EUROJUST Report

Terrorism Convictions Monitor

Issue 19 May 2014

Contents

Introduction

The Terrorism Convictions Monitor (TCM) is intended to provide a regular overview of the terrorism-related developments throughout the EU area. The Monitor has been developed on the basis of **open sources information** available to the Case Analysis Unit and methodologies such as individual case studies and comparative analysis. There is a link provided to each of the respective articles found on the Internet. **In addition, the current TCM includes information exclusively provided to Eurojust by the national authorities of several Member States by virtue of Council Decision 2005/671/JHA with no links to open sources.**

Issue 19 of the TCM covers the period **January – April 2014.** It includes an overview of the concluded court proceedings in the reporting period, a selection of upcoming and ongoing trials as well as an update on relevant legal developments. The analytical part of the report contains an analysis of a decision of the Paris Criminal Court regarding planned travel to Syria with the purpose to receive terrorist training and participate in armed jihad, while the topic of interest highlights some issues related to International Humanitarian Law and foreign fighters in the context of present and past conflicts.

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. Terrorism Convictions/Acquittals per Member State

January – April 2014

Belgium

January 2014

The Court of Appeal of Antwerp handed down harsher sentences to members of a terrorist group some of whom were previously acquitted of terrorist offences. The fourteen men, who held Belgian, Moroccan, Dutch, Russian or double nationality, had been charged with **leadership** or **membership of a terrorist group**. Furthermore, charges related to the **possession, transportation and trading of firearms** and **possession of ammunition without the necessary permit** had been brought against three of them. One of the men had been very active on an Internet forum, where extremist Islamist propaganda and other terrorism-related materials had been spread, and had visited a number of other similar websites. He had carried out numerous searches linked to armed jihad. In one of his chats, he had discussed plans to commit an attack that would cause more damage than the 2004 Madrid train bombings. Other members of the group had also been active in jihadist chatrooms and had been in possession of various terrorism-related materials. The court had heard that they had been pursuing to join a terrorist group in order to participate in armed fighting abroad (*for further details, please see TCM, issue 15*). At first instance, one defendant had been found guilty of leadership of a terrorist group and sentenced to five years' imprisonment and a fine of EUR 2 750. Three others had been given a three-month prison sentence and a fine of EUR 550 for violation of the weapons law. The Court of Appeal acquitted two of the fourteen of the terrorist offences they had been charged with and ordered one of them to pay a fine of EUR 1 650 for the committed violations of the weapons law. The court increased the sentence of the group's leader from five to 12 years' imprisonment and a fine of EUR 11 000. Six others were found guilty of leadership of a terrorist group and sentenced each to seven years' imprisonment and a fine. Two of them got an additional year in prison for firearms charges. Five of the men were found guilty of membership of a terrorist group and handed down five-year sentences and fines. A number of the men were not present in court. According to the information available in open sources, some of them are known to have left for Syria to join the fighting there, while others are suspected to have done so.

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

March 2014

The 1st Instance Criminal Court of Brussels pronounced a judgment *in absentia* against one defendant who had been primarily accused of **participating and supporting a terrorist group** under Article 140 of the Belgian Criminal Code. The judgment came after a preliminary hearing in November 2013, followed by another hearing in January 2014 at which the defendant

reported sick and the court decided to suspend the proceedings until February. However, immediately after this hearing, the defendant absconded to Turkey and did not return until February. In the meanwhile, notwithstanding the defence lawyer's argument that his client left him without any instructions, the judgment *in absentia* was issued providing for an imprisonment of two years and a pecuniary fine. In April 2014, the convict appealed the judgment on procedural grounds, namely the fact that he was not present during the trial. This appeal was accepted and the trial was repeated in May 2014. In court, the man was said to have delivered logistic support to his brother in 2010 who at that time had supposedly been affiliated with Al Qaida and fought the Coalition forces in Afghanistan after having been convicted *in absentia* in Brussels in May 2010 along with seven other defendants for participation in the activities of a terrorist group (*for further details on the judgment, please see TCM, issue 8, Chapter V. Judicial Analysis*). The court took into account that the defendant had sent a package with support material to his brother in Afghanistan. According to the court, supporting a terrorist organisation by whatever means is punishable provided that the defendant was aware of that terrorist disposition. Because the court was convinced that he knew that his brother was fighting the armed jihad in Afghanistan and thus was engaging in terrorist offences at the time he sent the package, it considered the element of *mens rea* proven in the present case. In its judgment, the court relied on intelligence sources, evidence gathered by telecommunications supervision, digital evidence and the transcripts of an interrogation to which the defendant had been subjected earlier in the framework of another case concerned with the participation in the activities of a terrorist group which led to the conviction of six other defendants (*for further details on the judgment, please see TCM, issue 14, Chapter IV. Judicial Analysis, as well as TCM, issue 16, Chapter IV. Judicial Analysis, on the subsequent appeal*). The defendant was declared guilty as charged and convicted to two years of imprisonment and a pecuniary fine. The decision of the court is not final.

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

Croatia

March 2014

A man in Croatia was sentenced to one year in prison for a video he had posted on YouTube. The video, a homemade production in which he had played the role of a fictitious commander, called for attacks on police stations, offices with EU flags, bridges, railways, bankers and "all those who support capitalism". He had been arrested shortly after the video had appeared on the Internet. During the trial that followed, he insisted the video had been meant as a joke. The prosecution, however, had charged him with **supporting terrorism**, which could be punished with up to ten years' imprisonment.

Source: Croatian Times.

France

March 2014

The Paris Criminal Court sentenced three defendants to prison terms of between four and five years, some of which suspended, after it found them guilty of **criminal association with the purpose to prepare terrorist acts**. More specifically, they were accused to have fully prepared a journey to destinations next to the Syrian border with the intention to establish contacts with groups or individuals associated with Al Qaida in order to receive military training, acquire weapons and take part in the armed jihad. The three had been arrested in May 2012 prior to their planned departure to Syria via Istanbul. Following some information received from the intelligence service, the examining judge had immediately initiated investigations and ordered physical surveillance of the suspects as well as telephone interception, which had allowed the monitoring of their preparations. The three verdicts are the first convictions of potential French fighters in Syria (*for further details, please see Chapter IV. Judicial Analysis*).

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

The Paris Criminal Court found one defendant guilty of **glorification and incitement of terrorism** and sentenced him to a year in prison. The man had been arrested in September 2013 by the Central Directorate of Internal Intelligence for having administered a radical Islamist website where he had published Al Qaida propaganda. He had also been charged with having translated and released two editions of the Al Qaida magazine *"Inspire"*, originally published in English in Yemen. The arrest of the man was the first following the adoption of new anti-terrorism legislation in France in December 2012. The legislation provides for a punishment of five years in prison and EUR 45 000 fine for glorification or incitement of terrorism. According to his lawyer, the charges were contrary to the European Convention on Human Rights.

Source: France24.

Germany

January 2014

Eight right-wing extremists received suspended prison sentences of between two and nine months for **insulting and threatening** an anti-fascist couple for hours. Two of them had been tried under the law applying to youth offenders. The victims, who had been known for their activism, had apparently posted pictures showing the eight men at right-wing demonstrations alongside with their full names on Facebook. In response to that, the men had shouted racist paroles and insults for two hours in front of the apartment building of one of the victims. Several of them had entered the building, switched off the electricity, banged on his door and vandalised the hallway. They had threatened to kill the man, rape his girlfriend and steal his property. Upon arrival of the police, the rioters had been identified and the victims taken to a safe house provided by a victims' assistance organisation.

Source: Der Spiegel.

An Al Qaida affiliate was sentenced to seven years in prison for threatening with a massacre in the German Federal Parliament. The Higher Regional Court of Frankfurt found him guilty of **belonging to both Al Qaida and Al-Shaabab.** The defendant had also wanted to incite his brother to commit robberies of local supermarkets to raise money for these organisations. In November 2010, the accused had called the Federal Crime Agency from an Internet café in Afghanistan threatening that a commando of Al Qaida and other groups might storm the seat of the Federal Parliament and cause a bloodbath, prompting a severe increase in security measures all over Germany. The court qualified this as a breach of public peace since it was aimed at creating insecurity within the population. The man had been extradited from Tanzania to Germany.

Source: Die Welt.

A radical Salafi Islamist lost an appeal against his conviction for causing **dangerous bodily harm, grievous resistance against law enforcement** and **grievous public disturbance**. He had participated in a protest against the right-wing Pro NRW party, which had led to massive disorders for which the police had not been prepared. The man had seriously wounded two policemen with stabs in the legs, consciously accepting that the inflicted wounds might be lethal. He had justified his actions with the teachings of Islam, saying that since the German state had allowed Pro NRW to show caricatures of the prophet Mohammad at the protests and the police had protected the "blasphemous" demonstrators, they had deserved to die. In October 2012, he had been sentenced to six years' imprisonment. The Federal Court had then ruled the verdict to be re-examined because of legal mistakes regarding the length of the sentence. At a new trial, another chamber of the Regional Court of Bonn reaffirmed the six-year sentence because the accused continued to stand by his deeds and his subversive convictions and was ready to commit further violent acts.

Source: WDR.

February 2014

A German court sentenced a German-Afghani to three years in prison for **membership of a foreign terrorist organisation**. The 27-year-old had been trained in Pakistan by Al Qaida and the militant Islamic Movement of Uzbekistan to become a "fighter against the infidels". He had also worked on the propaganda film "*The advantages of jihad*" that had been used to recruit fighters from Germany but had not participated in the fighting in Pakistan. In 2009, he had returned to Germany without any specific task on behalf of Al Qaida. During the trial, the man had escaped to Bulgaria, where he had been arrested by the local authorities and surrendered to Germany. According to the court, he had played a minor role in the terrorist groups. His older brother had convinced him to join a group of German extremists on their way to Pakistan by promising him that he would find a wife there. The brother had already been sentenced to six years in prison in 2012 together with another group member. He had been seen as the one of Al Qaida's most important connections in Europe.

Source: Die Welt.

A high-ranking PKK youth officer was sentenced to four years and six months' imprisonment for **membership of a foreign terrorist organisation.** He was found to have recruited members for guerrilla warfare for several years. Between March 2008 and his arrest in 2011, he had attracted youths to sign up for the armed struggle against Turkish institutions. He had also provided funds and identification papers for travels to combat areas in Northern Iraq and had organised meetings and events. The court highlighted the dangerousness of the PKK and the defendant's distinguished role within the organisation. On the other hand, his own bad experiences as a Kurd persecuted by the Turkish authorities were taken into account as a mitigating factor. At the end of the trial the defendant gave a two-hour speech reiterating the history of the Kurdish people. The highly complex trial came after he had been extradited from Switzerland. Two other members had already been sentenced to three and a half years each in a related trial in July 2013.

Source: Die Welt.

