ode]. This conduct does fall within the scope of Article 132, however. This is different if it turns out from the accused's comment to the retweet that he endorses its contents, or if the retweet fits in with a series of the accused's messages of a similar nature and/or purport within a certain period. The same is true for sharing a hyperlink.'* In the case of the female defendant, for example, the court found that she retweeted a message that *'... does not just glorify the armed jihadi struggle in Syria, but also the - apparently Dutch - fighters participating in it. It is suggested that taking part in that struggle is worthy of emulation and that dying during that struggle is the highest attainable goal and should therefore be imitated. In that sense the speech contains, in the court's opinion, an incitement to participate in the armed jihadi struggle in Syria.'* As she retweeted the message without comment, the court acquitted her of incitement, as referred to in Article 131 of the Dutch Criminal Code. The court, however, found it proven that she disseminated an inciting message.

In the case of another defendant, the court found that he adapted some inciting speeches to videos, by adding an intro and outro, as well as music. He then posted them on a website without

⁶ A translation of the judgement into English is available at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:16102>

any access restrictions. In the opinion of the court *'[b]y doing so, he endorsed the contents of the video (which would not have been the case if he had just retweeted or shared a hyperlink)'*. The man was found guilty, among other things, of incitement by posting these publications.

Eurojust's findings

Based on judgements summarised in recent issues of the TCM, as well as consultation with the National Desks, Eurojust prepared a note shared with the prosecutor in charge. Some highlights of the note are presented below.

European legal framework

In its Preamble, Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 states:

'(9) The offences related to terrorist activities are of a very serious nature as they have the potential to lead to the commission of terrorist offences and enable terrorists and terrorist groups to maintain and further develop their criminal activities, justifying the criminalisation of such conduct.

(10) The offence of public provocation to commit a terrorist offence act comprises, inter alia, the glorification and justification of terrorism or the dissemination of messages or images online and offline, including those related to the victims of terrorism as a way to gather support for terrorist causes or to seriously intimidate the population. Such conduct should be punishable when it causes a danger that terrorist acts may be committed. In each concrete case, when considering whether such a danger is caused, the specific circumstances of the case should be taken into account, such as the author and the addressee of the message, as well as the context in which the act is committed [...]

Furthermore, Article 5 *Public provocation to commit a terrorist offence* reads: *'Member States shall take the necessary measures to ensure that the distribution, or otherwise making available by any means, whether online or offline, of a message to the public, with the intent to incite the commission of one of the offences listed in points (a) to (i) of Article 3(1), where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed, is punishable as a criminal offence when committed intentionally.'*

Selected national legal provisions

Finland does not have any court practice on whether forwarding a tweet inciting to terrorism or an offence is public incitement to an offence. However, according to the legislative Proposal of the Government (HE 6/1994 vp), it is possible that exhortation or incitement indicated in section 1, chapter 17 of the Finnish Criminal Code, can also be received indirectly, for example

through news reporting on the exhortation or the incitement. Therefore it is not completely excluded that sending a tweet forward ('retweeting') could constitute an offence in Finland.

Germany The retweeting in the case of recruitment of members or supporters of a terrorist group could be considered a criminal offence under section 129a, paragraph 5 of the German Criminal Code (StGB) if the retweeter makes the content of the tweet expressly or implies his own.

However, the German legislator limited the criminalisation of propagandist acts of non-members pursuant to section 129a, paragraph 5 StGB to cases of recruiting members or supporters of the organisation. Merely standing up for a terrorist group, justifying its goals or the criminal offences committed by it does not constitute a criminal offence. The mere justification of terrorism is, strictly speaking, not punishable. This distinction between the expression of sympathy and recruiting for or support of a terrorist organisation is important to safeguard the fundamental principles of freedom of speech and freedom of religion. As a result, it only fulfils the requirements of section 129a, paragraph 5 StGB if the retweet of someone else's picture/video/tweet is used to recruit or to support a terrorist organisation.

Furthermore, the German Criminal Code represses the dissemination of a violent ideology by other criminal provisions like section 130 StGB (Incitement to hatred), section 130a StGB (Attempting to cause the commission of offences by means of publication), section 131 (Dissemination of depictions of violence), section 140, paragraph 2, no.2 StGB (Public Praising a criminal Act) and the dissemination of propaganda material of unconstitutional or banned organisations (section 86, 86a StGB; section 20 of the Law on Associations).

Hungary In the absence of case law on Twitter and retweeting, a parallel can be drawn with Facebook messages. In this sense, a retweet could be interpreted as spreading/distributing the message, which is an element of the crime of defamation. A more active contribution from the perpetrator is needed for the act to qualify as incitement.

