



EUROJUST Report

# Terrorism Convictions Monitor

Issue 14 October 2012





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## Introduction

**The Terrorism Convictions Monitor (TCM)** is intended to provide a regular overview of the terrorism-related developments throughout the EU area. The Monitor has been developed on the basis of **open sources information** available to the Case Analysis Unit (CAU) 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 also information exclusively provided to Eurojust by the national authorities of three EU Member States by virtue of Council Decision 2005/671/JHA.**

Issue 14 of the TCM covers the period **May-August 2012**. It contains a judicial analysis of a court decision from June 2012 as well as reference to a concluded trial related to violent single issue extremism (VSIE) and/or animal rights extremism (ARE) in the reporting period. A detailed study of a topic of interest is also included.

The present report develops further the changes in the TCM's format and contents, which have been brought forth on the basis of the input received from the Eurojust national correspondents for terrorism matters and introduced in the previous issue of the report. Special attention is given to the type of convicted terrorist offences, which constitutes a new aspect of the analysis provided. Some further focus areas are envisaged to be introduced in the next issues of the report. Navigation through the chapters is also made easier through clickable cross-references on top of every odd page.

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. In cases where such a confirmation and/or follow-up is needed, a special icon  will appear. The respective National Desks will be further contacted for specific details. In cases where the information has already been provided, it will be noted by a .

The Eurojust national correspondents for terrorism matters are invited to provide information on an ongoing basis to Eurojust, in conformity with Council Decision 2005/671/JHA.

## I. Court Decisions

### 1. Convictions/Acquittals per Member State May – August 2012

#### Belgium

June 2012

The District Court of Brussels found six defendants guilty of **participation in the activities of a terrorist group**. The case concerned activities carried out in the framework of Al Qaida and involved a number of websites that were used for the purposes of recruiting people for jihad. The leader of the group, convicted also of unlawful possession of firearms, was sentenced to eight years' imprisonment and ordered to pay a €5,000 fine. He was handed down a three-year sentence for leading an organisation established with the aim of attacking persons or property and for an attempt to steal money. An eight-year sentence was imposed to another man, also believed to have had a leading role. The court underlined his role in the administration of a fundamentalist website, which called for jihad and contained videos of beheadings. Another defendant received five years' imprisonment and a fine for his participation in the terrorist activities, and two more were handed down sentences of three years each. The sixth convicted man was sentenced to thirty months' imprisonment. All the convicted persons had to pay a sum of money to the Fund for Victims of Intentional Crimes. One defendant was acquitted by the court (*for further details on the court decision, please see Chapter IV. Judicial Analysis*).

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



#### Denmark

June 2012

The Glostrup City Court found four defendants guilty of terrorism and sentenced them to twelve years' imprisonment each. They were arrested in December 2010 on allegations of **preparing a violent attack** on the Danish newspaper Jyllands-Posten, which published cartoons of the prophet Muhammad in 2005. The men, who had been placed under surveillance by the Swedish and Danish intelligence agencies, denied the charges. They travelled from Stockholm to Copenhagen at the end of December 2010. Three of them were arrested on the following morning in Denmark and the fourth one later that day in Sweden. The police found two automatic weapons, 122 rounds, and more than \$20,000 in cash. According to the prosecution, the mastermind of the plot had received terrorist training in Pakistan in the period 2008-2010, while another member of the group was arrested in Somalia and Pakistan in 2007 and 2009 on suspicion of terrorist activities but was never charged.

Source: [The Washington Times](#).



## France

### May 2012

A Paris court found one defendant guilty of **criminal association with the intent to prepare terrorist acts** and sentenced him to five years' imprisonment, one of which suspended. The man, a former particle physicist, who was a researcher at the European Organisation for Nuclear Research (CERN) in Switzerland, had been under surveillance by the French intelligence. The charges against him were based on his 2009 online correspondence with a representative in Algeria of Al Qaida in the Islamic Maghreb (AQIM). The correspondence, consisting of about three dozen messages, some of which encrypted, was carried out via an Internet forum dedicated to radical Islam. In the message exchange he suggested targets for terrorist attacks in France but claimed to the French authorities that he never intended to act on his words. According to the police and the intelligence agency, he was planning an attack on the base of a French Alpine infantry battalion deployed in Afghanistan. The French anti-terrorism legislation allows authorities to intervene in the planning stages of terrorist plots. The criminal association conviction in this case is reported to be the first based solely on Internet activity.

Source: [The New York Times](#).



At a trial in Paris a group of six alleged members of an ultra-left anarcho-autonomous group were brought to court on suspicions of having **plotted terrorist acts** between 2006 and 2008. According to the prosecution, their objective was to destabilise the state and seriously disturb public order by intimidation or terror. Their radicalisation was reported to be related to some labour issues as well as the election of Nicolas Sarkozy for president in 2007. The six, who denied all charges, were found guilty and imposed prison sentences of between one and three years.

Source: [Europe1](#).



## Germany

### May 2012

The Koblenz State Court found one defendant guilty of **membership of a terrorist organisation** (Al Qaida) and sentenced him to six years' imprisonment. The man was captured by U.S. troops in Afghanistan in 2010 and provided information on alleged Al Qaida plots targeting European cities. As a result, Germany and other European countries raised their alert levels around Christmas in 2010. According to the court, the man trained in terrorist camps on the border of Pakistan and Afghanistan but there was no evidence that he was part of any plans for an attack.

Source: [Fox News](#).



### June 2012

The Stuttgart State Court convicted a former member of the left-wing terrorist group Red Army Fraction (RAF) of **being an accessory to the murder** of a federal prosecutor and sentenced her to four

years' imprisonment. The murder of the prosecutor, his driver and bodyguard took place in Karlsruhe in April 1977. During that same year the defendant was sentenced to life imprisonment for shooting a police officer during her arrest but a dozen years later was pardoned by the then German president. Before its dismantling in 1998, the RAF killed thirty-four people and injured many more in a number of bomb attacks and assassinations. Its targets included high-level German civil servants and corporate executives as well as U.S. military installations.

Source: [Spiegel Online](#).



### Ireland

#### May 2012

The Special Criminal Court found one defendant guilty of **membership of an unlawful organisation** (IRA) and sentenced him to five years' imprisonment. He was arrested as part of an investigation into dissident republican activity following the discovery of some guns and ammunition. The man admitted he was a republican and a former member of Sinn Féin but denied the charges of IRA membership. The sentence was backdated to 1 January 2012.

Source: [Irish Examiner](#).



#### July 2012

At a trial at the Special Criminal Court one defendant was convicted of **unlawful possession of a firearm** (a Webley revolver) and given a seven-year sentence. The police found the gun under a seat in his car during a routine patrol. The man had ten previous convictions, including one for membership of an unlawful organisation from 1999, for which he was sentenced to four years' imprisonment. The court considered the fact that the defendant did not contest the trial as a mitigating factor.

Source: [Independent](#).



#### August 2012

The Special Criminal Court convicted one defendant of **membership of an unlawful organisation** (IRA) and sentenced him to five years' imprisonment, with three years suspended. He was arrested in August 2010 when the police stopped two cars, driving in convoy, loaded with a 12-gauge sawn-off shotgun, two balaclavas, two shotgun cartridges and a Halloween mask. During the trial, the defendant entered a guilty plea and undertook under oath to disassociate himself from the unlawful organisation. The man was released on bond as the judge backdated the beginning of the sentence to the date of the charge.

Source: [Argus](#).





## Italy

### May 2012

The Appeals Court in Milan pronounced its decision in relation to a case of alleged members of the new Red Brigades – Partito Comunista Politico-Militare (PCPM). In 2009 they were found guilty of a number of offences, including promoting, establishing, organising, directing or financing associations aimed to violently subvert the economic or social order, or the political and judicial order of the state through the execution of terrorist acts. The convictions were over accusations of planning to commit attacks and plotting against a labour ministry consultant working for the government on labour reforms, allowing companies to lay off employees more easily. Sentences of up to fourteen years and seven months were imposed. Following the appeal filed against the convictions, the Assize Court of Appeal concluded in 2010 that the existence of an association with subversive and terrorist aims was completely confirmed. The decision of the court was important also with a view to the possible charges in an ongoing trial in Belgium against four individuals who allegedly participated in the activities of the PCPM. In the beginning of 2012 the Cassation Court returned the case for judicial review. The new trial at the Appeals Court began in May 2012 and was due to consider whether the group was willing and able to use terrorist methods to achieve its programme. At the end of the trial the Appeals Court upheld the earlier conviction that the defendants belonged to an armed band and subversive group but struck down the terrorist charges. The prison terms were reduced accordingly, ranging from two years and four months to eleven years and six months. The court ordered also €100,000 damages to be paid for threats made by group members against the labour ministry consultant.

Source: [Reuters](#).



## The Netherlands

### August 2012

The court in Breda found one defendant guilty of **preparing a bomb attack** and sentenced him to two years' imprisonment. The defendant was arrested in February 2012 in a recreation park in Baarle-Nassau. He was in possession of all necessary materials to make a bomb. He denied the charges, however the court considered it proven that he planned to make the bomb and use it. The man was convicted of similar offences in Belgium in 2011. The court in Breda found him, together with his former housemate, also guilty of drugs possession.

Source: [De Telegraaf](#).



### Portugal

#### May 2012

A court decision, pronounced earlier this year and convicting an alleged Basque militant, became final in May 2012. In January 2012 the court found the person guilty of **belonging to a terrorist organisation, possession of explosives, document falsification, vehicle theft and resisting arrest** and sentenced him to twelve years in prison. The court considered it proven that he had hidden 1,500 kilograms of explosives at an ETA hideout and bomb-making factory in Portugal. This was one of the largest hauls ever linked to ETA. He was arrested in 2010 when he tried to escape to Venezuela with falsified documents (*the decision was reported in issue 13 of the TCM*).

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



### Spain

#### May 2012

At a trial at the Audiencia Nacional one defendant was brought to court on charges of **attack on a security forces officer resulting in death** and **two counts of assassination**. He, together with other members of ETA, had allegedly plotted to kill Guardia Civil officers ensuring the security of a cycling event, which took place in Salvatierra in October 1980. An hour before the event started, they approached three members of the Guardia Civil and shot them dead. In November 2000 the Spanish authorities issued an international arrest warrant against the defendant. He was arrested in October 2005 in France and surrendered to Spain later. The court found him guilty of the indicted offences and sentenced him to a total of eighty-one years' imprisonment. An appeal was submitted on behalf of the defendant.