March 2014

A 31-year-old German from the Ruhr area was sentenced to two and a half years in prison. The Higher Regional Court of Düsseldorf found him guilty of **membership of the "German Taliban Mujaheedin"** (Deutsche Taliban Mudschahedin, DTM). The Federal Prosecutor had demanded a sentence of two years and ten months' imprisonment, whereas the defence held it had not been proven that DTM was a terrorist organisation and the defendant should have been acquitted. In 2010, he had joined a group of Germans in Pakistan, who had glorified suicide attacks and published threatening video messages online. According to the court, although the defendant's contribution had been relatively minor, this had been because of severe health problems he experienced. His intentions and criminal energy, however, had made him more than just a follower. He had converted to Islam and radicalised early, travelling to the Pakistan-Afghani border area on his own free will, buying an AK 47 and practising shooting. During his four months with the DTM, however, he had not only suffered from chronic diarrhoea but also from the early stages of a severe mental illness. The man had served as the "housekeeper" of jihad, doing laundry, grocery shopping and tidying up. Following heavy losses, the group had split up in May 2010. The defendant had turned down an offer to fight in the ranks of Al Qaida. The court argued that his schizophrenia had not been the reason why he had started fighting with the Taliban, but the reason for him to turn away. In fact, he had left when his hallucinations one day had told him that the fighting between the Taliban and ISAF had not been real. Thus, the offence of participating in the terrorist organisation in itself was not affected by diminished responsibility, only the weight of his contribution to the group.

Source: Handelsblatt.

Ireland

February 2014

One defendant was acquitted of the charge of **membership of an unlawful organisation within the state** styling itself the Irish Republican Army (IRA). The man, who had admitted taking part in a surveillance operation on the headquarters of a number of specialist garda units in Dublin, had been arrested in September 2012. He had booked a room in a nearby hotel and

taken photographs of the garda complex hosting units that monitored the activities of dissident republicans. He claimed he had been offered money to take the photographs. In court, a chief superintendant had claimed that the defendant was a member of IRA. His belief had been based on confidential information, yet the court would not convict on the basis of such a belief alone, in the absence of some form of independent corroboration. The defendant was given the benefit of the doubt and found not guilty of the membership offence.

Source: *Courts News Ireland.*

At the Special Criminal Court one defendant pleaded guilty to the **unlawful possession** of a .32 inch auto calibre IZH 79-8 model Baikal make semi-automatic pistol and was sentenced to five years' imprisonment. The pistol had been found in the boot of his car that had been under police surveillance. The man, who had been convicted of possession of explosives in 1999 and sentenced to ten years in prison, had also been charged with **membership of an unlawful organisation within the State** styling itself the Irish Republican Army (IRA) but the prosecution entered a "*nolle prosequi*" on the membership charge.

Source: *Courts News Ireland.*

The Special Criminal Court found four defendants guilty of **unlawful possession of firearms and ammunition** and sentenced them to between six and seven years' imprisonment. They had been arrested after the police had intercepted them outside the premises of a firearm dealer in November 2012. The four had been disguised and wearing wigs. According to the police, the defendants had used a stolen van and had been planning to attack and rob the firearms shop. In court, three of them pleaded not guilty to the unlawful possession of one 9mm parabellum calibre Taurus PT92 semi-automatic pistol, one magazine suitable to use with that pistol, one 9mm parabellum calibre Walther P5 semi-automatic pistol and one ZGJY branded combined stun gun and flashlight, as well as a total of 34 rounds of 9mm ammunition. The defendants, however, did not challenge the evidence. The fourth defendant pleaded guilty to the firearms charge. Police information revealed that the Taurus pistol had been used in a murder in February 2002 but there was no suggestion that any of the defendants had been involved in that murder. Two of them, however, had also been charged with **membership of an unlawful organisation within the state** styling itself the Irish Republican Army (IRA) but the prosecution had entered a "*nolle prosequi*" on this charge. The two had previous convictions; one of them had been sentenced to four years' imprisonment in 2005 for membership of the IRA.

Source: *Courts News Ireland.*

April 2014

One man, who had pleaded guilty to **membership of an unlawful organisation within the state** styling itself the Irish Republican Army (IRA), was handed down a sentence of three years, one of which suspended, by the Special Criminal Court. The man had been arrested in relation to an investigation into paramilitary activity at the funeral of a dissident republican killed in September 2012. In November 2012, he had been shot himself and later arrested to appear in court. According to the court, the appropriate sentence for the defendant would be four years,

however, due to his early guilty plea it reduced it to three years. He also undertook not to commit any further scheduled offence in the future, not to associate with any known members of an unlawful organisation or anyone convicted of a scheduled offence before the Special Criminal Court for one year after his release.

Source: Herald.

At the Special Criminal Court two defendants were found guilty of **unlawful possession of a Walther pistol, a Smith & Wesson revolver and 12 rounds of ammunition**. The two, who had denied the charges, had been stopped by the police while driving in a van. At the time, the men had been wearing forensic suits. The guns had been put in a pencil case in the van, where the police had found also a broken mobile telephone, rubber gloves, shoes, runners, a lot of plastic bags, a wig, a bleach container, petrol cans and a homemade wick. At the request of the defence, inquiries had been made in order to find out whether there had been recording facilities in the police station where one of the defendants had consultations with his solicitor during his detention. The sentencing of one of the convicted was scheduled for May 2014, while the other was remanded in custody as he was serving a four-month suspended sentence imposed by the Cork District Court.

Source: Irish Examiner.

Lithuania

April 2014

The Appeals Court overturned the conviction of one woman who had been sentenced to ten months' imprisonment by the Vilnius District Court for **planning a terrorist attack**. She had been arrested in October 2009 on allegations of plotting a suicide bomb attack against an object of strategic importance in Russia. According to the prosecution, she had obtained a book on how to make explosives and had discussed the plot with her younger brother and sister, who had already been convicted in December 2011 in Russia. The defence claimed that the actions of the accused could be qualified as those of a combatant in the Russian-Chechen conflict, rather than terrorism. She had confessed to planning a suicide bombing in Russia but had later withdrawn her statements claiming that they had been made under duress (*for further details, please see TCM, issue 17*). The Appeals Court ruled that even though she had expressed an intention to commit terror acts, there had been no concrete plan at hand.

Source: The Lithuania Tribune.

Spain

January 2014

In January 2014 the decision regarding the two individuals convicted in relation to a deadly explosion of a vehicle, in which four ETA members had passed away, became final. The two had appeared at the Audiencia Nacional on allegations of collaboration with ETA and weapons and explosives charges. At the explosion site, the police had found keys of a residence in Galdácano rented by the two defendants in order to provide shelter for the four deceased ETA members. During the searches of the residence, material for the manufacture of explosives, weapons, documents related to possible targets and cash had been found. Following the death of the four, the accused had left for France where they had been arrested and convicted of criminal association in 2008. After the completion of their prison terms, they had been surrendered to Spain on the basis of the arrest warrant issued by the Spanish authorities in July 2002. In July 2013, the Audiencia Nacional acquitted the two of **collaboration with an armed group** but found them guilty of **storing weapons, ammunition, or explosive substances or devices** and sentenced each of them to eight years' imprisonment (*for further details, please see TCM, issue 17*). In November 2013, the Supreme Court dismissed the appeal submitted by the defence.

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

The December 2013 decision of the Audiencia Nacional acquitting one defendant of **causing terrorist destruction** became final in January 2014. He had been suspected of having been involved in an attack in Santander in December 2002. Shortly before the attack, ETA members had contacted the newspaper *Gara* and announced that a car bomb was to explode on a parking lot. The police had been informed immediately and started evacuating the area. The explosion had occurred a few minutes after the announced time and caused considerable damage to buildings and vehicles in the vicinity. The court did not consider it proven that the defendant had been involved in the attack. The defendant had been temporarily surrendered by France to stand trial at the Audiencia Nacional following the European Arrest Warrant issued by the Spanish authorities in September 2003 (*for further details, please see TCM, issue 18*).

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

The Audiencia Nacional found one defendant guilty of **possession of explosives with a terrorist purpose** and sentenced him to six years' imprisonment. The defendant, who was a member of ETA's *Txomin Iturbe* command, had been the subject of two European Arrest Warrants issued by the Spanish authorities in June 2004 and in December 2013 respectively. Following a refusal in November 2004, the French authorities had surrendered him in March 2013. He had been wanted in Spain as he had been in disposition of a huge amount of material that could be used to make explosives. The material had been found during a house search carried out in April 1994 in an apartment rented by a person already convicted of possession of explosives in October 2001. Following the January 2014 guilty verdict, the defence submitted an appeal in February 2014.

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

The December 2013 decision of the Audiencia Nacional convicting three defendants in relation to the 2009 attack against the Guardia Civil barracks in Burgos became final in January 2014. The three had been found guilty of 160 counts of **attempted terrorist assassination** and **causing destruction with a terrorist purpose** and sentenced to a total of 3860 years' imprisonment each. The three had been members of ETA's *Otazua* command and had also been convicted of several other terrorism related offences earlier in 2013. For the attack in Burgos they had used a vehicle stolen in France, which had then been loaded with explosives and parked behind the barracks. As a result of the explosion, 160 people had been injured. In August 2009, the attack had been claimed by ETA in communications sent to the newspapers *Gara* and *Berria* (*for further details, please see TCM, issue 18*).

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

The Supreme Court dismissed the appeal submitted by the defence of one individual who had been convicted in March 2013 by the Audiencia Nacional. The 1st instance court had found him guilty of **terrorist assassination**, **illegal terrorist detention, theft of a vehicle with a terrorist purpose** and **causing terrorist damages** and ordered him to serve a prison sentence of a total of 44 years. He had been brought to court together with a co-defendant in relation to the 2008 deadly attack on the owner of a company involved in the construction of the high-speed train tracks in the Basque Country. The attack had allegedly been carried out by members of ETA's *Ezuste* command, who had approached the victim in a stolen car and fired shots at him. The owner of that car had been kidnapped by members of the command. Following the shootings, they had set the car on fire and deserted its owner. He was later a protected witness at the trial. In January 2009, ETA had claimed responsibility for the assassination in a message sent to the newspaper *Gara*. The co-defendant had been acquitted of collaboration with a terrorist organisation (*for further details, please see TCM, issue 16*). The decision of the court is final.

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

The November 2013 decision of the Audiencia Nacional convicting one defendant of **committing a terrorist attack concurrent with a terrorist homicide** and of **terrorist homicide** became final in January 2014. The defendant was sentenced to 56 years' imprisonment. He had previously been found guilty of membership of a terrorist organisation in July 2002 in France. From the end of 1994, he had been the leader of ETA's *Andalucia* command consisting of three other members who had already been convicted of terrorist offences. The members of the command had been collecting information regarding public figures and members of the People's Party in Spain. In January 1998, they had attacked a Seville city councillor and his wife, shooting them dead on the street (*for further details, please see TCM, issue 18*).