Switzerland There is no relevant recent jurisprudence. The resending or distribution via internet platforms of messages with terrorist content or supporting terrorism is considered endorsement if the perpetrator adds comments. In Switzerland, there is no specific provision relating to terrorism/terrorist organisations. The prosecution is initiated on the basis of participating in, or supporting, a criminal organisation.

Selected national jurisprudence

A. Retweet is a criminal offence in itself

Spain A defendant charged with glorification of terrorism was sentenced to one year and six months' imprisonment by the National Court. In ruling 706/2017, the High Court refused the application for leave to appeal against the conviction. The applicant argued that:

- the images and videos he reproduced were not part of a message, reasoning or argument of their own, but existed previously in the media, since 'retweet' means to reproduce what pre-existed;

- the mere reproduction of images cannot constitute a justification of the crimes included in the Criminal Code, much less an incitement to violence;
- the reproduction of a video does not constitute a crime because it is not the accused that appears in the video, records it, or uploads it on the internet; and
- this crime does not exist if there is no public or expectation, not only potential, but real; although the publications were made 'open', there is no evidence that anyone has seen them.

The court ruled that:

- it is not necessary that the defendant assumes as his own, justifies, or argues in favour of, the image and his message, or that he is the one who created it; it is sufficient that in one way or another he enables access to it and advertises it, spreading the message to a lot of people;
- it is not relevant that the photo is taken by a third party if the defendant is the one who collects and sends it to the public network;
- it is not necessary for the accused to participate in the video, or to record it; it is sufficient that it is likely to enhance the criminal actions; and
- the accused spread the images and messages in a network (Twitter) without any access restrictions; he had 121 followers, who can also further spread them to third parties, and so on.

United Kingdom⁷ On 11 June 2015, a 22-year-old woman was given a three-and-a-half-year prison sentence for having uploaded 45,600 Tweets and posted images on Instagram showing beheadings of prisoners and corpses of soldiers. The messages she had posted glorified jihad and encouraged mothers to support their children in travelling abroad to join jihad and become martyrs. The judge was reported to have stated that, although she had copied and pasted all the materials from other sources, the materials and their dissemination were important factors in encouraging young men and women to travel to Syria and engage in terrorist acts.

On 31 March 2017, Leeds Crown Court found a woman guilty of distributing a terrorist publication likely to encourage people to participate in terrorism, and sentenced her to 21 months' imprisonment, suspended for two years. The woman had retweeted a speech by an ISIL leader. Her account had 30 followers at the time.

B. Distribution of terrorist propaganda or messages via social media

Austria On 10 December 2014, the Regional Criminal Court of Vienna found one defendant guilty of condoning and approving crimes and gave him a two-month sentence. He had been prosecuted for having **posted material on his Facebook page**, which incited violence against a certain group of people based on their religion.

⁷ The information on the two judgements that follow has been found in open sources.

On 17 November 2015, the St. Pölten Court sentenced a defendant to 18 months' imprisonment, with three years' probation, after it found him guilty of participation in a terrorist organisation. The defendant confessed his role in the **distribution of propaganda videos, speeches of ISIL leaders and videos of executions carried out by ISIL**. The materials had been distributed on **Facebook and in a WhatsApp group** between April 2014 and March 2015.

Spain By sentence 11/2016 of 12 May 2016, section 2 of the National Court found one defendant guilty of glorification of terrorism and sentenced him to one year's imprisonment. He had **used his Facebook account to publish comments on ETA-related images posted by other users**. The images included photographs of an ETA leader and imprisoned ETA members.

On 16 November 2016 the National Court 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 retweet and resend seven messages containing images and texts praising terrorist organisations** in Spain.

Belgium The Court of First Instance of Brussels heard the case against a defendant who had posted numerous publications in social networks. He claimed that he was not radicalised but limited himself to challenging the legitimacy of the Syrian president and ISIL by disseminating material that was unfavourable to them, regardless of its origin. The court confirmed that mere membership of a terrorist organisation is not punishable. However, participation in an activity of a terrorist group or support of any kind is punishable provided that the person is aware of the group's terrorist nature. The concrete acts of participation sanctioned by law are not limited solely to acts of recruitment, material aid, financing or joining the ranks of a terrorist group. The indoctrination, encouragement and moral support given to people who wish to visit the area or who are already there also constitute substantial aid to terrorist groups. In the present case, the investigation and analysis of the defendant's Facebook account established that he adhered to the Salafist jihadist ideology promoted by Jabhat al-Nusra.