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



The Audiencia Nacional acquitted one person, who was brought to trial on accusations of **collaborating with an armed group** and **storing explosives**. He was prosecuted in relation to an explosion of a vehicle driven by an alleged ETA member and transporting an explosive device, which took place in September 2002 in Bilbao. Among the debris, the police found keys of his home. Allegedly he had been a member of ETA since the spring of 2002 and dealt with logistic matters. In January 2006 the Spanish authorities issued an EAW, which was executed in March 2011, when he was surrendered by France following the completion of his prison term there. His conviction in France included participation in a criminal association with terrorist purposes, illegal possession of fire arms, etc. The decision of the court became final in June 2012.

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



The Supreme Court considered the appeals submitted by five defendants, who had been found guilty by the Audiencia Nacional in 2011 and handed down sentences of eight or ten years' imprisonment for **membership of a terrorist organisation** (*for details, please see issue 12 of the TCM*). They had been



suspected of directly receiving orders from ETA with regard to the debate on the new strategy to be followed in order to achieve its objectives and establish a socialist state of a revolutionary character. The Supreme Court confirmed the conviction but reduced the imposed sentences to six-and-a-half years for the two leaders and six years for the remaining three appellants. The decision of the court is final.

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



The Audiencia Nacional acquitted one defendant charged with **conspiracy to assassinate, repeated falsification of official documents** (car registration plates), **repeated theft** and **intended theft of vehicles**. He had allegedly been attracted to collaborate with ETA by transporting members of its commands and participating in the preparation of an attack planned against the Guardia Civil barracks in Algorta. The decision of the court is final. In France the defendant had previously been convicted of criminal association with terrorist purposes in June 2007 and of criminal association for the preparation of a terrorist act in June 2010.

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



The Audiencia Nacional acquitted one defendant brought to court on the charge of **terrorist ravage**, for which the prosecution requested a ten-year sentence. He was tried for his alleged role in the planned attack on a bar in Lejona. Due to the intervention of the police, the placed explosive device did not burst. Another person was already convicted in relation to the attack. Following the arrest warrant issued by the Spanish authorities, the defendant was surrendered by France after he served his prison term for criminal association with terrorist purposes. The decision of the court is final.

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



The Supreme Court acquitted one person who had been convicted in 2011 by the Audiencia Nacional of **membership of a terrorist organisation** and sentenced to six years' imprisonment. The court rejected the appeal submitted by two other co-defendants, who had been found guilty by the Audiencia Nacional of respectively **membership of a terrorist organisation** and of possession of material to forge documents. The three, together with a fourth person, who was acquitted by the Audiencia Nacional, had been brought to court in 2011 for their involvement and relationship with those who carried out the terrorist attack on 11 March 2004 in Madrid (*for details, please see issue 10 of the TCM*). The decision of the court is final.

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



The Audiencia Nacional convicted two ETA members of **two counts of committed assassination, fifty-one counts of intended assassination** and **terrorist ravage**, and sentenced them to eight hundred and forty-three years' imprisonment each. The two were prosecuted as authors of an attack carried out in August 2002, which targeted the Guardia Civil barracks in Santa Pola and caused the death of two and injuries of fifty-one persons, as well as considerable material damage. Several days later the attack was claimed by ETA in a message to the newspaper Gara. The two men had previous convictions for participation in an armed group in France and were surrendered to Spain in 2008 and 2009 respectively. The court also ordered that they pay compensation to the state and those affected by the

attack. The decision became final in June 2012. In another proceeding in May the two were found guilty of placing explosives and causing damages in 2002 (*please see below*).

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

*R*

The Audiencia Nacional found one defendant not guilty of the charges of **theft of a vehicle, two counts of illegal detention, two counts of intended terrorist assassination and illicit possession of arms**. He was prosecuted in relation to the attack on the police officers, who were ambushed by members of an armed ETA command in September 2003 in Lagran. Pretending to have had a car accident, the members of the command opened fire at the police, which resulted in the death of one of them and injuries of the police. The court did not consider it proven that the defendant was present at the meetings in preparation of the attack or that he was the fourth member of the group that carried out the acts, for which the rest had already been convicted. The decision became final in June 2012.

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

*R*

The Audiencia Nacional acquitted three defendants of the charges of **terrorist public disorder**. They were prosecuted in relation to clashes with the police, which took place in May 2002 following a manifestation organised by Batasuna in Bilbao. The three were allegedly part of a group that obstructed the street traffic and threw Molotov cocktails at the police. The prosecution requested a two-year prison sentence for each of the defendants. The decision of the court became final in June 2012.

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

*R*

The Audiencia Nacional found three defendants guilty of **terrorist ravage and terrorist offence of use of a motor vehicle** and sentenced them to eight years' imprisonment each. The three were prosecuted for the attack on a building of the Ministry of Defence in Logrono in September 2007, for which a car stolen in France and carrying explosives was used. A warning call was received at the newspaper Gara claiming that ETA was going to place a bomb in the building and the police managed to take the necessary measures. The decision of the court became final in June 2012.

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

*R*

The Audiencia Nacional acquitted two persons brought to court on charges of **terrorist ravage and two counts of a terrorist attack**. The two had allegedly placed an explosive device in the building hosting the court of Getxo in November 2007. Following a call to the emergency phone line, the police managed to move the device to a location where it could be deactivated. An explosion occurred while a police officer was holding a detonator, as a result of which he was severely hurt. In June 2012 the prosecution submitted an appeal against the decision of the court.

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

*R*

At a trial at the Audiencia Nacional five defendants were found guilty of **glorification of terrorism**. They were prosecuted for having shown pennants in support to ETA prisoners during the running

race Korrika in 2009. The exact location of their action was broadcasted the previous day on a webpage. The court sentenced four of the convicted to one year' imprisonment and the fifth one to one-and-a-half years' imprisonment due to the aggravating circumstance of a reoccurring offence. All five submitted an appeal in July 2012.

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



The Audiencia Nacional found two individuals guilty of **placing explosives** and **causing damages** and sentenced them to six-and-a-half years' imprisonment each. The court ordered also that the two pay a fine amounting to €10 a day for a period of twelve months. The men were prosecuted for allegedly placing an explosive device, which burst out and caused damages to surrounding buildings and vehicles, coinciding with the tourist season and the forthcoming summit in Seville at the end of the Spanish Presidency of the EU. Following a phone call before the explosion, the police managed to cordon the area. ETA claimed the attack in a message to the newspaper Gara in July 2002. The two men had previous convictions for criminal association and possession of explosives in France in 2006 and for terrorist ravage in Spain in 2009. The decision of the court became final in June 2012.

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



## June 2012

At a trial at the Audiencia Nacional two defendants were brought to court on charges of **illicit possession of arms with terrorist purposes** and **storing terrorist explosives**. They were prosecuted in relation to large amounts of explosive material found during two house searches in 1997. One of the houses searched was owned by one of the defendants and was used by an ETA command. An EAW was issued against him and he was temporarily surrendered by France, where he had been serving a prison term. The Audiencia Nacional found him guilty of the charges and sentenced him to a total of three years in prison. The court did not consider it proven that the second defendant had access to one of the searched addresses or had at his disposition the seized arms and explosives. He was acquitted.

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



At a trial at the Audiencia Nacional two defendants were prosecuted for having allegedly been part of ETA's Buruntza command, which had placed and detonated explosive devices in the industrial area of Irun in August 2000. Following the EAW, issued by the Spanish authorities in 2004 regarding one of the defendants, he was temporally surrendered by France, where he was also prosecuted. The court found the two guilty of **placing, or use, and possession of explosive substances with terrorist purposes** and sentenced them to six years' imprisonment each. The court ordered also that they pay a fine amounting to €10 a day for a period of six months for **causing damages**. An appeal was submitted by the prosecution in July 2012.

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



At a trial at the Audiencia Nacional one person was charged with **terrorist ravage of a tentative degree, two counts of terrorist assassination of a tentative degree, forceful robbery with a terrorist purpose** and **forgery of car registration plates with a terrorist purpose**. He was prosecuted in relation

to a car bomb placed behind the factory Iberdrola. The forthcoming explosion was communicated to the newspaper Gara on behalf of ETA. The newspaper informed the emergency line and the police managed to deactivate the device. The defendant was found guilty of all charges and was given a sentence of fifty-four years' imprisonment and a fine. An appeal was submitted on his behalf.

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



The Supreme Court considered the appeals filed by two defendants, convicted by the Audiencia Nacional in 2011 of **storing explosive devices** and sentenced to four years' imprisonment. The two were among the eleven persons brought to court after the police searched their addresses and two hiding places in the woods and found explosive material, fire arms, terrorism related books, ETA and Segi stickers, etc. The Audiencia Nacional acquitted the other nine defendants (*for details, please see issue 12 of the TCM*). The Supreme Court confirmed the guilty verdict of one of the appellants and reduced his sentence to three years. The other appellant was acquitted. The decision of the court is final.

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



The Audiencia Nacional found one defendant guilty of **terrorist ravage, theft of a motor vehicle, forgery of an official document, and 6 counts of injuries**. He was handed down a twenty-year sentence and was ordered to pay a fine amounting to €10 a day for a period of six months for each of the six counts of injuries. Together with two other persons, who were acquitted by the court, he was prosecuted for an attack, which took place in June 2002 in Basauri using a stolen vehicle. Shortly before the car exploded, warning phone calls were received at the newspaper Gara and el DYA. The explosion caused injuries to some people and damages to property. Several days later ETA claimed the attack. The three defendants were surrendered by the French authorities for needs of the judicial proceedings in Spain and were returned to France following the conclusion of the trial. The decision of the court became final in July 2012.

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



The Supreme Court dismissed the appeal submitted by two persons who had been found guilty of **terrorist damage** by the Audiencia Nacional in March 2011. The two had been convicted for impeding a tram way in Vizcaya and making graffiti on the wagons and ordered to pay a fine amounting to €10 a day for a period of eighteen months each and a compensation to the railway company. Two other co-defendants had been acquitted in 2011 (*for details, please see issue 10 of the TCM*).

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



At a trial at the Audiencia Nacional nine individuals were brought to court in relation to a police investigation into street violence (kale borroka) in Navarra de Barañain at the end of 2007. They were arrested for their alleged membership of Segi or Ekin. However, the membership of any of them of those organisations could not be proven. The court found five of them guilty of **active membership of a terrorist group** and sentenced them to six years' imprisonment each. The other four defendants were acquitted. In July 2012 the five convicted persons filed an appeal.