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

The Supreme Court dismissed the appeal against the July 2013 conviction of one individual found guilty of **causing terrorist destruction** and sentenced to 15 years' imprisonment by the Audiencia Nacional. The man had been arrested in relation to an attack on a building that had been in construction for the judiciary in Amurrio. The attack had been carried out in November 1996 using an explosive device and had caused material damages (*for further details, please see TCM, issue 17*). The decision of the court became final in February 2014.

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

February 2014

The Audiencia Nacional acquitted one defendant brought to court on charges of **causing terrorist destruction**. He had been prosecuted for his alleged involvement in a planned attack against Bilbao's Stock Exchange in March 2002, when an explosive device had been placed in a restroom in the building. The upcoming explosion had been communicated to a newspaper and a traffic breakdown assistance service. The device had failed to explode due to malfunctioning of the ignition mechanism. The investigation had come across the defendant's fingerprints, however, the court did not consider it proven that he had been involved in the attack. The decision of the court is final.

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

At the Audiencia Nacional 43 defendants stood trial in relation to an investigation into alleged laundering of money obtained from drug trafficking. The money had been brought back to circulation in various South American countries disguised as capital sent by emigrants. The authorities suspected that these money transfers might have been used to finance the terrorist organisation Fuerzas Armadas Revolucionarias de Colombia (FARC). The court found 35 defendants guilty of **laundering of money** obtained from drug trafficking and handed down sentences ranging from two to nine years' imprisonment. It considered that some of the convicted individuals had committed the offence multiple times, in some cases as a leader or a member of an organisation, or by negligence. 13 of them were additionally ordered to pay fines of between EUR 2 000 and EUR 200 000. One of those 35 was **acquitted of collaboration with a terrorist organisation**. One other defendant was found guilty of **illicit possession of weapons** and handed down a one-year sentence. Six of the remaining defendants were acquitted of laundering of money obtained from drug trafficking and one of illicit possession of weapons.

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

At a trial at the Audiencia Nacional one defendant was brought to court on the charge of **glorification of terrorism**. The defendant had been arrested for having used her Twitter profile for publishing a number of radical and violent messages with political content. There had been more than 5000 messages on her profile that had been accessed by more than 3000 followers. The messages had been intended to praise the activities of the terrorist organisation GRAPO. In December 2012, she had posted a photograph of 44 GRAPO prisoners. She had also used the anagram of the terrorist organisation GRAPO as her profile's background image. The court found the defendant guilty as charged and sentenced her to one year imprisonment, in conformity with

what had been asked by the prosecution. The decision of the court became final in February 2014.

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

The Audiencia Nacional found one defendant guilty of an **attempt to cause terrorist destruction** and **possession of explosive substances** and sentenced him to one year imprisonment. The prosecution had asked for a prison sentence of five years. The defendant, together with other unidentified individuals, had made an explosive device and placed it behind the wheel of a bus. The device had been discovered by the police that had been deployed to prevent incidents in Lanestrosa during the general strike on 29 March 2012. During the house searches carried out in the residence of the defendant, as well as in some restaurants he had frequently visited, the police had found various objects and materials that could be used to make explosive devices, T-shirts of EKIN, a SEGI banner, ETA stickers, etc. In March 2014, the prosecution and the defence appealed the sentence.

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

The Audiencia Nacional sentenced one defendant to 46 years' imprisonment and ordered him to pay compensation to a victim after it found him guilty of two counts of **attempted assassination concurring with an attack**. He had been brought to court in relation to a planned attack against a member of the Basque government carried out in Galdakano in July 1994 by ETA's *Vizcaya* command. The command had used a vehicle previously stolen by the defendant and loaded it with explosives intended to be blown up when the politician's car would drive by. The attack had been aborted, as the car had not passed by at the expected hour. Four further attempts had been made, all of which had failed. Later, determined to fulfil their plan, the command had decided to place some explosives in a brief case and leave it in the victim's car at his son's wedding. However, they had not been able to access the vehicle as it had been surrounded by security. The command had also intended to assassinate an officer from the armed forces. In November 1994 in the town of Larrabetzu, they had opened fire at the officer while his car had been standing still at a street traffic light. As a result, the officer had suffered serious bodily injury. The defendant's co-perpetrators had already been convicted for their role in the attack. The February 2014 decision of the court became final in March 2014.

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

Five defendants charged with **glorification of terrorism** were found guilty by the Audiencia Nacional and sentenced to one year imprisonment each, in conformity with what had been asked by the prosecution. In August 2012, the five had published a letter in the printed and digital versions of the newspaper *Gara* coinciding with the 25th anniversary of the death of two ETA militants who had passed away when trying to place an explosive device. The defence of the five convicts appealed the verdict.

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

The Audiencia Nacional found one defendant guilty of **storing explosives** and of **conspiracy for illegal terrorist detention** and sentenced her to 11 years, one month and 15 days of imprisonment. The defendant had been surrendered to Spain by the French authorities in December 2012 based on a European Arrest Warrant issued by the Spanish court. Following orders from ETA leadership, in 2007 she had left France where she had been residing and returned to Spain to join, among others, ETA's *Askatasun Haizea* command. The command had been tasked with the abduction and subsequent murder of a local Socialist Party councillor. At the beginning of 2008, using false identification documents, the defendant had rented the apartments where the members of the command had resided and stored explosive material and 18 ampoules containing a tranquiliser. The abduction plan had been aborted and the defendant had returned to France in April 2008, as ordered by ETA's leadership. The explosive material and the tranquiliser had been transferred to a safe house, which had later been discovered by the police. The defendant had been arrested in France in July 2008 and sentenced four years later to a prison term of five years after the court had found her guilty of a number of offences, including terrorist association, possession of weapons, ammunitions and explosives, etc. Following the guilty verdict pronounced by the Audiencia Nacional, in March 2014 the defence submitted an appeal.

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

The Supreme Court dismissed the appeal submitted by the defence of one individual convicted of **spreading terrorist material** and sentenced to serve two years in prison by the Audiencia Nacional in July 2013. According to the prosecution, the he had been active on a number of jihadist forums on the Internet, including 'Al Shumukh Al Islam', 'Ansar Al Mujahideen' and 'Al fidaa' that broadcast videos made by jihadist terrorist groups, engage in radical jihadist propaganda and indoctrination and serve as a platform for terrorist recruitment. He had also administered a webpage, 'Shabaka al Haqiqa Al Ikhbaria', where he had posted images, videos and news related to acts of Al Qaida and other terrorist groups (*for further details, please see TCM, issue 17*). The decision of the court is final.

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

March 2014

The Audiencia Nacional acquitted 14 defendants brought to court on charges of **glorification of terrorism** in relation to an incident that had taken place during festivities in the city of Vitoria in the summer of 2012. The planned activities during the festive week had included some street acts. During one of those, some individuals directly or indirectly related to ETA had carried a silhouette with a photograph of ETA prisoners. The 14 defendants had been among those identified to have actively participated in the acts. Due to alleged aggravating circumstances, the prosecution had asked for two years' imprisonment for one of them, and one year for the remaining 13.

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

Three defendants, one of whom temporarily surrendered by France, appeared before the Audiencia Nacional on charges in relation to an explosion that had taken place in Calahorra in March 2008. The explosion had been caused by a car bomb placed alongside the Guardia Civil barracks. Its upcoming activation had been announced by one of the defendants in a telephone call to the traffic breakdown assistance service DYA and the local fire brigade. Despite the evacuation carried out by the police, the explosion had resulted in serious injuries of eight persons and considerable damages to buildings, vehicles and infrastructure in the vicinity of the car bomb. The car used for the attack had been stolen and its owner and her companion had been abducted only to be released more than four hours later. The attack had been claimed by ETA in a communication to the newspaper *Gara*. Two of the defendants in the trial were found guilty of eight counts of **attempted terrorist attack**, two of which under aggravating circumstances, as well as of **causing terrorist destruction**, two counts of **illegal detention with a terrorist purpose** and **robbery with intimidation, also with a terrorist purpose**. They were ordered to serve almost 130 years in prison. One of them was also given another sentence of six years for **possession of explosives** and both were acquitted of causing injuries. The third co-defendant was acquitted of all charges.

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

At a trial at the Audiencia Nacional five defendants appeared before the court for their alleged involvement in an attack against an officer of the armed forces that had taken place in Madrid in January 2000, shortly after the unilateral ceasefire declared by ETA had been broken in November 1999. The attack had been carried out by members of ETA's *Buro Ahuste* group who had placed an explosive device in a stolen car and parked it nearby the location where the officer used to be picked up for work. The device had been activated resulting in his death as well as in injuries to a number of other victims. The members of the group had left the crime scene in another stolen vehicle, which they had parked in the vicinity of the first explosion, and then activated another explosive device. Both explosions caused considerable material damages. The court found four of the defendants guilty of **a premeditated terrorist attack resulting in death**, three counts of **attempted premeditated terrorist attack intended to cause death**, and two counts of **causing terrorist destruction**. Three of them, together with the fifth defendant, were convicted also of **robbery of a motor vehicle as members of a terrorist organisation** for their respective role in stealing the two vehicles used in the attack. Additional penalties were given to four of the defendants for **forgery of an official document as members of a terrorist organisation.** The sentences pronounced by the court were between 12 and 135 years of imprisonment. The court ordered them also to pay compensation to the victims of the attack. Four of the sentenced individuals have previous convictions in France for criminal association with terrorist purposes.

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

The Audiencia Nacional found two defendants guilty of **glorification of terrorism** and sentenced them to one year imprisonment each. The two had participated in a demonstration held in Barcelona in September 2012 on the occasion of the Catalan day. The demonstration had been organised by the group *Ezquerra Independiente* but it had not been officially communicated to the competent authorities. At the end of the demonstration, there had been some speeches, followed by the Catalonian anthem. At the same time, four unidentified individuals had set

Spanish, French and EU flags on fire. The two defendants had also participated in the demonstration and carried around photographs of convicted ETA terrorists of Catalonian origin, bearing the words "Amnesty" and "Catalonian political prisoners". The incident had been captured and transmitted by various media, including the television, press and Internet.

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

The Audiencia Nacional sentenced one individual to two years' imprisonment after it found him guilty of **glorification and justification of terrorism in relation to an attack against the life or physical integrity of persons and goods**. The man had uploaded audio- and/or video materials on YouTube, including songs written by him that contained allusive expressions with regard to terrorist organisations, such as GRAPO, ETA, Al Qaida, RAF, Terra Lluire and their members. The songs were supporting and praising their actions, justifying their existence and presenting their members as victims of the democratic order. A total of 12 materials had been uploaded using three different identities linked to an IP address generated at the residence of the songwriter. The titles of the materials included "Freedom for the political prisoners", "Obama Bin Laden", "The worse terrorists", etc. The uploaded materials had been widely disseminated.