The Court of First Instance of Hainaut, Charleroi division, heard the case of a man who had **retweeted a number of ISIL propaganda messages and videos**. He had also systematically downloaded and saved stored propaganda material found on the internet and originating from propaganda bodies affiliated to ISIL. The court found that by acting as a relay in disseminating ISIL propaganda via Twitter and ensuring it had been stored before its removal from the internet, which can only be considered as the will to ensure the continuity of ISIL propaganda, the defendant had committed acts that could be qualified as support to ISIL insofar as its recruitment activities are concerned.

In a ruling of 28 June 2017, the same court found that a defendant **actively engaged in ISIL propaganda and advocated the ideas and actions of the terrorist group via Facebook and Telegram** by encouraging potential jihadists to travel to Syria and join the ranks of ISIL or by strengthening their convictions and advising on how to do so.

Norway On 19 January 2018 the Borgarting Court of Appeal found one defendant guilty of participation in, recruiting members into, and financial/material support to a terrorist organisation. Both **tweets and retweets were part of the evidence used by the court**. The

tweets/retweets where supported by several other pieces of evidence. The judgement is pending appeal.

United Kingdom On 10 November 2011, the Court of Appeal issued a judgement (2011/02025/C5) convicting an offender for selling through his website a publication entitled the 'Anarchist's Cookbook'. According to the court, there is no unacceptable interference with his rights to freedom of speech and freedom of expression under the European Convention on Human Rights. A criminal act of distribution or circulation of a terrorist publication under section 2 of the Terrorism Act 2006 could not be saved by the principle of freedom of speech. According to Section 2 of the Terrorism Act 2006, subsection 2(e), it is prohibited to transmit the contents of a terrorist publication electronically. Proof of a terrorist purpose is not required. The crime may be committed intentionally or recklessly, it is immaterial that the motive may be financial reward or greed rather than ideological commitment.

Concluding remarks

According to Directive (EU) 2017/541, and decisions of national courts, the action of dissemination of messages or images online shall be considered a terrorist offence under national law. In this respect, it is not required to be the author or to add commentaries.

An important factor is whether the dissemination has the potential to lead to the commission of terrorist offences and enable terrorists and terrorist groups to maintain or develop their criminal activities, justifying the criminalisation of such conduct. The specific circumstances of the case, such as the author and the addressee of the message as well as the context, are to be taken into consideration, but not the originator of the message.

Whether this action should be qualified as recruitment, as evidence of the crime of membership of a terrorist organisation, endorsement, glorification, incitement or any other terrorist offence, depends on the context of the specific wording and the definition of those criminal offences in each Member State.

The ruling of the Court of Appeal of The Hague

In its ruling of 25 May 2018, the Court of Appeal of The Hague held that the defendant (re)tweeted several messages in the period 15 – 23 September 2013, as described in the indictment; on 29 July 2014 he also tweeted about an ISIL video. The court deliberated whether these (re)tweets could be qualified as inciting in the meaning of the law.

The court held that it could be considered inciting if criminal acts – in this case participation in the armed fighting in Syria – are directly encouraged. It is not decisive whether someone feels encouraged to go so, but whether the statements are such that they could bring someone to do it.

The court held that influencing in an indirect manner can also be inciting, namely by certain statements that aim to spiritually prepare for the commission of criminal acts. The statements must be intended for those who are prone to them, because, for example, they are influenced easily or consider travelling to Syria to join ISIL or Jabhat al-Nusrah. Expressing appreciation for

the battle of terrorist groups in Syria and admiring those who fight in their ranks implies that participation in such fighting deserves to be followed and is therefore inciting. Glorifying martyrdom in this fighting is an expression of such an intense admiration that can in itself encourage followers.

The court did not consider separately each of the social media messages posted by the defendant but assessed them as a whole. With regard to one of his Twitter accounts, the court could not judge whether and to what extent it was created for a reason other than the regular, namely to tweet. The court took into account the choice of topics but held that based on this it could not be concluded that the Twitter account was intended to be used to place inciting messages.

However, the court ruled that three tweets posted on 19 September 2013 could be considered inciting as, read together, they glorified the violence, martyrdom and battle of Jabhat al-Nusra in such a way that they could inflict someone to participate in the armed fighting in Syria. Another message about an ISIL commander, who died as a martyr, posted on 23 September 2013, was also considered inciting.

Regarding the defendant's Facebook account, the court ruled that the posted or shared messages in the period between 1 December 2013 and 3 February 2014 concerned Islam, jihadism, radicalisation and violence. Among the messages, several were of inciting nature (concerning, for example, martyrs). According to the court, shared messages that may not be inciting were considered as such, since they were posted or shared on a Facebook profile with such a scope.