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





The Audiencia Nacional acquitted thirteen defendants charged with **membership of or collaboration with a terrorist organisation**. They were brought to court for their alleged role in the establishment and promotion of the outlawed political party Askatasuna and the political formation D3M. The court did not consider it proven that they acted as instructed by, or to the benefit of, ETA. The prosecution filed an appeal in July 2012.

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



The Audiencia Nacional acquitted one defendant brought to court on charges of **homicide, robbery of a vehicle with a terrorist purpose, forgery of an official document with a terrorist purpose, and illicit possession of arms**. The defendant was prosecuted in relation to the murder of a Guardia Civil officer in Ciervara in May 1997 but the court did not consider it proven that he was one of the three, who killed the officer by shooting him in the head in a restaurant. The defendant was previously convicted of criminal association with a terrorist purpose in France in 2002 and later surrendered to Spain. The decision of the court became final in July 2012.

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



At a trial at the Audiencia Nacional one person was found guilty of **glorification of terrorism** and handed down a sentence of one year' imprisonment. He was prosecuted in relation to an action organised in August 2011 at the beginning of the festival week in Bilbao, during which several persons placed photographs of ETA prisoners, together with the word "amnesty" on the façade of a store. As the police approached, they started throwing objects at them. Fingerprints left on adhesive tape on a poster helped identify the perpetrators.

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



The Audiencia Nacional found one defendant guilty of **attack and related assassination and two counts of illegitimate use of a motor vehicle**. He was prosecuted as in 1995 he had allegedly participated in an ETA command and, together with others, planned the assassination of a police chief in San Sebastian. They attempted to kill the victim in May 1995 but failed. In June 1995 a member of the group approached the police chief and shot him in the head. The victim passed away in the hospital in October 1995. The court handed down a sentence of thirty years and eight months and ordered a fine as well as a compensation to be paid to the family of the deceased. In 2002 the defendant was convicted of membership of a terrorist organisation (ETA) by a French court.

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



At the Audiencia Nacional one person was tried on charges of **glorification of terrorism** in relation to an action during festivities in the summer of 2011 in Azpeiteia. The action was promoted by a group, whose declaration of intent referred to ETA prisoners. During the action posters with photographs of prisoners convicted of terrorist offences were placed. The defendant was found guilty and sentenced to one year in prison. In August 2012 he submitted an appeal against the decision.

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



The Audiencia Nacional found one person guilty of **terrorist arson** and sentenced him to three years' imprisonment. He was involved in the attack on two ATMs of the Caja Vital in Vitoria in August 2006. The attack caused material damage to the ATMs and the façade of the building. A few days later the attack was claimed in a publication by the newspaper Gara. The police found some biological material, which was used to uncover the DNA and helped identify the perpetrators. The defendant was arrested in France and surrendered by the French authorities in March 2012. In July 2012 he submitted an appeal against the court decision.

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



The Audiencia Nacional convicted two defendants of **glorification of terrorism** and sentenced them to one year' imprisonment each for damaging public property with graffiti. The graffiti made reference to ETA terrorists, who had been arrested in France and disappeared since a long time. The sentences of both defendants were accompanied by nine days community work. The decision of the court became final in September 2012.

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



### July 2012

One defendant was sentenced to a total of twenty-three years of imprisonment by the Audiencia Nacional as she was found guilty of **intended terrorist assassination** and **possession and transportation of explosive devices with a terrorist purpose**. She was brought to court for her alleged role in the parcel bomb attack against a journalist in May 2001. ETA claimed responsibility for the bomb attack through a communication published in the newspaper Gara in July 2001. The victim suffered severe face, chest and eye injuries and was permanently impaired to exercise his habitual profession. In its sentence, the court ordered also compensation to the victim. The decision of the court is final. The convict was temporarily surrendered by the French authorities in March 2012 for a period of six months.

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



The Supreme Court admitted the appeal of the prosecution against the earlier acquittal of a person charged with **terrorist ravage**. In December 2011 the Audiencia Nacional had convicted him of a terrorist offence and possession or storing of explosives and imposed a sentence of a total of nine years' imprisonment. It had however found him not guilty of terrorist ravage. Another co-defendant had also been acquitted. The Supreme Court convicted the person of the offence of terrorist ravage, offence which integrates the one of possession of explosives, and sentenced him to a total of fifteen years' imprisonment. The remaining sections of the Audiencia Nacional decision were confirmed.

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



The Audiencia Nacional sentenced one defendant to thirteen years' imprisonment as it found her guilty of two counts of **robbery with terrorist purposes**. The defendant was brought to court for her participation in the armed robbery of two branches of a bank in Madrid in April and May 2002. The robberies were committed with the intention to finance terrorist activities of GRAPO. The defendant



was arrested in France and surrendered to Spain in July 2010 in execution of a European Arrest Warrant issued by the investigating tribunal. Besides the prison sentence, the court ordered the convict to pay compensation to the financial institution that fell victim of the robbery.

R

The December 2011 decision of the Audiencia Nacional convicting one defendant of **terrorist assassination** and **illicit possession of arms with a terrorist purpose** became final in July 2012. He was sentenced to thirty-two years' imprisonment. The defendant was brought to court in relation to the plot to murder a municipal police officer in 2003 following the instructions of the M.L.N.V (Movimiento de liberación Vasco de la izquierda abertzale) (*for details, please see issue 12 of the TCM*).

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

R

The Audiencia Nacional sentenced four defendants and acquitted other five in a trial following the 2008 explosion of two devices placed in a telecommunication antenna and in a construction site, causing damage to the infrastructure and surrounding objects. In the investigations that followed, authorities revealed that one of the defendants was in possession of cocaine for local distribution. The court sentenced two defendants to a total of eight years' imprisonment each for the charges of **membership of a terrorist organisation** and **terrorist damages**. One defendant was handed down a sentence of five years and one day for **collaboration with a terrorist organisation** and another was sentenced to three years for possession of drugs with the intention of distribution. Pecuniary penalties were added to the sentences as well. An appeal against the verdict was filed in September 2012 by the convicted defendants. For the acquitted persons the decision of the court became final in September 2012.

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

R

The Audiencia Nacional found one person guilty of two counts of **terrorist assassination in a tentative degree** and **terrorist damages** and sentenced him to a total of twenty-two years and six months' imprisonment. The charges were brought in relation to an ETA-directed attack against a branch of the BBK bank with the intention to attract some police officers. The attack took place in August 2001 and was claimed by ETA in a message to the newspaper Gara a few days later.

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

R

A defendant was sentenced by the Audiencia Nacional to thirty-three years of imprisonment for two charges of **assassination and a concurrent attack** and was acquitted of the charge of membership of a terrorist organisation. The conviction was in relation to his participation in the 1995 murder of two police officers who intended to interview him. He shot at each one of them without warning. The defendant was extradited from France after completing a sentence for participation in a terrorist organisation (ETA). The decision of the court was appealed in September 2012 by the defence lawyers.

R

### United Kingdom

#### May 2012

The Belfast Court of Appeal quashed the terror convictions of two men, who had been found guilty of **terrorist offences** as teenagers more than thirty years ago. According to the court, neither of the two should have been found guilty because of doubts over the way their confessions were obtained. The cases of two other men referred to the Court of Appeal in Belfast by the Criminal Cases Review Commission (CCRC) resulted in convictions being upheld. All four were convicted in the 1970s on the basis of statements they made to the police during interviews when aged 15 or 16. In the judge's opinion, confessions made under the emergency provisions legislation were admissible unless they had been obtained by torture or inhuman or degrading treatment. A number of other similar applications were submitted to the Commission involving disputed admissions of criminal acts by juveniles, who had no legal representation or were not accompanied by an adult during police questioning.

Source: [The Guardian](#).



#### June 2012

The Belfast Court of Appeal reversed the conviction of a man sentenced to hang in 1973 for the **killing** a British soldier in Belfast. The man was the last person given a death sentence in the United Kingdom. Having spent seventeen years in prison, he had his sentence changed to life imprisonment. According to the court, the British Army rounded up suspects unlawfully and the defendant's confession was obtained by torture. He was arrested following a tip from an informant. He admitted the killing during the trial as he claimed he was told he would otherwise be subjected to more torture. He also admitted having belonged to the IRA but stated he had quit the organisation.

Source: [UPI](#).



#### July 2012

The High Court in Glasgow found one defendant guilty of **financing terrorism** in relation to a suicide bomb attack in December 2010 in Sweden. According to the court, the defendant supplied money to the man, who blew himself up in a busy shopping area in Stockholm. Two other people were injured as a result of the attack. In some messages sent to the Swedish media and police by the attacker's wife, a reference was made to the prophet Muhammad caricatures, military presence in Afghanistan, etc. According to the police, the defendant used several bank accounts with various aliases to transfer a total of £5,725 to the attacker. Another £1,000 was intended for his widowed wife after the explosion. In August 2012 the court sentenced the convicted man to seven years' imprisonment.

Source: [BBC](#).



At a trial in Manchester a married couple was brought to court in relation to an alleged plot of a terrorist attack on Jewish communities in the city. The two, categorised as "home-grown" terrorists, started reading and listening to extremist Al Qaida-inspired media in November 2010. They were

planning to build an explosive device and carried out reconnaissance missions on possible targets. They accessed online bomb-making manuals and acquired everyday household items, which could be used to construct such a device. In their house the police found a number of documents, including “39 Ways to Serve and Participate in Jihad”. The Manchester Crown Court found the man guilty of **engaging in conduct in preparation for acts of terrorism** and ordered an indeterminate sentence, with a minimum of seven and a half years to be served before being considered eligible for parole. The wife was convicted of **engaging in conduct in preparation for acts of terrorism** and two counts of **possessing a record of information likely to be useful to a person committing or preparing an act of terrorism**. She was handed down an eight-year sentence.

Source: [The Telegraph](#).



### 2. Other Court Decisions of Interest May – August 2012

#### Germany

##### August 2012

The Federal Constitutional Court allowed the German Armed Forces to conduct combat operations within the country under strict conditions, thus ending the restrictions set after World War II. The military could be deployed in case of a terrorist attack of catastrophic proportions, with the potential for scores of casualties. The use of combat weapons would only be acceptable as a last resort and must be approved by the federal government. The court's decision effectively broadens Article 35 of the Constitution, which only permits a domestic military deployment in case of a natural disaster or a particularly serious accident.

Source: [The Local](#).