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

April 2014

The Audiencia Nacional handed down a two-year sentence to one defendant as it found him guilty of **causing terrorist damages**. The man had placed an explosive device at the gate of the seat of Madrid's Tetuan District Municipal Board in September 2011. The explosion had resulted in material damages. The act had been claimed several minutes later in a website used since 2009 by the anarchist organisation Tierra Salvaje to claim attacks against various targets in Madrid. There, the September 2011 explosion had been justified as an attack against the political power and the scientific and technological progress. Prior to his arrest, the man had maintained a blog where he had published various articles in defence of the environment and animals. In his residence the police had also found T-shirts with slogans "Free all animals", firecrackers, a document containing the Unabomber's Manifesto, etc.

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

At the Audiencia Nacional four defendants appeared before the court in relation to their alleged role in a number of incidents that had taken place in Vitoria between 2004 and 2007. The incidents included placing an explosive device at the office of an insurance company and under a vehicle owned by an electric company, throwing Molotov cocktails at an ATM, drawing graffiti referring to the terrorist organisation SEGI, blocking the city traffic, etc. During the house searches in the residences of three of the accused, the police had found lists of companies in Vitoria, objects bearing the anagrams of SEGI and ETA, etc. The court convicted two of the defendants of **attempting to cause public disorder with a terrorist purpose** under aggravating circumstances and sentenced them to five months' imprisonment. A third defendant was found guilty of **causing public disorder with a terrorist purpose** under aggravating

circumstances and handed down a two-and-a-half year sentence. All four were acquitted of **belonging to a terrorist organisation** and one of them of the additional charges of **causing terrorist damages, illicit possession of inflammable substances with a terrorist purpose**. The court did not consider it proven that the four had formed a group specialising in propaganda and street violence (the so-called "kale borroka") as part of SEGI and in conformity with the complementarity strategy designed by ETA.

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

One defendant, affiliated to the pro-independence organisation AMI, was acquitted of **belonging to a terrorist organisation** and found guilty of **possession of explosives with a terrorist purpose** at a trial at the Audiencia Nacional. He was handed down a seven-year sentence. The man had been arrested in January 2013 when he had attempted to enter an abandoned hut in a forest area with the purpose of collecting three improvised explosive devices. The devices had been timed at a maximum of 12 hours and ready to produce an explosion. They had been left in the hut by affiliates of the group Resistencia Galega. During the house searches in the residence of the man the police had found documents sent to him from prison, as well as leaflets and posters with the anagram of AMI, pamphlets, a poster with a photograph of soldiers, etc.

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

United Kingdom

February 2014

At the Old Bailey not guilty verdicts were entered on four counts of **murder** and a charge of **conspiracy to cause explosions** against one defendant brought to court for his alleged role in the 1982 Hyde Park bombing. The bombing had also wounded 50 people and killed seven horses. A couple of hours after the bombing a second device had exploded and killed seven Royal Green Jackets bandsmen. According to the judge at Old Bailey, in this case "executive misconduct" had struck at "justice and propriety". For more than 30 years, the man on trial had been a suspect for the murder of four members of the Blues and Royals, part of the Household Cavalry riding from their Knightsbridge barracks to Buckingham Palace. Alleged fingerprint and ID evidence had linked the man to the car carrying the Hyde Park bomb. In July 2007, however, he had received a letter from the Northern Ireland Office assuring him that he was no longer under threat of arrest. Similar "comfort letters" had been sent to 186 other suspected IRA terrorists "on the run" following the Good Friday Agreement. According to the prosecution, the letter did not amount to immunity or a promise not to prosecute historic offences. It claimed that the letter had been sent out in error, as at the time the man had been listed on the Police National Computer as wanted by Scotland Yard in relation to murder. The error had been spotted in 2008 when the Police Service of Northern Ireland considered reinvestigating his alleged involvement in another car bomb attack in Enniskillen in 1972. In May 2013, he had been arrested at Gatwick airport on his way to Greece. According to his defence, the charging had been an "abuse of executive power", which threatened the Good Friday Agreement. Taking into consideration the distress of the victims and their families, the court stressed also the public interest in "ensuring that executive misconduct does not undermine public confidence in the criminal justice system". In 1987, one man had been convicted of making the Hyde Park bomb

and jailed for 25 years. He had served 12 years in prison and his conviction had later been quashed as unsafe.

Source: London Evening Standard.

The Belfast Crown Court acquitted a press officer of the Northern Irish Party Eirigi of seven counts of **publishing, collecting and possessing information likely to be of use to terrorists**. The man had on several occasions taken pictures of policemen and police operations and posted them on his Facebook page. He had claimed that the photographing and filming had been part of his position as press officer. The judge found that there was no proof offered that Eirigi as such supported terrorism or that the man had taken the pictures with the intent to use them for terrorist purposes. He had been detained for a total of 14 months pending trial.

Source: Belfast Telegraph.

At the Old Bailey two men convicted in December 2013 for the Woolwich **murder** of a soldier in May 2013 were handed down life sentences (*for further details on the conviction, please see TCM, issue 18*). One of them was given a whole-life term, while the other was ordered to serve a minimum of 45 years in prison due to his age and mental health. Both convicts were taken out of the court during the sentencing, as they started shouting and scuffling with court security guards. They had to be forced to the ground and were removed from court. According to the judge, there was "overwhelming" evidence of the "barbaric" murder. He ruled that the murder had been "done for the purpose of advancing a political, religious or ideological cause", a criterion necessary to impose a whole-life sentence. The defence lawyer of one of the men claimed that the murder shared "the characteristics of a religiously aggravated crime" and that the indeterminate sentence could "create a martyr". The sentencing of the two men convicted in December 2013 was delayed with a view to a pending ruling of the English Court of Appeal regarding life imprisonment. In February 2014, the Court of Appeal ruled in favour of British national law allowing whole-life sentences without a chance of parole (*for further details, please see Section "Other Court Decisions of Interest"*). According to an earlier ruling of the Grand Chamber of the European Court of Human Rights, life without the prospect of release upon rehabilitation is torture. One of the two men in this trial has announced he will appeal the conviction, as he claimed the judge made legal errors.

Source: BBC.

March 2014

A self-styled terrorist and convicted armed robber, who claimed to be a member of a terrorist group called 'Scottish and Irish Sympathisers', was sentenced to ten years' imprisonment. The man, who had 140 previous convictions, had been arrested for threatening to blow up several London landmarks, including hotels, stores and the railway system. On a few occasions, he had rushed into hotels and other buildings claiming that a bomb would go off, or had left a note announcing a forthcoming explosion. His threats had left to the enforced employment of police in the west London area. According to his defence, the man suffered from a mental illness. The court found him guilty of two counts of **possession of an imitation firearm at the time of committing an offence** namely robbery, two counts of **robbery**, one count of **possession of an**

imitation firearm with the threat of violence, one count of **fraud**, and five counts of **communicating false information with intent**.

Source: Daily Mail.

At a trial at the Old Bailey a young couple was convicted for having posted videos on YouTube that glorified the May 2013 murder of a soldier in Woolwich. One of the two, who had recorded and uploaded three videos shortly after the murder, pleaded guilty to three counts of **disseminating a terrorist publication** and one of **inciting murder** and was sentenced to five years and four months' imprisonment. The first of the three videos had been made on the day of the murder, which the man called "a brilliant day", and included images of a man holding a decapitated head. In the second, he had stated that British troops would be killed on the streets of London, and in the other he had been laughing when driving past floral tributes for the murdered soldier. The man, who knew one of the murderers personally, had also offered on Facebook to give a Vauxhall Astra 3-door and money for avenging the rape of an Iraqi woman and for anyone who killed an "invading soldier in Muslim land". Earlier, he had also received a five-year anti-social behaviour order for promoting Sharia law in London, as well as a number of convictions for using threatening words or behaviour, and one for assault on a security guard at a mosque. His wife, who wore a veil in court, pleaded guilty to **disseminating a terrorist publication** and was handed down a prison term of 20 months. According to the prosecution, she had sent links of the videos to friends. The woman is awaiting sentence for a charge of witness intimidation that she admitted.

Source: BBC.

The Kingston Crown Court found one defendant guilty of **engaging in conduct in preparation of terrorist acts** contrary to the Terrorism Act 2006. The man had been arrested after he had made searches on chemicals and explosive substances on the Internet at his work place, a glass-recycling factory. At the internal disciplinary meetings he had claimed that he had been doing a research related to his hobby, homemade fireworks. At his house the police had found chemicals, including potassium nitrate, sulphur and charcoal, a crude homemade improvised explosive device and a replica Nazi uniform. The police had seized also a number of computers and other devices with more incriminating material, including Internet research into mosques, video clips showing him experimenting with explosives and a self-made anti-Islam video. During the police interview, he had admitted having had extreme right views in his youth but claimed he no longer thought like that. Sentencing was scheduled for later.

Source: Wirral Globe.

2. Other Court Decisions of Interest

January - April 2014

Ireland

February 2014

The High Court refused leave to a man facing extradition to the United States on international terrorism charges. The decision came after a previous refusal to allow the man to seek judicial review of the Director of Public Prosecutions' (DPP) decision not to prosecute him in Ireland. According to the judge, he had not met the threshold required for the court to grant him leave. The U.S. authorities have sought his extradition on charges relating to the conspiracy to provide material support for terrorists and attempted identity theft to facilitate an act of international terrorism. He has been suspected of having conspired with an American convert to Islam and others to create a terror cell in Europe capable of targeting both U.S. and West European citizens, including the Swedish artist who had depicted the head of the prophet Mohammad on a dog (*please see below the court decision rendered in the United States*). He has also been suspected of having participated in a conspiracy to transfer a passport stolen from a U.S. citizen to an individual in Pakistan, whom the conspirators believed to be a member of Al Qaida. According to the judge at the High Court, there were no rules, which compelled the DPP to prosecute suspected offences in Ireland. Extradition to other jurisdictions was still possible even if the DPP had decided not to prosecute in Ireland. The defence counsel indicated to the court that his client may appeal the decision at the Supreme Court.

Source: The Independent.

The United Kingdom

January 2014

One man, imprisoned in 2012 for plotting an attack on a UK army base, was sentenced to five extra years in jail for not giving his sophisticated USB-stick password to British security forces. They became interested in the information on the USB-stick during a separate investigation into credit card fraud. At the start of January 2014, a British jury convicted the defendant of the separate offence of hiding information from the police, thus hindering the anti-fraud investigation. It remained unclear how the password – a word mix related to the Koran – was finally revealed.

Source: Business Insider.