The court took into consideration the fact that the objective of social media is to find audience and attract followers to read and, preferably, to 'like' the shared posts and their underlying message. The fact that the posts could be repeatedly viewed also played a role in the inciting nature of the Facebook page of the defendant. As messages posted on Facebook do not disappear by themselves, the inciting nature was reinforced by the making the 'content' permanently accessible.

The court held that in this case the uploading of files on Twitter and Facebook was to be considered the same as spreading those files.

The Court of Appeal found the man guilty of membership in a criminal organisation with a terrorist objective, inciting a terrorist offence and spreading of such material and sentenced him to a prison term of five-and-a-half years.

V. The Way Ahead

Ongoing/Upcoming Trials

May - August 2018

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.

Belgium

A suspected **accomplice of the terrorist bombings at the Brussels Airport and metro** in March 2016 was **indicted**. The man, a 24-year old Tunisian, *has already received a punishment of 20 years* for a shoot-out with the police prior to his arrest. He is also suspected to be linked to the November 2015 terrorist attacks in Paris and Saint Denis. The man is charged with **participating in the activities of a terrorist organisation**.

Source: 20 Minutes

The Belgian authorities were to receive two men surrendered by France and Germany. Both men, one of which is an **Iranian diplomat**, are **accused of being involved in the planning of a bombing of an Iranian opposition convention** in Paris. Some time ago, a Belgian couple with Iranian roots was arrested for the possession of 500 grams of TATP and a detonation device, allegedly on their way to the convention.

Source: Reuters

Denmark

In Copenhagen a man is **suspected of being involved in the planning of both knife and bomb attacks** in the city. The Danish police stated that the man had linked up with a 21-year-old Syrian to carry out the attacks. The 31-year-old suspect, who applied for asylum in Sweden, denies the charges.

Source: The Local

France

An ex-spy of the Norwegian intelligence was arrested and charged with **financing a terrorist enterprise**. He worked as a security officer at the Syrian plant of a cement-making enterprise that allegedly dealt with ISIL and other jihadist groups in Syria. **All seven executives of the**

company were charged on similar bases, since they kept the plant open even after Assad's forces lost control over the area in which it was located.

Source: RFI

The **Belgian authorities handed over a suspect of the 2015 Paris attacks and 2016 bombings** to France. The man, a 25-year-old Swede with Syrian roots, will be questioned in relation to his alleged link with both terrorist attacks. He is thought to be the man that either bought the bags used for the bombing, or manufactured the bombs himself. During his two-year custody in Belgium the man has repeatedly denied his involvement.

Source: France 24

The French Homeland Security police arrested a couple in Southern France. Both of them were supporters of a radical Islamist extremist movement. The couple was placed under surveillance for several weeks during which the man looked up tutorials for making bombs and repeatedly expressed his desire to take action. The woman was released after 72 hours of custody, while her husband has been **charged with criminal terrorist conspiracy and unauthorised manufacturing of explosive devices**.

Source: La Depeche

Italy

The Italian anti-terrorism police dismantled a **criminal migrant smuggling organisation that used its proceeds to fund armed groups, mainly Jabhat al-Nusrah**. 13 of the 14 members of the organisation were arrested. The police had also been tracking the money laundering activities of the organisation, which amounted in total to about EUR 2,000,000, sent to various Islamist extremist groups.

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

The hearing of a suspect of an Italian of Moroccan origin, which is widely covered in the media, is expected to commence on 16 October 2018. The man was arrested on 28 March 2018, suspected of being a **member of ISIL, planning to use trucks for attacks and seeking 'lone wolves' to carry them out**. The suspect is known for writing the first ISIL propaganda message in Italian. *On 13 July 2018 the Prevention Measures Section of the Court of Turin ordered special surveillance for a period of five years, with the obligation to stay within the municipality of residence.* The suspect was previously arrested **in 2015 and convicted for glorification of terrorism** to two years prison after a *plea bargain*.

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

The Netherlands

The Dutch police have arrested three men who have links with an **ISIL hideout in France**. The men are respectively 26, 30 and 53 years old. They all have the Dutch nationality. A fourth suspect, who also has links with the French ISIL hideout, is already in jail for his involvement in violent crimes. According to the Dutch prosecution office, the suspects are linked with various other arrests of terror suspects.

Source: NOS

United Kingdom

A 26-year-old male, who was arrested earlier this year whilst trying to travel to the Philippines, has **pleaded guilty to planning a terrorist attack** by driving a van into pedestrians outside a Disney Store in Oxford Street in London. The man also **admitted** that he set up a fake Facebook account 'Antique collections' which he used **to send funds to a contact of ISIL** in the Philippines. The Central Criminal Court of England and Wales has taken note of the guilty plea and will hand down a sentence on 2 November 2018.

Source: ITV