#### Norway

##### August 2012

The court in Oslo found one defendant guilty of terrorism and premeditated murder and sentenced him to twenty-one years' imprisonment, the maximum sentence envisaged. The jail term could also be prolonged, if the person is still considered to be a danger to society. The man, a lone wolf, who set up a car bomb in the centre of Oslo and then went on a shooting rampage at a youth political summer camp on the island of Utoeya in July 2011, killed seventy-seven people and injured a total of two hundred and forty-two. Having heard the ruling, he declared he would not appeal as he did not recognise the court and an appeal would legitimise it. According to the court, he suffered from "narcissistic personality characteristics" but not psychosis. At the opening of the trial in April 2012, the man admitted the acts but denied criminal responsibility. He confirmed his intention to kill hundreds in his attack on the Labour Party summer camp, with his primary target being a former prime minister. He also hoped his car bomb in Oslo would kill the entire government. In his words, his actions were "a small barbarian act to prevent a larger barbarian act". He reiterated his belief that these were "legitimate targets".

Source: [BBC](#).

#### European Court of Justice

##### July 2012

The European Court of Justice (ECJ) rejected the claim by the European Parliament (EP) for annulment of the Council Regulation No 1286/2009 on restrictive measures directed against persons and entities associated with Usama bin Laden, the Al Qaida and the Taliban. The claim challenged the legal basis and called for the annulment of the Regulation, which adds the freezing of funds to the restrictive measures provided for in Regulation 881/2002. The ruling upheld the opinion of Advocate General that the Regulation comes under the Common Foreign and Security Policy (CFSP) and not, as the EP had argued, the area of freedom justice and security. According to the EP, after the Lisbon Treaty

came into force, the legal basis chosen should not have been Article 215 (2) of the TFEU but the provisions on the prevention of terrorism and related activities, which fall within the area of freedom justice and security (Article 75 of the TFEU). The latter would have ensured certain powers of the EP. In the Court's opinion, it would not seem possible to regard Article 75 TFEU as a more specific legal basis than Article 215(2) TFEU. The Court pointed out that the EU Treaty no longer provides for common positions but for decisions in matters relating to the CFSP; this, however, does not have the effect of rendering non-existent those common positions adopted under the EU Treaty before the Treaty of Lisbon entered into force (*for further details, please see Chapter V. Topic of Interest*).

Source: [Eur-lex](#).

## European Court of Human Rights

### May 2012

In a ruling on application no. 33809/08, the European Court of Human Rights (ECHR) (Third Section) found that Slovakia had violated Articles 3, 13 and 34 of the European Convention of Human Rights by deporting a person to Algeria, where he was at risk of being subject to torture or inhuman or degrading treatment. The person was deported as he was deemed to constitute a danger to national security. He was wanted in Algeria where in 2005 he had been convicted in absentia of membership of a terrorist organisation and forgery. The following year he was convicted in France of involvement, as a member of an organised group, in the preparation of a terrorist act in France and several other countries, and of forging identity documents. According to the ECHR, the diplomatic assurances given by the Algerian government were insufficient, in particular in light of the reports of torture committed by its secret services, which detained the person for twelve days upon his arrival in the country. The Court also found that his right to a remedy had been violated, as he was not given time to use a constitutional remedy, which could have avoided deportation. Finally, the ECHR held that Slovakia violated the provisions of the European Convention on Human Rights for having expelled the person while interim measures of the Court were still in force.

Source: [ECHR](#).

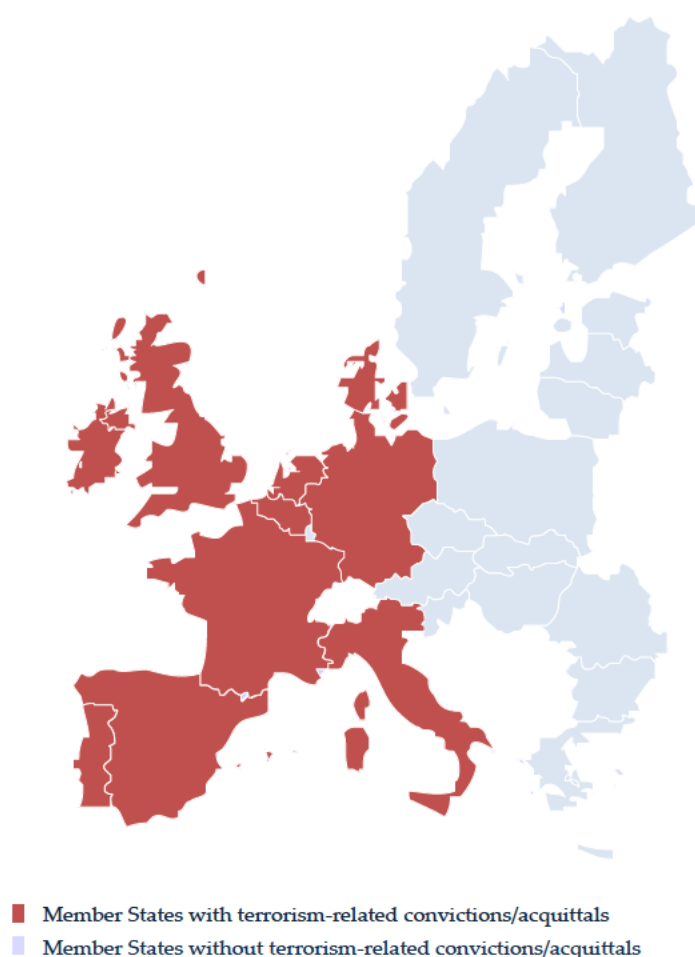
## II. Comparative Analysis

May – August 2012

### Court Decisions in the EU Member States

In the period May – August 2012 terrorism-related court decisions were reported in ten EU Member States: Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Portugal<sup>1</sup>, Spain and the United Kingdom (*please see Figure 1 below*).

Figure 1



<sup>1</sup> The court decision in Portugal was pronounced in January 2012 and became final in May 2012. It was already reported in the previous issue of the TCM and will therefore not be included in the overview, which follows.



## Convictions and Acquittals

As reported in the TCM, in five of the Member States (Denmark, France, Germany, Ireland and the Netherlands) all court decisions contained guilty verdicts. In 2011 three of these Member States, Denmark, Germany and the Netherlands, also had a full conviction rate with no acquittals throughout the year. The total percentage of acquittals as reported in the TCM in the period January – August 2012 (32%), is in line with the average for 2011, which was 31%. The percentage of acquittals in the period in May – August 2012 (41%) is however higher than the average for 2011 (*please see Figure 2 below*).

Figure 2

COUNTRY	CONVICTIONS	ACQUITTALS	TOTAL	ACQUITTALS AS %
Belgium	6	1	7	14%
Denmark	4	-	4	0%
France	7	-	7	0%
Germany	2	-	2	0%
Ireland	3	-	3	0%
Italy	-	11	11	100%
The Netherlands	1	-	1	0%
Spain	47	38	85	45%
United Kingdom	5	3	8	38%
TOTAL	75	53	128	41%

## Types of Terrorism

As in 2009, 2010 and 2011, the majority of verdicts in the period May – August 2012, as well as in the period January – August 2012, relate to separatist terrorism. Spain has the highest number of verdicts for separatist cases in the reporting period, just as in previous years, and Belgium for religiously-inspired<sup>2</sup> terrorism. No right-wing cases were detected in the reporting period (*please see Figure 3 below*).

<sup>2</sup> Terrorism verdicts are classified by type of terrorism according to the terminology used by Europol in the EU Terrorism Situation and Trend Report TE-SAT 2012.

Figure 3

COUNTRY	SEPARATIST	RELIGIOUSLY-INSPIRED	LEFT-WING	RIGHT-WING	NOT SPECIFIED	TOTAL
Belgium	-	7	-	-	-	7
Denmark	-	4	-	-	-	4
France	-	1	6	-	-	7
Germany	-	1	1	-	-	2
Ireland	3	-	-	-	-	3
Italy	-	-	11	-	-	11
The Netherlands	-	-	-	-	1	1
Spain	82	2	1	-	-	85
United Kingdom	5	3	-	-	-	8
<b>TOTAL</b>	<b>90</b>	<b>18</b>	<b>19</b>	<b>-</b>	<b>1</b>	<b>128</b>

In the period May – August 2012 the reported verdicts in relation to left-wing terrorism have the highest acquittal rate (58%), which is dissimilar to 2009, 2010 and 2011, when the majority of the acquittals were to be found in separatist terrorism cases. In the reporting period the acquittal rate for separatist cases equals 44%. Cases of religiously-inspired terrorism have an average conviction rate of 94%.

## Types of Convicted Offences

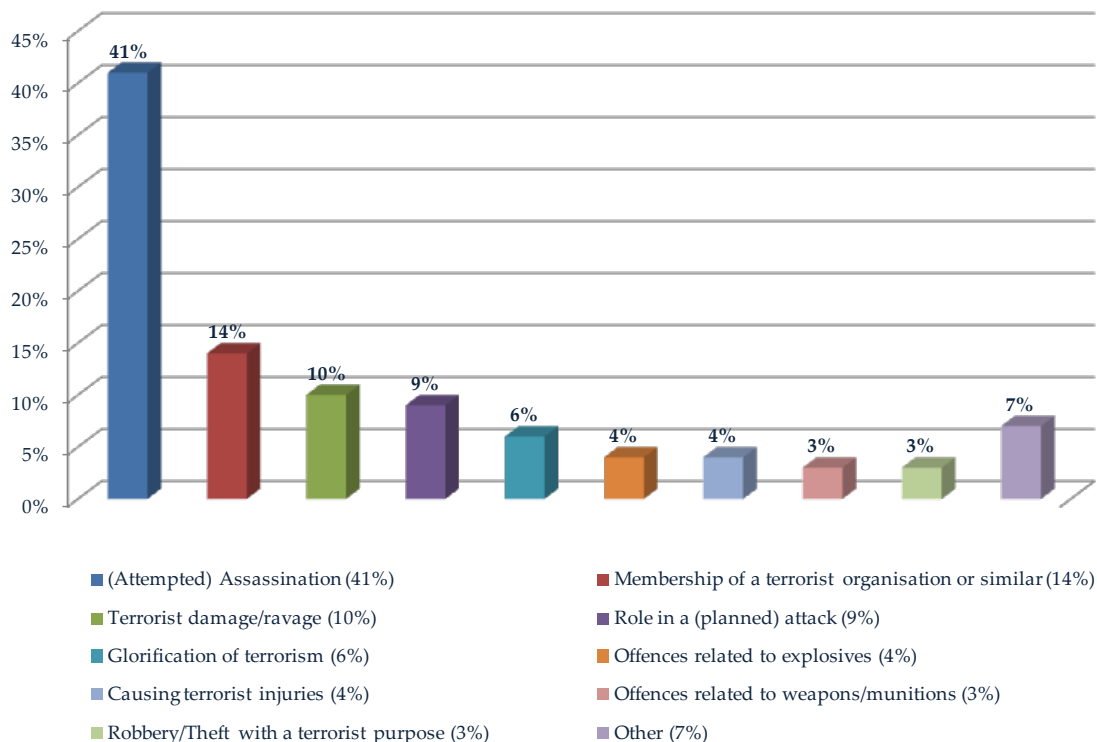
The evaluation of the kind of terrorist offences prosecuted more frequently in the respective reporting period is one of the themes of interest indicated by the respondents to the questionnaire on the future development of the TCM (*please see the Annex in issue 13 of the TCM*). Due to the fact that information from open sources often does not contain the necessary details, an analysis has been made on the type of convicted offences instead. Following the proper verification with the competent national authorities, at the end of the year an analysis shall be made on the types of offences prosecuted and convicted. The overview below presents the types of offences of which the individuals brought to trial were found guilty.<sup>3</sup> The analysis considered the countries' specifics and the definitions of offences in the national legislations. With a view to avoid fragmentation and terminology or translation inaccuracies, some offences have been grouped, e.g. offences such as "participation in a terrorist organisation", "belonging to a terrorist organisation", "membership of a terrorist organisation" have been combined under "membership of a terrorist organisation or similar".