The Woolwich Crown Court ordered six convicted terrorists to pay back over £ 33 000. The six had been convicted in April 2013 for plotting to carry out suicide bomb attacks in Britain. They had pretended to raise money for charities in order to fund the plot. The Al Qaida-linked cell had planned to detonate up to eight rucksacks stuffed with explosives intending to cause more deaths than the 7 July 2005 London bombings. They had been found guilty of plotting a bombing campaign in the United Kingdom, attending terrorist training camps and fundraising for terrorism (*for further details, please see TCM, issue 16*). The court ordered the money to be paid

back over three months to Muslim Aid and to the Madrasah-e-Ashraful Uloom. In case of failure, the six face longer prison terms.

Source: Birmingham Mail.

One man, who had been convicted in September 2009 for his involvement in a plot to blow up transatlantic planes with liquid explosives, admitted possession of an identity document with improper intention (*for further details, please see TCM, issue 6*). For his earlier conviction he had been jailed for eight years but had been released after four on conditions of licence, one being he could not travel abroad. He had been arrested at Stansted Airport in September 2013 when trying to board an airplane to Turkey using a fake passport. It is believed he was planning to travel to Syria to join militants fighting the regime of the Syrian president but he denied this. When stopped at the airport, the man had claimed to be fleeing the country because he had been caught driving without insurance and had been worried he would be put back to prison.

Source: The Guardian Series.

February 2014

The Appeal Court ruled that British judges may continue to impose whole-life prison sentences in the most serious cases of murder. The ruling came after a European Court of Human Rights (ECHR) ruling in July 2013 that the whole-life sentences passed earlier on three killers amounted to inhumane and degrading treatment because it lacked any formal review mechanism that would give any prospect of release. According to the ECHR, such sentences had to be reviewed at some stage, suggesting 25 years. The judges at the Appeal Court ruled that British law provided clearly whole-life prisoners with a possibility of release saying that such a power existed in exceptional circumstances, quoting Section 30 of the Crime (Sentences) Act. Such requests should only be considered on an individual basis. In their ruling, the appeal judges increased the 40-year sentence of a convicted murderer to a whole-life prison term. At his trial at the Old Bailey in October 2013, the judge had imposed a minimum sentence of 40 years, as he said he had to take account of the ECHR ruling. The Appeal Court, however, stated that the trial judge had been in error in thinking that he did not have the power to give a whole-life order. In the same ruling, the court dismissed also a challenge brought by another killer against his whole-life order.

Source: The Guardian/Judiciary of England and Wales.

The United States of America

January/April 2014

A U.S. court sentenced one defendant to ten years in prison for her role in a failed plot to kill a Swedish artist, who had depicted the head of the prophet Mohammad on a dog. According to the defence, the plot was "more aspirational than operational". The woman had pleaded guilty to conspiracy to provide material support to terrorists, conspiracy to kill in a foreign country, making false statements, and attempted identity theft. She had converted to Islam online and got involved in the Muslim online community. In 2009, she had travelled to Europe to join the plot to shoot the Swedish artist. She had been in contact with an Al Qaida operative in Pakistan but her co-conspirators had remained at the planning stages of the attack. After six weeks she became impatient and returned to the United States where she had been arrested. According to the

prosecution, the defendant still posed a danger to society although she co-operated extensively in the investigation of terrorism cases since 2009. In court she said she did not want to be in jihad any more. The defence claimed that she had deep psychological scars from her childhood when she had been abused by her father. Another co-conspirator pleaded guilty to conspiracy to provide material support to terrorists and was sentenced to eight years in prison. The sentencing of a third defendant had been delayed in order to complete psychological evaluations. He had been 15 and 16 years old at the time of the offence and was the youngest person ever charged with terrorism inside the United States. In April 2014, he was sentenced to five years in prison for conspiracy to provide material support to terrorists. His co-defendant is in custody in Ireland pending extradition to the United States (*please see above the decision from Ireland*).

Source: FBI/Reuters.

March 2014

A man, who acted as an Al Qaida spokesman after 11 September 2001, was convicted of conspiracy to kill Americans, conspiring to provide support to Al Qaida, and providing support to Al Qaida. According to the government, as part of his role in the conspiracy and the support he had provided to Al Qaida, he had spoken on behalf of the terrorist group, "embraced its war against America" and sought to recruit others to join in that conspiracy. He had been captured in Jordan in 2013 and brought to the United States. Prior to that, he had been imprisoned for about a decade in Iran. In 2008, he had married the daughter of the former Al Qaida leader who had been shot dead by U.S. troops in his villa in Pakistan in 2011. His links with the deceased leader dated back from years before. In 2001, he had been in Afghanistan delivering religious lectures in Al Qaida training camps. Later, he testified that he had no idea "specifically" that the 11 September attacks would occur but admitted he had heard at those camps that "something" might happen. A few hours after the attacks he had been called to a meeting with the former Al Qaida leader in a cave in the mountains of Afghanistan. On the next day he had agreed to help spread his message to the world. In videotaped speeches that followed the 11 September attacks, the preacher had been sitting next to the then Al Qaida leader and praised the attacks warning repeatedly that the "storm of airplanes" would not abate. The preacher had, however, argued that his role had been a purely religious one, aimed at encouraging all Muslims to rise up against their oppressors. The charges against him did not include helping to plan or carry out the 11 September attacks; however, the prosecution claimed he had known of the attempted shoe-bomb attack on a trans-Atlantic airplane. Unexpectedly, the defendant testified at the trial and denied he had helped plot Al Qaida attacks, claiming he had never become a formal member of the group. The defence had intended to obtain a testimony from the self-described architect of the 11 September attacks presently detained at Guantánamo Bay, as it believed his knowledge of Al Qaida's operations would help clear the defendant. The judge, however, did not allow such a testimony. The convicted preacher faces life imprisonment at the sentencing, which was scheduled for September 2014.

Source: The New York Times.

II. Comparative Analysis

January - April 2014

Court Decisions on Terrorist Offences in the EU Member States

In the period January – April 2014 terrorism-related court decisions were reported in eight EU Member States: Belgium, Croatia, France, Germany, Ireland, Lithuania, Spain and the United Kingdom (*please see Figure 1 below*). They include decisions on first instance, as well as decisions on appeals.[1]

Figure 1

[1] The comparative analysis that follows in this chapter includes only those court decisions that were rendered in the reporting period and does not include the ones that were pronounced in 2013 but became final in the period January – April 2014. It excludes also the sentencing of the two men found guilty in December 2013 for the Woolwich murder of a soldier in London, the United Kingdom.

Convictions and Acquittals

The verdicts handed down in the period January – April 2014 included 25% acquittals (*please see Figure 2 below*).[2] This percentage is slightly higher than the one reported for 2013 (23%). In three of the EU Member States (Croatia, France and Germany) the relevant court proceedings resulted in convictions only. Among those, Germany is the country, which did not report acquittals for terrorist offences in the period 2010-2013 either.

Figure 2

MEMBER STATE	CONVICTIONS	ACQUITTALS	TOTAL	ACQUITTALS AS %
Belgium	13	2	15	13%
Croatia	1	-	1	0%
France	4	-	4	0%
Germany	13	-	13	0%
Ireland	8	1	9	11%
Lithuania	-	1	1	100%
Spain	28	18	46	39%
United Kingdom	4	2	6	33%
TOTAL	71	24	95	25%

Types of Terrorism

As reported in the TCM since 2008, the majority of verdicts, also in the first four months of 2014, related to separatist terrorism. Traditionally, Spain is the Member State with the highest number of verdicts in separatist terrorism cases. In Ireland and Lithuania separatist terrorism verdicts were the only type reported in January – April 2014, while courts in Belgium and France pronounced verdicts on religiously-inspired terrorism cases only. The court in Spain was the only one that ruled on left-wing cases (*please see Figure 3 below*).

[2] The number of acquittals includes also verdicts in which the defendant was acquitted of the terrorist offence(s) but found guilty of a non-terrorism related common offence. Also, in Spain, for example, 43 defendants were tried on charges of money laundering related to drug trafficking allegedly linked to FARC. Only one of them, however, was charged with a terrorist offence and is included in the overview below.

Figure 3

MEMBER STATE	Separatist	Religiously-inspired	Left-wing	Right-wing	Not specified	TOTAL
Belgium	-	15	-	-	-	15
Croatia	-	-	-	-	1	1
France	-	4	-	-	-	4
Germany	1	4	-	8	-	13
Ireland	9	-	-	-	-	9
Lithuania	1	-	-	-	-	1
Spain	41	1	3	-	1	46
United Kingdom	3	2	-	1	-	6
TOTAL	55	26	3	9	2	95

Types of Convicted Offences

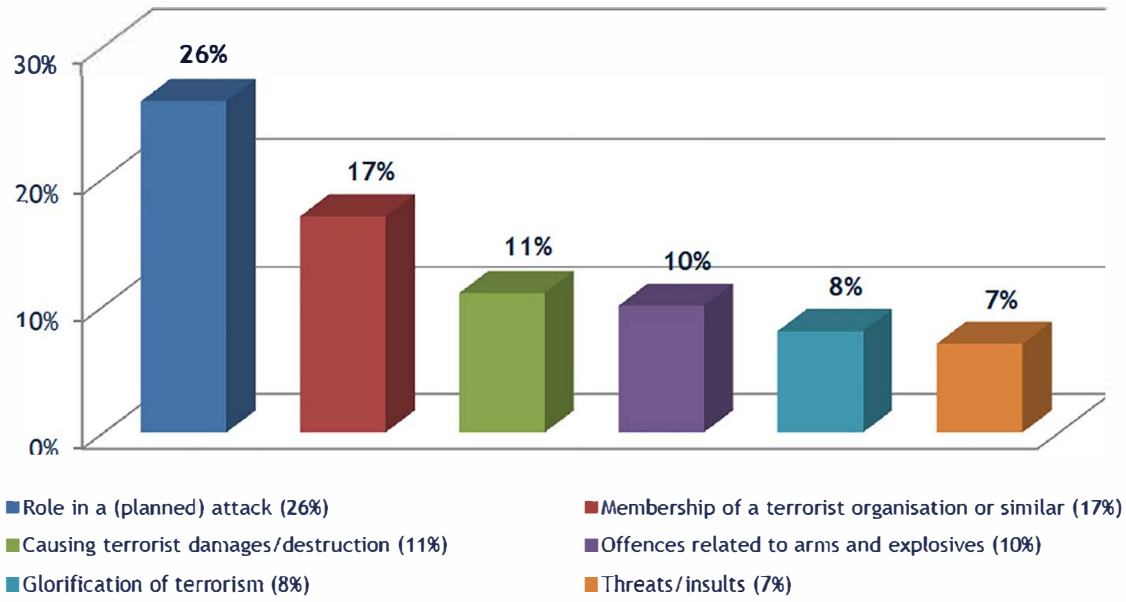
The overview below presents the types of offences of which the individuals brought to trial were found guilty.[3] The overview focuses on offences that amount to at least 5% of the guilty verdicts. In order to ensure certain relativity, the offences are shown as a percentage. In the cases when one individual was found guilty of more than one offence, all convicted offences are included separately.