<sup>3</sup> The overview that follows is based on the information on offences as found in open sources or, in the cases of Belgium and Spain, as reported to Eurojust by the national authorities. Open sources information can be incomplete or inaccurate; therefore the overview should be treated with caution until confirmed by the competent authorities of the respective Member States.

The overview focuses on offences that appear more than once in the verdicts. In order to ensure certain relativity, the offences are shown as a percentage. In the cases when one individual was found guilty of more than one offence, all convicted offences are included separately.

A closer look at the information available in open sources or shared with Eurojust by the national authorities reveals a variety of terrorist offences in the Member States concerned (*please see Figure 4 below*). Unlike the first four months of 2012, in the reporting period the offences related to (intended) assassination have the highest percentage among the convicted offences (41%). The majority of these are in Spain, where, *inter alia*, in one single court proceeding two persons were found guilty of fifty-three counts of (intended) assassination each. The second largest type of offences, membership of a terrorist organisation or similar, constitutes 14% of the total. Spain is the Member State with the highest number of convictions for membership of a terrorist organisation or similar (*please see explanation of the used term above*). Terrorist ravage/damage presents 10% of the total number of offences, with the majority of these have been committed in Spain. The offences related to a (planned) attack, that were the most common in the first four months of 2012 (17%), constitute 9% in the period May-August 2012.

Figure 4

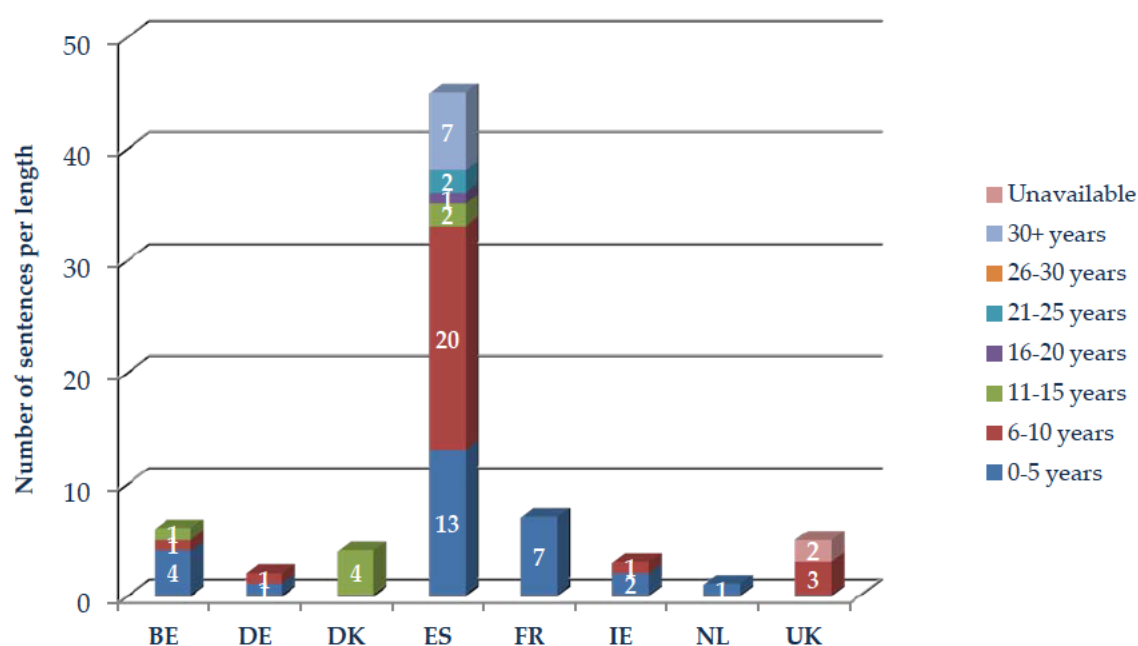


## Pronounced Sentences

The length of sentences pronounced for terrorism offences varies per country and per convicted offence. The severity of penalties throughout the EU in the period May – August 2012 ranges between a fine and eight hundred and forty-three years' imprisonment (*please see Figure 5 below*). The shortest prison sentence imposed was for a term of one year. As in previous reporting periods, an indeterminate sentence was also handed down. For the purposes of the overview below, it is included as the minimum term indicated to be served. In some cases the conviction included an accessory penalty of temporary deprivation of certain civil rights. Sometimes the prison sentence is accompanied by a pecuniary fine to be paid for a certain period of time or by a ban to enter the territory of the country upon completion of the prison term.

As seen on Figure 5 below, in the period May – August 2012 sentences of up to five years' imprisonment are the most frequent penalties for terrorist offences (37%), followed by sentences of between six and ten years (35%). These two combined present 72% of all the penalties handed down for terrorist offences, which is similar to what has been reported in the period January – April 2012. The two cases where only a fine was imposed are not included in the figure below.

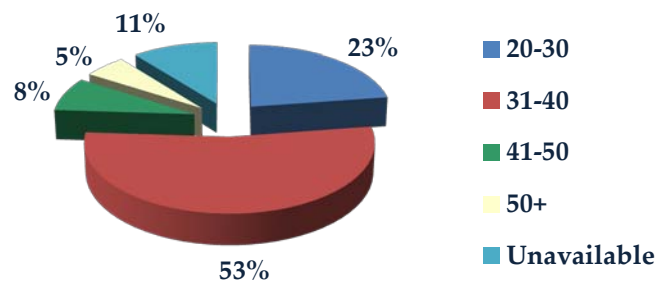
Figure 5



## Age of Convicted Individuals

The data on the age of those found guilty, where available, shows a considerable majority (53%) of terrorism convicts in their thirties. The second largest group (23%) consists of individuals in their twenties. In other words, more than three quarters of the convicted individuals were aged between twenty and forty years (*please see Figure 6 below*). This is similar to what has been observed for the period January – May 2012 as well.

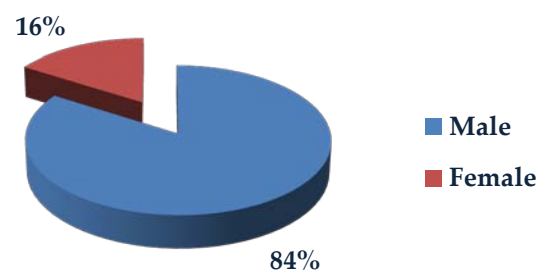
Figure 6



## Gender of Convicted Individuals

Of the 75 defendants found guilty in the period May – August 2012, twelve were female. This constitutes 16% of the total number of guilty verdicts in the reporting period (*please see Figure 7 below*). In comparison, the convicted female defendants in the first four months of 2012 were 9% of all convicted individuals, whilst in 2011 they constituted 7%.

Figure 7





### III. Legal Update

#### 1. EU

May – August 2012

#### European Commission

##### May 2012

Commission Implementing Regulation (EU) No 403/2012 of 10 May 2012 amending for the 170<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

Source: [\*Official Journal of the European Union\*](#).

Commission Implementing Regulation (EU) No 415/2012 of 15 May 2012 amending for the 171<sup>st</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

Source: [\*Official Journal of the European Union\*](#).

##### June 2012

Council Decision 2012/333/CFSP of 25 June 2012 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2011/872/CFSP.

Source: [\*Official Journal of the European Union\*](#).

Council Implementing Regulation (EU) No 542/2012 of 25 June 2012 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 1375/2011.

Source: [\*Official Journal of the European Union\*](#).

##### July 2012

Commission Implementing Regulation (EU) No 598/2012 of 5 July 2012 amending for the 172<sup>nd</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

Source: [\*Official Journal of the European Union\*](#).



Commission Implementing Regulation (EU) No 619/2012 of 10 July 2012 amending for the 173<sup>rd</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

Source: [Official Journal of the European Union](#).

Commission Implementing Regulation (EU) No 632/2012 of 12 July 2012 amending for the 174<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

Source: [Official Journal of the European Union](#).

## August 2012

Commission Implementing Regulation (EU) No 706/2012 of 1 August 2012 amending for the 175<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

Source: [Official Journal of the European Union](#).

Commission Implementing Regulation (EU) No 718/2012 of 7 August 2012 amending for the 176<sup>th</sup> time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network.

Source: [Official Journal of the European Union](#).

## 2. EU Member States

### Germany

#### June 2012

The German authorities banned Millatu Ibrahim, considered to be one of the most important Salafist groups in the country. According to the Interior Minister, the group acted in opposition to the idea of constitutional order and multicultural understanding and promoted violence. Its leader, who left the country before the authorities could expel him, is believed to be a key figure in Germany's jihadist scene. Having served four years in prison in Austria for creating and promoting a terrorist organisation, he moved to Germany in 2011. Two other Salafist groups were reported to be under investigation. Salafists are reported to be considered by the German government as particularly dangerous and prone to violence, primarily because of their goal of establishing Sharia in Germany and their rejection of Western values. Salafist groups are believed to have close ties to jihadist fighters in Afghanistan and elsewhere.

Source: [Spiegel Online](#).

### United Kingdom

#### June 2012

An Order was adopted amending the definition of a business in the regulated sector for the purposes of Part 3 of the Terrorism Act 2000 (c.11) (terrorist property) and Part 7 of the Proceeds of Crime Act 2002 (c.29) (money laundering) by adding the activity of bidding on behalf of others in an auction of emission allowances. Those Parts contain provisions relating to the reporting of suspicious activity, including requirements and offences specific to such businesses. The Order came into force on 7 July 2012.

Source: [The National Archives](#).

In June 2012 the UK government presented the draft Communications Data Bill. The new bill is reported to ensure that law enforcement agencies maintain the ability to tackle crime and terrorism as criminals use modern technology and new ways of communicating to plan and commit crime. In addition, an impact assessment and privacy impact assessment have also been undertaken.

Source: [The Home Office](#).

#### July 2012

The updated List of Proscribed International Terrorist Groups was published. The document lists the terrorist groups or organisations banned under the UK law, and provides the criteria that are considered when deciding whether or not to proscribe a group or organisation. The list contains forty-eight international terrorist organisations, proscribed under the Terrorism Act 2000. Of these, two organisations are proscribed under powers introduced in the Terrorism Act 2006, as glorifying terrorism. Fourteen organisations in Northern Ireland are proscribed under previous legislation.

Source: [The Home Office](#).

## IV. Judicial Analysis

*The present analytical chapter has been produced in an attempt to provide an insight into terrorist judgements rendered throughout the EU area. It is intended to help practitioners and offer relevant case studies and/or comparative analyses. The judgments to be analysed have been purposefully selected. The analysis focuses on the most interesting aspects of the case, rather than covering all issues and arguments addressed by the court.*

**Procedure:** 54<sup>th</sup> Chamber of the District Court of Brussels (Tribunal de première instance de Bruxelles), Belgium

**Date of decision:** 25 June 2012

### Introduction

On 25 June 2012, the District Court of Brussels rendered a decision concerning seven persons charged with terrorism related offences. The relevant activities took place between 31 May 2004 and 23 November 2010. The accused were all involved in activities carried out within the framework of Al Qaida, and some of them had travelled to Syria and Iraq for these purposes. The case involved a number of websites that were used for the purposes of recruiting people for *jihad*. The Court found it established that the use of the websites constituted a concrete and tangible act of participation in the activities of a terrorist group. Six of the accused were convicted of terrorism related offences.

### Indictment

This case mainly concerns the participation of a number of persons in the activities of a terrorist group, either in the capacity of leader or commander of the group, or as a participant. The existence of such a long-lasting organisation was inferred from the defendants' role in spreading propaganda promoting radical jihadist opinions on internet forums and in allowing the recruitment of volunteers to support the terrorist group. The indictment contained charges according to which one of the defendants, a person who was seen as one of the leaders of the group, had travelled to Iraq to fight a jihadist war together with someone who later died in Iraq under unknown circumstances.

The indictment contained seven counts on similar acts, carried out during different periods of time. The accused were charged with the following crimes:

A) AA and DD – Participation in the activities of a terrorist group, including by providing the terrorist group with information, equipment or with finances for an activity of a terrorist group, knowing that by participating in this way, they contributed to the commission of an offence of the terrorist group. The accused AA and DD allegedly committed the crimes between 7 July 2005 and 23 November 2010, and between 31 May 2004 and 31 May 2009, respectively.

B) AA, FF and GG – The defendants were charged with attempt to fraudulently, using violence or threat, steal an undetermined amount of money, during one specific night in 2009. The accused either committed the offences or assisted directly in the commission of the crimes, by carrying out acts

without which the crimes could not have been committed. The offence against the victim was committed at night, by two or more people, and the offenders used a vehicle to facilitate the commission of the crime or to ensure their escape. The act was allegedly carried out in the night between 17 and 18 March 2009.

C) BB, CC, EE – Participation in the activities of a terrorist group, including by providing the terrorist group with information, equipment, or with finances for an activity of a terrorist group, knowing that by participating in this way, they contributed to the commission of an offence of the terrorist group. The accused BB, CC and EE allegedly committed the crimes between 1 December 2007 and 23 November 2010, between 24 January 2009 and 23 November 2010 and between 22 April 2005 and 31 July 2010, respectively.

D) AA and FF – Exercising command or being a leader of an organisation established with the aim of committing crimes against people or property by carrying out acts to which long imprisonment sentences apply, varying from life imprisonment to sentences between twenty to thirty years, fifteen to twenty years or ten to fifteen years. The act was allegedly carried out between 9 February and 18 March 2009.

E) GG – Participation in an organisation which aimed at committing crimes against people or property by carrying out acts to which long imprisonment sentences apply, varying from life imprisonment to sentences between twenty to thirty years, fifteen to twenty years or ten to fifteen years. The act was allegedly carried out between 9 February and 18 March 2009.

F) BB – The defendant was accused of unlawful possession of a firearm, munitions and devices attached to the weapon that changed the original characteristics and functions of the weapon. The accused did not possess the required permits and licences for the firearms in question. The accused allegedly committed the offence between 1 January 2008 and 23 November 2010.

G) AA – The defendant was accused of unlawful possession of a firearm, munitions and devices attached to the weapon that changed the original characteristics and functions of the weapon. The accused did not possess the required permits and licences for the firearms in question. The accused allegedly committed the offence during an undefined period between 15 July 2008 and 27 July 2009.

### The applicable law

Terrorism – as stipulated in the Belgian Penal Code – had been discussed in case law prior to this case and it had also received some attention in the legal literature. For that reason, the present judgement refers to earlier developments but points out the necessity of succinctly reiterating the constitutive elements of the crime of terrorism and the conditions that have to be fulfilled in order to be charged with this crime. For the purposes of comparative analysis of terrorist offences, the discussion by the District Court on the application of the relevant legal provisions of the Belgian Penal Code is interesting.

The terrorism provisions in the Belgian Penal Code can be found in Articles 137 – 141ter of the Penal Code. Of relevance to this specific case is the fact that the law distinguishes between terrorist offences (Art. 137), on the one hand, and offences consisting of participation in criminal activities of a terrorist group (Art. 139), on the other hand. In the present case, the question was how to determine which acts fall under the latter category, and in particular whether the crimes committed by the accused

corresponded to those acts. The accused in this case were only charged with acts that did not correspond to the terrorist offences listed in Article 137, paragraph 2 of the Penal Code.

According to the Court, the distinction that had been made between the two categories of offences clearly indicated that an offence consisting of participation in criminal activities of a terrorist group does not have to consist of actually committing a terrorist offence. This position was supported by the preparatory documents of the law and was largely confirmed by relevant jurisprudence.

An act will fulfil the requirements of Articles 139 and 140 even where the cause of the terrorist group still has not materialized through the commission of preparatory acts, or where a participant to the group does not know about the specific terrorist acts, provided that the participant knows that his/her contribution will further the cause of the group or will allow, even indirectly, the group to become operational.

The Court pointed out that due to the fact that the existence of a terrorist group largely depends on the measures taken by anonymous persons who do not commit the offences – ‘réseaux dormants’ – but either give financial support or provide them with material or intellectual support, the will to be part of the terrorist cause is stressed in the applicable law. The Court noted that the intention of the legislator was to make it possible to punish participation in terrorist groups that are in development.

Importantly, in addition to establishing the existence of the terrorist group and defining what constitutes the group, the law requires both the objective and subjective elements of the crime to be fulfilled. In other words, the accused must have fulfilled the objective (material) element by participating in the activities of the group. In the view of the Court, such participation includes providing information, financial or other means to the group, for instance for the purposes of buying weapons. The objective element may be fulfilled by participation which is occasional and/or which is not necessarily directly linked to the commission of the act. The subjective element or the intent (*dolus specialis*) is fulfilled where the accused knew that his/her participation contributed to the commission of a crime by the terrorist group. For the purposes of the Penal Code, it will not be sufficient to conclude that the accused adhered to the ideas of a terrorist group, or that he/she knew about the activities of the group or even was in contact with the members of the group. The accused must have participated in the activities of the group, in accordance with Article 140, paragraph 1 of the Penal Code.

## The decision

AA – The defendant denied the allegations according to which he had travelled to Iraq to fight a jihadist war, but admitted to having been in Syria for the purposes of improving his knowledge of Arabic. The Court found that the defendant had not demonstrated any such legal activity in Syria. On the basis of information provided by investigators, hearings of other protagonists, cross checking and other indications, the Court considered it established that the accused had travelled to Iraq for the purposes of fighting a jihadist war.

Recorded telephone conversations and analyses of the defendant's bank account showed that he participated in financing groups of individuals who wished to join the terrorist network. The same information showed that the defendant had acted as an instigator and organizer of the network and that, in fact, he recruited some of the other defendants for the jihad.



BB – The defendant denied the charge according to which he participated in a terrorist group and claimed that he did not have any knowledge of the existence of a terrorist group. Telephone conversations between BB and AA offered evidence to show that BB supported the terrorist group and travelled to Syria for the jihadist cause.

DD – The role of the accused as manager of one of the relevant websites was admitted during a pleading by the defence. According to the defence, the acts of the accused did not constitute terrorism and his role as manager of the website would not be sufficient for establishing the crimes charged. As the role of the accused was admitted, the Court found it established that the accused was the manager of the relevant website in question. Having determined the subversive character of the websites that played a significant role in the case, the Court found the defendant guilty as charged.

EE – The defendant denied having participated in a terrorist group, but based on information obtained during a house search of his home, the Court considered it established that the defendant provided the terrorist group with assistance and that he was fully aware of the cause of the terrorist organisation.

FF – In addition to being the leader of a terrorist group, the Court found that having been subjected to surveillance for almost two weeks, it was established that the defendant was the initiator of the crimes charged, including the attempted theft.

GG – The defendant having been subjected to surveillance, the Court found that he played a peripheral role in the crimes of which he was charged, including in the attempted theft.

### Convictions and sentences

With regard to the punishment for terrorist crimes in general, the Court found that the gravity of the offences is not diminished by the fact that some criminal offences are not based on a concrete terrorist act, but for example on acts without which the terrorists could not have carried out their actions.

Six of the accused were convicted of terrorism related offences, either solely of participation in the activities of a terrorist group or of that crime in combination with other crimes charged.

AA was convicted of participation, as a leader (charged under A), in combination with unlawful possession of firearms (G) and was sentenced to eight years' imprisonment and a fine, and of attempt to steal an undetermined sum of money from a person (B), in combination with being the leader of or exercising command over an organisation established with the aim of attacking persons or property (D) and was sentenced to three years imprisonment for those crimes. As an additional punishment, the defendant was deprived of some of his civil and political rights (the right to hold public office and his eligibility) for a period of ten years.

BB was convicted of participation (A), in combination with unlawful possession of firearms (F) and was sentenced to three years' imprisonment and a fine. As an additional punishment, the defendant was deprived of some of his civil and political rights (the right to hold public office and his eligibility) for a period of ten years.