The analysis considered the countries' specifics and 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'.

A closer look at the information available in open sources or shared with Eurojust in the reporting period reveals a rather wide spectrum of terrorist offences in the Member States concerned (*please see Figure 4 below*). A relatively high percentage of the convicted offences were related to a specific role in a (planned) attack (26%). The second largest type of offences – membership of a terrorist organisation *or similar* – presented 17% of the total. Causing terrorist damages/destruction constituted 11% of the convicted offences in the reporting period.

[3] The overview that follows is based on the information on offences as found in open sources or 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 EU Member States.

Figure 4



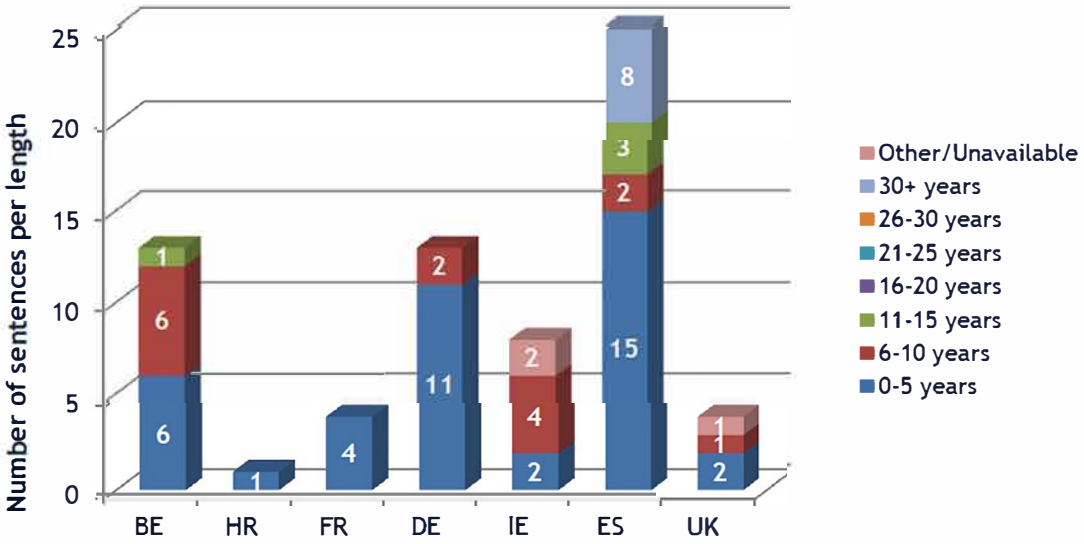
Pronounced Sentences

The severity of the penalties pronounced in the concluded court proceedings in the period January – April 2014 ranged between two months and 135 years' imprisonment (*please see Figure 5 below*).

The majority of the penalties imposed (58%) were of up to five years' imprisonment. This percentage is higher than the one reported in 2013 for this type of penalties (47%). As a whole, the penalties of up to ten years' imprisonment constituted 79% of the total, while the penalties exceeding 30 years' imprisonment comprised 11% of all the penalties handed down in the reporting period.

In some cases parts of the sentences were suspended and probationary periods were set; pecuniary penalties were given as well. Prison sentences were sometimes also accompanied by temporary deprivation of certain civil rights.

Figure 5


Number of sentences per length
25
20
15
10
5
0
BE
HR
FR
DE
IE
ES
UK
Other/Unavailable
30+ years
26-30 years
21-25 years
16-20 years
11-15 years
6-10 years
0-5 years

III. Legal Update

January - April 2014

European Institutions

January 2014

Commission Implementing Regulation (EU) No 16/2014 of 9 January 2014 amending for the 209th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting one natural person from the list.

Source: Official Journal of the European Union.

Commission Implementing Regulation (EU) No 21/2014 of 10 January 2014 amending for the 210th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting two entries under the heading 'Legal persons, groups and entities' and two natural persons from the list.

Source: Official Journal of the European Union.

March 2014

Commission Implementing Regulation (EU) No 329/2014 of 31 March 2014 amending for the 211th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by replacing one entry under the heading 'Legal persons, groups and entities' with a new one, adding one natural person to the list and deleting another natural person.

Source: Official Journal of the European Union.

April 2014

Commission Implementing Regulation (EU) No 369/2014 of 10 April 2014 amending for the 212th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network was adopted. The Regulation amends Annex I to Regulation (EC) No 881/2002 by deleting three natural persons from the list.

Source: Official Journal of the European Union.

European Court of Justice

March 2014

The President of the General Court of the European Union submitted the Draft Rules of procedure of the General Court for the approval of the Council, in agreement with the Court of Justice. Chapter 7 of Title III Direct Actions concerns Information or Material Pertaining to the Security of the Union or of its Member States or to the Conduct of Their International Relations. According to the explanatory notes, this new chapter embodies the General Court's intention to make categories of highly sensitive information or material subject to very specific treatment by laying down a special procedural regime for situations in which the security of the Union or of its Member States or the conduct of their international relations is at issue. Due to the high number of actions challenging the lawfulness of acts adopted by the institutions in the sphere of 'restrictive measures' pursuant to Articles 29 TEU and 215 TFEU in 2011 and in 2012, the General Court had learned certain lessons as regards procedure, particularly in relation to the modification in the course of proceedings of the form of order sought, and had been able to fill a gap concerning the treatment of information or material the confidential nature of which was based on overriding considerations pertaining to the security of the Union or of its Member States or to the conduct of their international relations. The scope of the relevant Article 105 of the Draft Rules was, however, not limited to actions challenging the lawfulness of acts adopted on the basis of Article 215 TFEU, since the overriding interests mentioned as being worthy of protection (security of the Union, security of its Member States, conduct of the international relations of the Union or of its Member States) may also be put in issue in other proceedings before the General Court.

Source: Council of the European Union.

IV. Judicial Analysis

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

Foreword

The case presented below concerns the phenomenon of (aspiring) foreign fighters who leave for Syria to join the violent jihad there.[4] The phenomenon has affected most of the EU Member States over the last couple of years. It raises serious concerns, as fighters who have undertaken combat training and gained fighting experience on the Syrian battlefield are perceived as possible threat to the security of the EU Member States upon their return to Europe. While a number of EU Member States have specific legal provisions that can be applied with regard to those who plan and leave for Syria to train and wage violent jihad and to those who come back to Europe, challenges to build successful prosecution cases seem to be far-reaching.

The judgment in context: an instrumental case study

The present case is the first one in France to result in verdicts for potential French fighters in Syria. The analysis of the judgment focuses on certain aspects of interest, in particular those related to the evidence admitted by the court and especially the digital evidence, including messages posted on Facebook. The case can be consulted as an instrumental case study reflecting key aspects of the phenomenon of aspiring foreign fighters.

The case concerns three defendants, who, at the time of their arrest, were 20, 23, and 25 years old respectively. It is mentioned in the text of the judgment that two of them knew each other for a long time, whereas they met the third defendant only half a year prior to the planned departure during an Islamist gathering in Nice which was organised by an individual, hereafter referred to as DD. Further open sources research shows that DD was born in 1976 in Senegal and immigrated to France when he was a child. While he grew up in Nice, he was arrested several times for various offences. During a two-year prison term, he familiarised with the radical exegesis of the Islam. After his release in 2005, he started preaching the radical Islam. When he eventually realised that the Internet could serve as a platform to easily address people amenable to his doctrine, DD started to produce videos glorifying the Hijra and the jihad in particular and uploaded them on common platforms, such as YouTube. He furthermore approached young people directly on public places, such as football fields or in the city centre of Nice and organised meetings for those who were interested. The three defendants in this case,

[4] The Case Analysis Unit would like to thank the French National Desk at Eurojust for providing the full text of the judgment, which allowed for its comprehensive study and analysis.

invited via Facebook, attended one of these meetings amongst approximately 30 other interested persons. Because he felt under pressure by the French authorities, DD departed to Senegal in 2012. In the summer of 2013, he travelled to Syria and joined a group of combatants affiliated with Al Qaida. From Syria, he regularly disseminated propaganda and news from the battlefield through social media channels.

Considering this background information, two interdependent features of the present case can be underlined: the relatively low age of the defendants and the fact that the radicalisation process, at least in the case of one of them, took place in a relatively short period of time and was facilitated by a recruiter who made extensive use of the Internet.

These two key features are not intrinsic to the present case only; in fact, they are characteristic of the phenomenon of foreign fighters and represent two of its unique traits. First of all, as for example the Dutch General Intelligence and Security Service recently found, throughout Europe primarily young people decide to join the jihad battlefields in Syria. Secondly, the Internet plays a significant role in the promotion of the jihad and also as a platform of radicalisation: not only has the number of jihadist websites greatly increased in the past years, but the recruiters often make use of social media, such as Twitter, Facebook and YouTube as well. In the media, this phenomenon is referred to as cyber-jihad. In a recent study, the International Centre for the Study of Radicalisation found that social media represents an essential source of information and inspiration to aspiring foreign fighters.

Thus, the present case well exemplifies the phenomenon of foreign fighters in general and the aspect of online radicalisation in particular. In overall, case law related to the phenomenon of (aspiring) foreign fighters in Syria is of particular interest and will be further studied at Eurojust.

Procedure: 1st instance, Tribunal Correctionnel de Paris, France

Date of decision: 7 March 2014

Introduction

On 4 April 2012, the French Central Directorate of Interior Intelligence (DCRI – Direction du Renseignement Militaire) reported to the examining judge of the Tribunal de Grande Instance de Paris that it was in possession of information indicating that at that time three individuals – hereafter referred to as AA, BB and CC – were preparing their departure from France in order to join the armed jihad. The examining judge immediately initiated investigations and ordered physical surveillance of the suspects, as well as telephone interception. In this way, the preparations of the defendants could be traced in the following weeks. On 18 May 2012, prior to the planned departure to Istanbul, they were arrested at the airport and made subject to pre-trial detention and control orders respectively. The trial of the three started on 30 January 2014.

The charges

The three men appeared in court on charges of having formed a criminal association with the purpose to prepare acts of terrorism. More specifically, they were accused to have fully prepared a journey to destinations next to the Syrian border with the intention to establish contacts with groups or individuals associated with Al Qaida in order to receive military training, acquire weapons and take part in the armed jihad.

The applicable law

The legal provisions, indicated as applicable in this case, included Articles 421-1, 421-2, 421-3, 421-4 and 421-6 of the French Criminal Code, Title II Terrorism, Chapter I Acts of Terrorism, as well as Article 706-16 (Prosecution, Investigation and Trial of Terrorist Offences)of the French Code of Criminal procedure[5].