DD was convicted of participation, as a leader (A), to eight years' imprisonment and a fine. As an additional punishment, the defendant was deprived of some of his civil and political rights (the right to hold public office and his eligibility) for a period of ten years.



EE was convicted of participation (C) to five years' imprisonment and a fine. As an additional punishment, the defendant was deprived of some of his civil and political rights (the right to hold public office and his eligibility) for a period of ten years.

FF was convicted of an attempt to fraudulently, using violence or threat, to steal an undetermined amount of money (B), in combination with being the leader of or exercising command over an organisation established with the aim of attacking persons or property (D), and was sentenced to three years' imprisonment.

FF was convicted of an attempt to fraudulently, using violence or threat, to steal an undetermined amount of money (B), in combination with participation in an organisation which aimed at committing crimes against people or property (E), and was sentenced to thirty months' imprisonment.

All the convicted persons had to pay a sum of money to the Fund for Victims of Intentional Crimes.

### **Acquittal**

One of the accused, CC, was acquitted of the only charge brought against him. The Court found that he was the uncle of one of the defendants, AA, that he was very close to him and BB, another accused in the case, and that he was well informed about their radical opinions and shared their views.

However, the Court found that in the case of this accused, it had not been established with the certainty required by criminal law that the very thin line between freedom of opinion and freedom of expression, on the one hand, and voluntary participation in a terrorist group, on the other hand, had been crossed. Consequently, the accused could not be convicted on the basis of the single charge against him.

## V. Topic of Interest

**Judgment of the European Court of Justice (ECJ) on the claim by the European Parliament for annulment of the Council Regulation No 1286/2009 on restrictive measures (freezing of funds and economic resources) directed against persons and entities associated with [REDACTED], the Al Qaida and the Taliban**

(Case C-130/10, *European Parliament v Council of the European Union*, ECJ Judgment of 19 July 2012)<sup>4</sup>

### Introduction

The case brought by the European Parliament before the ECJ raised the problem of finding an appropriate legal basis for individual restrictive measures adopted by the EU. The competence to adopt such measures is granted by two different Articles of the TFEU:

- Article 75 TFEU (included in Part Three – Union Policies and Internal Actions, Title V – Area of Freedom, Security and Justice); and
- Article 215 TFEU (included in Part Five – Union's External Action, Title IV – Restrictive Measures).

The choice of the legal basis is crucial, because it determines the legislative procedure which shall be applied for adoption of the restrictive measure. The legislative procedures envisaged by these two Articles differ significantly:

- Article 75 TFEU requires the ordinary legislative procedure where the Council and the European Parliament act as co-legislators; so, the proposed restrictive measure undergoes full parliamentary scrutiny.
- Article 215 TFEU provides that the European Parliament merely has the right to be informed. This Article can be used only following a decision in the sphere of common foreign and security policy adopted by the Council in a unanimous voting.

In this judgment, the Court assesses the spheres of application of the above-mentioned Articles and concludes that Article 215 TFEU constitutes the appropriate legal basis for adoption of measures such as the contested Regulation.

### Background of the case

On 16 January 2002 the United Nations Security Council adopted Resolution 1390 (2002), which provided for measures to be applied against [REDACTED], members of the Al Qaida, Taliban and

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<sup>4</sup> The full text of the judgment is available at [www.curia.europa.eu: C-130/10 - European Parliament v Council of the European Union - Judgment of the Court \(Grand Chamber\) of 19 July 2012](http://www.curia.europa.eu: C-130/10 - European Parliament v Council of the European Union - Judgment of the Court (Grand Chamber) of 19 July 2012).

their associates. This Resolution ensured continuation of the freezing of funds imposed by the earlier adopted UN Resolutions in this field (No 1267 (1999) and No 1333 (2000)).

In order to implement the UN Resolution, on 27 May 2002 the Council of the European Union adopted Common Position 2002/402/CFSP, and, on the same day, Regulation (EC) No 881/2002, which provided for continuation of the application of the restrictive measure. Annex I to Regulation contained the list of persons, entities and groups affected by the measure.

The Regulation (EU) No 1286/2009, which is contested in the current case, was adopted by the Council on 22 December 2009 in order to introduce amendments in the Regulation No 881/2002. The amendments were necessary by virtue of the judgment of the ECJ of 3 September 2008 in the Joined Cases C-402/05 P and C-415/05 P *International Foundation v Council and Commission*. Regulation No 1286/2009 introduced a revised listing procedure, which ensured that the fundamental rights of the affected parties are respected, in particular, the right to be informed of the reasons for listing and the right to be heard on this matter.

## Applicant's pleas

In support of the claim for annulment of the contested Regulation, the Parliament raised two pleas in law:

- 1) The contested Regulation is wrongly based on Article 215 TFEU; the correct legal basis is Article 75 TFEU (the principal plea);
- 2) The conditions for recourse to Article 215 TFEU are not satisfied (the alternative plea).

## Arguments of the parties

### The principal plea, alleging incorrect choice of legal basis

#### *The Applicant's arguments*

The Parliament's arguments in support of this plea are divided in two parts: the first part relates to the aim and content of the Regulation, and the second relates to the general scheme of the Treaties.

Regarding the aim and content of the Regulation, the Parliament maintained that the legal basis of the contested Regulation ought to be the same as that of Regulation 881/2002, because the contested Regulation does not change the nature of the Regulation 881/2002, but just clarifies it and facilitates its application.

The Regulation 881/2002 was adopted on the basis of Articles 60 EC, 301 EC and 308 EC. Since those Articles became obsolete after entry into force of the Lisbon Treaty, the Parliament claimed that Article 75 TFEU became the appropriate legal basis, as the objectives of the contested Regulation, which are combating terrorism and its financing, are consistent with the objectives of Article 75 TFEU.

Regarding the general scheme and the spirit of the Treaties, the Parliament argued that these factors also justify the choice of Article 75 TFEU. The Regulation is linked to the establishment of the area of freedom, security and justice, as the measure envisaged by the Regulation assists combating crime,

especially terrorism and its financing. Additionally, in the view of the Parliament, the contested Regulation is linked to ensuring proper operation of the common market, including capital movements, as the restrictive measure envisaged by the Regulation by its nature concerns capital movements and payments.

Furthermore, the Parliament maintained that the Council might have recourse to Article 215 TFEU only for measures that pursue objectives in the sphere of external relations, including the Common Foreign and Security Policy (CFSP). However, the Parliament concluded that there was no link between the contested Regulation and the CFSP. The Parliament emphasised that the measures under the CFSP are subject to specific rules and procedures. Giving effect to these rules and procedures outside their scope would result in excluding parliamentary scrutiny from the legislative procedure, when measures with direct impact on fundamental rights, internal market and fight against crime are being adopted. This would be contrary to the intention of the Member States to enhance the democratic nature of the EU, as reflected in the Treaty of Lisbon.

### *The Defendant's arguments*

In the opinion of the Council, the Regulation by its aim and content falls within the scope of the CFSP, and Article 215 TFEU is an appropriate legal basis, as the purpose of the Regulation is to maintain international peace and security (by combating international terrorism and its financing). The Council referred to the specific international threat posed by Al Qaida, and to the EU obligations under the Charter of the United Nations.

The Council maintained that the location and political goals of the terrorist threat are the factors to be taken in consideration when deciding on the legal basis of a restrictive measure. Article 75 TFEU would provide a legal basis for measures aimed at safeguarding the EU internal area of freedom, security and justice. However, for the measures which contribute primarily to the security of a third State or international community in general, Article 215(2) TFEU is an appropriate legal basis.

Regarding the general scheme and the spirit of the Treaties, the Council argued that these factors do not constitute relevant criteria for determining the legal basis of the Regulation. The choice of legal basis must rest on the aim and content of the measure. Measures affecting human rights can be adopted also within the legislative procedure without the Parliament's involvement. The Council pointed at the wording of Article 215 TFEU saying that "the acts referred to in this Article shall include necessary provisions on legal safeguards", which, in the opinion of the Council, implied that acts adopted under Article 215 TFEU may affect fundamental rights.

## **The second plea, alleging failure to satisfy conditions for recourse to Article 215 TFEU**

### *The Applicant's arguments*

The Parliament's arguments in support of this plea are also divided in two parts: the first part concerns failure to comply with the requirement to have a joint proposal from the High Representative and the Commission; the second part concerns the fact that no decision under the CFSP was taken prior to adoption of the contested Regulation.

Regarding the absence of the joint proposal from the High Representative and the Commission, the Parliament argued that there was no Commission on duty when the contested Regulation was adopted on 22 December 2009. The Parliament pointed out that between 31 October 2009, when the

term of office of the Commission expired, and 10 February 2010, when the new Commission took up duty, there was no Commission that could legitimately submit the proposal.

Furthermore, in the Parliament's opinion, a joint proposal cannot be replaced by a mere endorsement by the High Representative of a pre-existing Commission proposal. Therefore, the proposal submitted by the Commission acting alone on 22 April 2009 and endorsed by the High Representative on 14 December 2009 cannot be considered as the joint proposal under Article 215 (2) TFEU. Additionally, the proposal endorsed on 14 December 2009 lacked an adequate statement of reasons by the High Representative, which was necessary for the joint proposal to be considered as submitted.

Finally, the Parliament argued that the contested Regulation does not contain any reference to a prior CFSP decision. The reference to the Common Position 2002/402 cannot serve for that purpose, as the mentioned Common Position does not constitute a decision within the meaning of Article 215 TFEU.

### *The Defendant's arguments*

The Council maintained that during the interim period between the expiration of the term of office and appointment of the new Commission, the Commission remained in office and ensured work continuity, as required by Council Decision 2010/80/EU on appointing the European Commission. The joint proposal was duly submitted by the Commission presenting it on 22 April 2009 and the High Representative endorsing it on 14 December 2009. It was not necessary for the High Representative to present a separate statement of reasons additionally to those set out in the preamble to the Commission's proposal. The proposal remained valid after the expiration of the Commission's official term of office.

Regarding the alleged lack of decision under the CFSP, the Council submitted that the Common Position 2002/402 constituted a proper decision under the CFSP for the contested Regulation to be adopted. The Common Position 2002/402 was the basis for adoption of the Regulation No 881/2002; since the contested Regulation did not change the nature of the Regulation 881/2002, there was no need to amend the Common Position 2002/402 or to adopt a new decision under the CFSP.

## Findings of the Court

### **The principal plea, alleging incorrect choice of legal basis**

In the **preliminary observations**, the Court cited the case-law concerning criteria for the choice of legal basis for a Community measure, and in particular, for a measure with a dual legal basis. The Court emphasised that, by the established case-law, the recourse to dual legal basis is not possible where legislative procedures laid down for each legal basis are not compatible with each other.