The evidence

Before the court, the following categories of evidence were referred to:

Intelligence information

AA and BB were childhood friends. They met CC during a meeting in Nice in December 2011, which was organised by an individual, DD, who at that time was active in promoting Islamist radicalism and the jihad via the Internet. Following their meeting in Nice, the three defendants stayed in touch and envisaged travelling to various destinations together. Finally, they agreed to depart to the Maghreb in order to proceed to a jihad battlefield, identifying Syria, Mali and

[5] For an unofficial translation of the relevant provisions, please see the end of this Chapter.

Yemen as possible destinations. To this end, they purchased a four-wheel drive vehicle at the end of March 2012. At the same time, they also acquired night vision devices and rubber boat equipment.

Telephone interception recordings

The telephone interception conducted under the authority of the examining judge allowed the investigators to monitor the state of preparations. It is noteworthy that during the interception period (6 April – 12 May 2012), the defendants changed both the destination and the travel routes several times. Whereas the original plan foresaw to take a ferry to Tunisia and then continue the journey to Syria using the 4WD vehicle, BB eventually decided that it would be better to wait until the jihadist movement was better organised in Syria and receive training in Libya instead. The very same day, however, due to new information received, he proposed to depart to Syria, this time by transiting Turkey. The ferry tickets could be returned and the money be used for fuel. Yet, CC declared that he would prefer to travel by plane and meet in Palestine, which would effectively mean that the group would have to split. At the beginning of May 2012, the plan was been changed again to the effect that the defendants agreed to join the jihadists in Mali, travelling through Tunisia and Algeria with the 4WD vehicle. Finally, they decided to cancel the reservation for the ferry tickets and booked a flight to Istanbul instead.

On the telephone, the defendants also intensively discussed their equipment, covering both logistical items (such as luggage bags, a rubber boat engine, documents for the 4WD vehicle), as well as tactical, respectively military items (such as flashlights, tactical vests, holsters, an electroshock weapon Taser).

On several occasions, it became clear that they were concerned about eventual controls. Solutions were proposed to this problem, for example pretending to be on a humanitarian aid mission.

Furthermore, the telephone interception recordings produced insights into the inter-personal dynamics among the three suspects. Thus, it became clear that, whereas CC was initially pushing the other two to accelerate their preparations in order to depart as early as possible, later he appeared more reluctant, raising suspicion in AA and BB regarding his commitment to the project. In addition, BB felt his authority questioned by CC. AA and BB also found out that FF was allegedly an unskilled paintball player and concluded that he would probably be rapidly killed on the battlefield.

Material evidence produced by searches

Most of the items, which were mentioned in the intercepted telephone conversations, were indeed found on the defendants later on. Additionally, EUR 5 500 in cash and several digital devices (USB storage, mobile telephones, etc.) were seized. As a result of the house searches carried out, other data storage devices were also found.

Digital evidence

The digital evidence admitted to the case stemmed mainly from mobile devices and hard disks seized. Numerous jihadist videos, pictures showing prominent leaders, such as the former Al Qaida leader killed by U.S. troops in Pakistan in 2011, as well as Al Qaida-related scripts were found. Furthermore, CC's Facebook profile was scrutinised. It turned out that he appeared under

the pseudonym *Fares*, the Persian horseman. He indicated that he resided in Baghdad and studied at the fictitious *Intifada University* and claimed to have the Sharia as his political affiliation. Furthermore, he was not only a member to the group *Jihad, the only solution*, but also used the photograph of a group of Islamist terrorists as a profile picture and had private conversations in which he talked about his plans to join the jihad. In a private message to a female who had *mujahid* (female jihadist) in her pseudonym, he stated that he had made his preparations and was impatient to leave. The message was sent on the morning of the day of departure.

The defence case

CC explained that he began to search for a religious identity after the divorce of his parents in late 2011. Along the way, he learned about the jihad, mainly through the Internet, and decided to take part in it. He alleged that BB acted as the group's emir. Whereas CC eventually was in doubt about the rightfulness of their undertaking, the others would not let him abscond since he was the one providing the financial means for the project. Furthermore, due to his bad paintball performance, the others told him that he was not able to handle a gun and should capture the events on film instead. In the end, he became frightened of dying on the battlefield and therefore allegedly decided to leave AA and BB in Turkey and proceed to Yemen to study, while the other two intended to join the opposition forces in Homs, Syria.

BB alleged that it was not his intention to depart to Syria in order to fight on the battlefield. Instead, he indicated that his aim was to collect material in Syria, which he wanted to compile into a video documentary later on. Regarding his beliefs and convictions, he stated that he agreed with Al Qaida with regard to a Muslim's duty to fight in the name of God.

AA, like BB, claimed that their only incentive for travelling to Syria was to collect material to be used for a video report. When asked what the military equipment was to be used for, he replied that they only acquired it for self-defence purposes. He referred to the same reason when justifying the group's plan to receive military training. He posed the planned journey as a "jihad of the soul" and stated that ultimately, it was not up to him, but rather to God, to decide whether or not he would join the armed jihad.

The ruling of the court

When assessing CC's involvement in the planning of the journey, the court considered the fact that he was responsible for most of the financing and that he, as revealed by the telephone interception recordings, pressed the others on several occasions to leave as soon as possible. Furthermore, the digital evidence and, in particular, the information revealed by his Facebook account – especially his private messages, such as the one referred to above – convinced the court of his commitment to the project. The court was not convinced of CC's allegation that his aim was to do studies in the Yemen.

Due to the digital evidence recovered, in particular photographs, videos and Al Qaida-related scripts, the court was convinced that BB was strongly committed to the ideas of radical Islamism. Furthermore, the telephone interception recordings, especially those revealing that BB was the one who acquired most of the tactical and military equipment, showed how eager he was to fight on the battlefield. Finally, the court dismissed the claim that the journey was

supposed to serve documentation purposes, as it considered the existence of camera equipment and the fact that this equipment was bought only two days before departure as merely serving as an alibi.

Again, the court referred to the digital evidence recovered from AA's mobile telephone and his computers, in particular pictures showing terrorist leaders and armed jihadists. Furthermore, it was revealed that AA conducted research on the radical Islamist movement. The telephone interception recordings indicated that AA also intended to receive military training.

The court held that the presented evidence was sufficient to prove the offence of criminal association for the preparation of acts of terrorism under Article 421 of the French Criminal Code for all three defendants. It referred specifically to preparatory acts carried out by the defendants (e.g. the initial meeting in Nice, the numerous contacts between the defendants, the purchase of a 4WD vehicle and other functional equipment, the logistic planning) and their fascination with the jihad. Therefore, the court declared the defendants guilty under Article 421 of the French Criminal Code.

The sentences

The court handed down the following sentences:

- AA: four years of imprisonment suspended for one year, with a probationary period of three years;
- BB: five years of imprisonment suspended for one year, with a probationary period of three years;
- CC: four years of imprisonment suspended for two years, with a probationary period of three years.

Unofficial translation of the relevant legal provisions

French Criminal Code Title II, Chapter I: Acts of Terrorism

Article 421-1

The following offences constitute acts of terrorism where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is to seriously disturb public order through intimidation or terror:

1) wilful attacks on life, wilful attacks on the physical integrity of persons, abduction and unlawful detention and also hijacking of planes, vessels or any other means of transport, defined by Book II of the present Code;
2) theft, extortion, destruction, defacement and damage, and also computer offences, as defined under Book III of the present Code;
3) offences committed by combat groups and disbanded movements, as defined under Articles 431-13 to 431-17, and offences set out under articles 434-6, 441-2 to 441-5;
4) offences committed with arms, explosives or nuclear material, as defined under Article L. 1333-9. Articles L. 1333-11 and L. 1333-13-2, the second paragraphs of Article L. 1333-13-3 and L. 1333-13-4, Articles L. 1333-13-6, L. 2339-2, L. 2339-14, L. 2339-16, L. 2341-1, L; 2341-4, L. 2341-5, L. 2342-57 – L. 2342-62, L. 2353-4, the first paragraph of Article L. 2353-5 and Article L. 2353-13 of the Defence Code, as well as Articles L. 317-4, L. 317-7 and 317-8 with the exception of arms of category D, as defined by Decree of the Council of State, of the Code of Internal Security;
5) receiving the product of one of the offences set out in paragraphs 1 to 4 above;
6) money laundering offences, set out in Chapter IV of Title II of Book III of the present Code;
7) insider trading offences, set out in Article L.465-1 of the Financial and Monetary Code.

Article 421-2

The introduction into the atmosphere, on the ground, in the soil, in foodstuff or its ingredients, or in waters, including territorial waters, of any substance liable to imperil human or animal health or the natural environment is an act of terrorism where it is committed intentionally in connection with an individual or collective undertaking whose aim is to seriously disturb public order through intimidation or terror.

Article 421-2-1

The participation in any group formed or association established with a view to the preparation, marked by one or more material actions, of any of the acts of terrorism provided for under the previous Articles shall in addition be an act of terrorism.

Article 421-2-2

It also constitutes an act of terrorism to finance a terrorist organisation by providing, collecting or managing funds, securities or property of any kind, or by giving advice for this purpose, intending that such funds, securities or property be used, or knowing that they are intended to be used, in whole or in part, for the commission of any of the acts of terrorism listed in the present Chapter, irrespective of whether such an act takes place.

Article 421-2-3

Being unable to account for resources corresponding to one's lifestyle when habitually in close contact with a person or persons who engage in one or more of the activities provided for by Articles 421-1 to 421-2-2 is punishable by seven years' imprisonment and by a fine of EUR 100 000.

Article 421-2-4

The act of making offers or promises to a person, announcing rewards, presents or advantages of any kind, threatening or exerting pressure on a person with the aim to induce this person to either participate in a group or an association as referred to by Article 421-2-1 or to commit an act of terrorism as referred to in Articles 421-1 and 421-2 is punished with ten years' imprisonment and a fine of EUR 150 000 even if the addressed person did no act accordingly.

Article 421-3

The maximum custodial sentence incurred for the offences provided for under Article 421-1 is increased as follows where those offences constitute acts of terrorism:

1) it is raised to criminal imprisonment for life where the offence is punished by 30 years' criminal imprisonment;
2) it is raised to 30 years' criminal imprisonment where the offence is punished by 20 years' criminal imprisonment;
3) it is raised to 20 years' criminal imprisonment where the offence is punished by 15 years' criminal imprisonment;
4) it is raised to 15 years' criminal imprisonment where the offence is punished by ten years' imprisonment;
5) it is raised to ten years' imprisonment where the offence is punished by seven years' imprisonment;
6) it is raised to seven years' imprisonment where the offence is punished by five years' imprisonment;
7) it is raised to twice the sentence incurred where the offence is punished by a maximum of three years' imprisonment.

The first two paragraphs of Article 132-23 governing the safety period are applicable to the felonies referred to under the present Article, and also to the misdemeanours punished by ten years' imprisonment.