In this regard, the Court observed that the legislative procedures provided for Articles 75 TFEU and 215 TFEU are incompatible. Recourse to Article 75 TFEU entails application of the ordinary legislative procedure, with qualified majority voting in the Council and the Parliament's full involvement in the legislative process. Use of Article 215 TFEU as the legal basis entails merely informing the Parliament, and the recourse to this Article can be made only after a respective decision in the sphere of CFSP is adopted by the Council in a unanimous voting.



Regarding the **relation between the Articles 60 EC, 301 EC and 308 EC and Articles 75 TFEU and 215 TFEU**, the Court observed that both parties of the dispute agreed on the point that the legal basis of the contested Regulation should correspond to that of the Regulation 881/2002. The Court analysed the obsolete Articles used as the legal basis for the Regulation 881/2002 and concluded that their content is mirrored in Article 215 TFEU.

Regarding the **sphere of application of Article 215 TFEU**, the Court noted that:

- Article 215 TFEU concerns the adoption of restrictive measures against natural or legal persons, groups and entities without specifically referring to combating of terrorism, and without limiting those measures to those concerning capital movement;
- Article 215 TFEU may not be used until a respective decision under the CFSP has been adopted.

In this regard, the Court considered that Article 215 TFEU provides for a bridge between the actions involving economic measures and the objectives in the sphere of external relations, while Article 75 TFEU, for its part, creates no link with decisions taken under the CFSP.

The Court noted that combating of terrorism and its financing are among the objectives of the area of freedom, security and justice; nevertheless, the objective of combating international terrorism and its financing in order to preserve international peace and security corresponds to the objectives of the Union's actions in the sphere of CFSP. The Court concluded that Article 215 TFEU may constitute an appropriate legal basis for individual restrictive measures, including those designated to combat terrorism.

Regarding the **purpose and objective of the contested Regulation**, the Court noted that the contested Regulation, together with the Regulation No 881/2002, constitutes an instrument for putting into effect the decision adopted by the UN Security Council. The contested Regulation, while having essentially the same purpose and object as the Regulation No 881/2002, i.e. combating international terrorism and preserving international peace and security, has also the more specific aim of reconciling the fight against international terrorism with the respect for fundamental rights.

The Court concluded that the contested Regulation, in the light of its objectives and content, relates to a decision taken by the Union under the CFSP; Article 215(2) TFEU provides a sufficient legal basis for adopting an individual restrictive measure in response to a decision taken under the CFSP.

Finally, regarding the **consequences of the choice of legal basis for the Parliament's role in the legislative process**, the Court stated that this factor cannot determine the choice of legal basis. The Court emphasised that the limited role of the Parliament in the decision-making process with regard to the Union's actions under the CFSP is the result of the choice made by the Member States and reflected in the Treaty. The duty to respect fundamental rights is imposed on all institutions and bodies of the Union, and it is not contrary to EU law, if a measure affecting fundamental rights is adopted by means of a legislative procedure excluding the Parliament's participation. So, a restrictive measure containing safeguards for the respect of fundamental rights of the affected persons may be adopted on the basis of Article 215 TFEU.

Having regard to the above-mentioned considerations, **the Court concluded that the contested Regulation was rightly based on Article 215(2) TFEU, therefore, the first plea was rejected.**

## The second plea, alleging failure to satisfy conditions for recourse to Article 215 TFEU

Regarding the **absence of a duly submitted joint proposal** from the High Representative and the Commission, the Court held that, during the interim period after the expiration of the term of office, the Commission could undertake legitimate actions necessary to continue with pending procedures. The Court considered that the requirement for a joint proposal, as provided by Article 215 TFEU, was fulfilled by the Commission submitting it on 22 April 2009 and the High Representative endorsing it on 14 December 2009. The Court noted that Article 215 TFEU does not require a statement of reasons by the High Representative.

In respect of the **lack of a decision under the CFSP**, the Court referred to the principle of continuity of acts and stressed that the legal effects of the Common Position 2002/402 have been preserved after the entry into force of the Treaty of Lisbon for as long as that measure was not repealed, annulled or amended. Therefore, the Common Position 2002/402 shall be considered as applicable for the purpose of implementing the requirement under Article 215 TFEU.

On those grounds, **the second plea was rejected as unfounded.**



### VI. VSIE/ARE

Concluded/Ongoing trials

May – August 2012

#### United Kingdom

July 2012

A UK court convicted the founder of the National Anti-Vivisection Alliance (NAVA) of harassing staff at Harlan laboratories in Blackthorn and sentenced him to eighteen months' imprisonment. Another activist was given a seven-month sentence. The laboratories host more than 50,000 rats and mice for use in medical experiments. About 6,000 of them are sent every week to their customers, including pharmaceutical companies, such as GlaxoSmithKline, and academic centres such as University College London and King's College London.

Source: [The Guardian](#).

## VII. The Way Ahead

### Ongoing/Upcoming Trials

May – August 2012

*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

The Belgian authorities launched a terrorism investigation against Sharia4Belgium. According to the prosecution, the organisation might have recruited young men for jihad in Yemen and Chechnya. The leader of Sharia4Belgium is suspected to have influenced some to go abroad and fight jihad. He is currently facing charges of incitement of hate in another trial.

Source: [De Morgen](#).

#### Cyprus

A man who is suspected of planning a foiled terrorist attack against Israeli tourists in Cyprus was ordered to stand trial. Initially he faced seventeen charges, including espionage and conspiracy to commit a terrorist attack. The charges were later reduced and the trial was re-scheduled for the end of September. According to the Minister of Justice, the man belonged to an unnamed terrorist organisation and displayed behavioural patterns similar to the attacker, who killed five Israeli tourists and a Bulgarian bus driver in Bulgaria. He was reported to have acted alone.

Source: [Fox News](#).

#### Germany

At a trial in Düsseldorf four suspected Al Qaida members are accused of planning to set off a shrapnel bomb and cause a blood bath, and then to detonate another one once rescue services arrived. The suspects are charged with membership of a terrorist organisation and could face ten years in prison, if found guilty. According to the prosecution, one of the four received orders for the attack during his stay in an Al Qaida training camp on the Pakistani-Afghan border. He contacted the others upon his return to Germany and they started working together to make an explosive. Germany was informed

about the striking and unusual travel patterns of the suspects by the U.S. authorities using airline passenger data.

Source: [The Local](#).

### United Kingdom

The four men, convicted for the failed 21 July 2005 attacks targeting the London transportation system, launched a legal bid with the Criminal Cases Review Commission and the Court of Appeal to overturn their convictions on the claims of miscarriage of justice. The attacks were reported to have failed because the plotters erred in the chemical recipe of the bombs. The accused themselves claimed they had deliberately constructed the devices in a way that they would not explode. According to their lawyers, concerns about key evidence were raised, as during the 2007 trial an expert declared in a witness statement that the bombs were viable and would have worked. His findings were contested by a former principal scientist at the Forensic Explosives Laboratory but this was not disclosed to the defence during the trial. The defence thus argues that the convictions are unsafe.

Source: [BBC](#).

A group of five was brought to the Westminster Magistrates' Court on charges under Section 5 of the Terrorism Act 2006 and Section 58 of the Terrorism Act 2000. Three of them were charged with preparing for acts of terrorism. They had allegedly travelled to Pakistan and elsewhere for terrorist training and had provided information to others about how to obtain such training. Two other persons were charged with possession of a document likely to be of use to a terrorist, including issues of Al Qaida's Inspire magazine and the document "39 Ways to Support and Participate in Jihad".

Source: [BBC](#).

Three individuals appeared at Lisburn Magistrates' Court in Northern Ireland on charges of conspiracy to murder, collecting information likely to be of use to terrorists, planning acts of terrorism and conspiring to cause an explosion. One of the three was also charged with directing terrorism. On the same day four other individuals were brought to the Omagh Magistrates' Court in relation to the alleged running of a dissident republican training camp. All seven were arrested in the framework of the same police operation directed against alleged dissident republicans.

Source: [Irish Times](#).

### Norway

The Kurdish founder of the radical group Ansar al-Islam, sentenced earlier this year to five years' imprisonment for making threats to politicians and others (*for further details, please see issue 13 of the TCM*), was charged with making death threats and encouraging terrorist acts. His targets included the former prime minister, three Kurds residing in Norway and a TV2 photographer.

Source: [News and Views from Norway](#).



## European Court of Justice

The European Commission referred Germany to the ECJ and requested financial penalties as the country has still not transposed the 2006 European directive on data retention. The Directive provides for the compulsory storage of telecommunications traffic and location data by telephone companies and Internet service providers for law enforcement purposes. Data is to be retained for a period of six months to two years. The Directive was supposed to be transposed by September 2007; however, it provided Member States with the option to postpone the retention of communication data relating to Internet access, Internet telephoning and Internet email until March 2009. In Germany, the Federal Constitutional Court in Karlsruhe had annulled the national law transposing the Directive in March 2010, considering its provisions disproportionate and detrimental to privacy. The Commission made clear that the proposed by the German government system of data preservation ("quick freeze plus"), which is limited in time, would not amount to a full transposition of the Directive. According to the European Commission, the discussed revision of the 2006 Directive would not have an impact on the transposition obligations of EU Member States.

Source: [European Commission – Press release](#).

In June 2012 the Advocate General of the ECJ delivered his Opinion in the joined cases C-539/10 P and C-550/10 P *Stichting Al-Aqsa v Council of the European Union and Kingdom of the Netherlands v Stichting Al-Aqsa*. The cases concern appeals of a judgment on freezing of assets held by Stichting Al-Aqsa, as part of the EU measures to combat terrorism. In the judgment under appeal, the General Court annulled a number of Council decisions and a Regulation, in so far as those acts concerned Al-Aqsa, and dismissed the application as to the remainder. Both Al-Aqsa and the Netherlands appealed the judgment. According to Al-Aqsa, the General Court included a number of legal considerations, on the basis of which certain pleas were rejected. It claimed that the Court should set aside the judgment and give a new ruling upholding the claims put forward at first instance on improved grounds. The Kingdom of the Netherlands, supported in essence by the Commission, claimed that the Court should set aside the judgment and refer the case back to the General Court. According to it, the General Court misinterpreted Article 1 of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001 in relation to the basis to keep Al-Aqsa on the EU asset-freezing list. The Opinion of the Advocate General upheld that both appeals should be dismissed.

Source: [ECJ](#).



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