Article 421-4

The act of terrorism set out under Article 421-2 is punished by 20 years' criminal imprisonment and a fine of EUR 350 000.

Where this offence causes the death of one or more persons, it is punished by criminal imprisonment for life and a fine of EUR 750 000.

The first two paragraphs of Article 132-23 governing the safety period are applicable to the felony referred to under the present Article.

Article 421-5

The acts of terrorism defined by Articles 421-2-1 and 421-2-2 are punished by ten years' imprisonment and a fine of EUR 225 000.

Leading or organising [the type of] group or association provided for under Article 421-2-1 is punished by 20 years' imprisonment and a fine of EUR 500 000.

Attempt to commit the misdemeanour set out under Article 421-2-2 is subject to the same penalties.

The first two paragraphs of Article 132-23 governing the safety period are applicable to the offences referred to under the present Article.

Article 421-6

The penalties are increased to 20 years' imprisonment and a fine of EUR 350 000 where a group or association referred to in Article 421-2 engaged in the preparation of:

1) one or more offences against persons referred to in the first paragraph of Article 421-1;
2) one or more attacks involving explosives or incendiaries referred to in the second paragraph of Article 421-1 and to be carried out in circumstances of time or place likely to cause the death of one or more persons;
3) an act of terrorism as defined by Article 421-2 where it is likely to cause the death of one or more persons;

The act of leading or organising such a group or association is punished by 30 years' imprisonment and a fine of EUR 500 000.

The first two paragraphs of Article 132-23 governing the safety period are applicable to the offences referred to by the present Article.

French Code of Criminal Procedure Title XV: Prosecution, Investigation and Trial of Terrorist Offences

Article 706-16

The terrorist offences punishable by Articles 421-1 to 421-6 of the Criminal Code, and also their related offences, are prosecuted, investigated and tried according to the rules of the present Code, subject to the provisions of the present Title.

These provisions are also applicable to the prosecution, investigation and trial of terrorist offences committed abroad where French law is applicable, pursuant to the provisions of Section 2, Chapter III, Title I of Book I of the Criminal Code.

They are also applicable to the prosecution, investigation and trial of terrorist offences committed abroad by members of the French armed forces or against them in the cases provided for in Chapter I, Title II of Book I of the Code of Military Justice.

V. Topic of Interest

International Humanitarian Law and Foreign Fighters: Some Reflections on Present and Past Conflicts

Introduction

The analysis that follows is aimed at giving an assessment of the phenomenon of foreign fighters in Syria, specifically with a view to difficulties EU Member States may encounter when prosecuting those individuals upon their return to Europe with regards to a possible preclusion of criminal law under International Humanitarian Law (IHL).

With the exception of the official texts of judgments as mentioned below, this analysis relies solely on open sources, i.e. diverse international news outlets.

The Syrian conflict in brief

The anti-government protests in Syria started in March 2011 in the city of Deraa in reaction to the arrest and torture of a group of teenagers who had painted revolutionary slogans on school walls. Security forces opened fire during a protest march, killing four. Another person was killed by authorities at one of the victims' funeral. The protesters then started to demand the removal of the Syrian president. The government reacted with a combination of minor concessions, such as lifting the 48-year-long state of emergency, and force, such as besieging opposition strongholds. It first sent tanks to Deraa in late March 2011 and only intensified the crackdown when the protests spread around the country. The fighting reached the capital Damascus in 2012 and since then has been prevalent in almost every part of the country.[6] As of February 2014, roughly 140000 persons are estimated to have been killed in three years of conflict.[7]

Classification of the conflict under international law

Presence of an armed conflict

In order for the ongoing violence on the territory of the Syrian Arab Republic to be classified as an armed conflict – whether international or non-international – two criteria need to be fulfilled: intensity of violence and identifiable conflict parties.[8]

[6] For a summary of all relevant events since March 2011, please see BBC, http://www.bbc.com/news/world-middle-east-26116868 (14/04/2014).
[7] Syrian Observatory for Human Rights, as quoted by Reuters, http://www.reuters.com/article/2014/02/15/us-syria-crisis-toll-idUSBREA1E0HS20140215 (14/04/2014).
[8] The analysis that follows is based on Louise Arimatsu/Mohbuba Choudhury, *The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya, London*, Chatham House, March 2014.

Intensity

It is quite undisputed that by the summer of 2011 at the latest, the violence crossed the threshold of intensity to be considered an armed conflict. Evidence in support include the use of tanks and live ammunition, the fact that the government deployed the armed forces to contain the situation and the use of methods of military operations against protesters, such as shelling of wide areas populated by likely opposition members. This as well as the sheer number of government forces deployed illustrates that government action departed from a mere law enforcement setting. The collective nature of hostilities can be derived from the number of clashes at multiple locations causing a considerable amount of casualties and destruction of property. The extensiveness of hostilities both in a geographic and chronological sense is evidenced, among others, by the growing number of (cross-border) refugees.

The intensity criterion is therefore met.

Presence of conflict parties

The founders of the Free Syrian Army (FSA) nominated a spokesperson, released political statements and established exile headquarters in Turkey right at the beginning of the conflict, but there was little evidence for an actual "chain of command" between the FSA leadership in Turkey and the groups on the ground in Syria, even though these groups identified themselves with the FSA. However, by March 2012 FSA fighters set up command structures, notably the provincial military councils. Though based on separate and loose structures, coordinated action between the various armed groups became more frequent and the groups were able to carry out sustained operations against government forces. At this point, the FSA started recruiting new members and providing basic military training. It apparently had access to weapons from abroad. Therefore, from March 2012 onwards, the FSA can be qualified as a conflict party opposing the regular Syrian government armed and security forces.

The combination of the facts mentioned above means that beginning in March 2012 at the latest, a non-international armed conflict (NIAC) between the government forces and armed groups under the banner of the FSA existed in Syria, triggering the application of IHL to those participating in the hostilities.

Classification of the armed conflict

In some cases, an armed conflict between a state and organised armed groups operating within this state can be qualified as an *international* armed conflict (IAC) because of the involvement of other states. Criteria for such a scenario have been developed in customary IHL. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY), for instance, holds that in order for an NIAC to be considered an IAC, "control by a State over subordinate armed forces or militias or paramilitary units may be of an overall character (and must comprise more than the mere provision of financial assistance or military equipment or training). (...) The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in

organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group." [9]

In the case of Syria, it is highly controversial whether the extent of control possibly exerted by third states meets this threshold. A control of the Syrian opposition (or government) forces by a foreign state to the required extent is at this point not established. Therefore, the conflict must be qualified as non-international.

Non-international armed conflicts are governed by Common Article 3 of the Geneva Conventions of 12 August 1949 and Protocol II to the Geneva Conventions[10], as well as by rules of customary IHL.[11] In the opinion of the International Conference of the Red Cross, members of organised armed groups are entitled to no special status under the laws of non-international armed conflict and may be prosecuted under domestic criminal law if they have taken part in hostilities.[12]

The issue of foreign fighters and terrorism in the Syrian conflict

Since mid-2013, there is an increasing number of reports of individuals of diverse origin – predominantly Saudi-Arabian, North African and Chechen, but also a large number of European, as well as U.S., Canadian and Australian citizens and persons from several South-East Asian countries – that travel to Syria to join militant Islamist groups fighting against the regime. The most important of these groups are the Jabhat Al Nusra (also Al Nusra Front) and the Islamic State of Iraq and the Levant (ISIL, also ISIS; "Levant" meaning Greater Syria). On the ground in Syria, these groups not only engage in fighting with government forces, but also commit suicide attacks on military and civilian targets and have been reported to establish and brutally enforce Sharia law in the communities under their control.

Increased law enforcement and media attention has mostly focussed on the risk posed by those foreign fighters returning from Syria to their home countries. It is widely suspected that the fighters receive not only extensive military training and extremist indoctrination while in Syria, but also specific instructions to carry out terrorist attacks on behalf of Al Qaida upon their return from Syria.[13]

[9] Judgment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, case no. IT-94-1-A.
[10] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Syria is not a party to the Protocol.
[11] 31st International Conference of the Red Cross and the Red Crescent, Report: *International Humanitarian Law and the challenges of contemporary armed conflicts*, Geneva 2011, p.8.
[12] International Committee of the Red Cross, *The relevance of IHL in the context of terrorism*, http://www.icrc.org/eng/resources/documents/faq/terrorism-ihl-210705.htm.
[13] For more information on the general issues see e.g. The Meir Amit Intelligence and Terrorism Information Center, *Foreign Fighters in Syria*, December 2013; Chatham House, *Foreign Fighters in Syria: A Threat at Home and Abroad?*, April 2014.

IHL and terrorism

In view of the above, there is an increased interest in preventing and disrupting travel to Syria, as well as prosecuting those individuals very quickly and effectively upon their return, or even before leaving. In most cases so far, individuals were charged with offences such as belonging to terrorist organisations or preparing terrorist acts, meaning that for the law to apply it has to be proven that the (intended) activities in Syria are covered by the respective definition of terrorism.

While several attempts have been made to define the crime of terrorism at the international level (see e.g. the International Convention for the Suppression of Terrorist Bombings), there is no single universally accepted definition of this crime. National definitions vary significantly even within Europe for reasons of differing national policies on the matter. This may also be the reason why some countries specifically address IHL in relation to terrorism in their national law, whereas others do not cover the matter of terrorism in the context of (N)IAC at all.

Despite the possible applicability of IHL in some situations where terrorist acts have been committed, terrorism as such has been defined as primarily a criminal phenomenon[14] Thus, individual acts of terrorism can be pursued under national criminal law provisions dealing with offences such as membership of a terrorist organisation, material support to terrorist organisations, murder, or offences regarding possession of certain weapons, explosives or extremist materials. Similarly, the general provisions of national criminal procedure law will apply, in addition to existing terrorism-specific procedural legislation (see e.g. the relevant parts of the UK Terrorism Act regarding detention, etc.).[15]

In a recent study by the Geneva Academy of International Humanitarian Law and Human Rights it is stated that "IHL governs the conduct of all parties to a conflict, which often includes groups designated as 'terrorist', either by individual states or international bodies such as the UN Security Council. The purported aim of a group participating in an armed conflict is irrelevant for the purposes of IHL." The study argues that during NIAC armed non-state actors do not enjoy 'combatant' immunity and "may be prosecuted under national criminal law even for acts that do not violate IHL". It reads further that "in cases of states exercising jurisdiction on the basis of the active nationality principle, returning foreign fighters may face prosecutions for acts committed during the armed conflict abroad", regardless of whether the acts constitute violations of IHL or not. It is also underlined that IHL "recommends amnesties for the mere participation in hostilities during NIAC, but not for war crimes, including acts of terror, and other international crimes, such as torture."[16]

[14] International Committee of the Red Cross, *Excerpt of the Report prepared by the International Committee of the Red Cross for the 28th International Conference of the Red Cross and Red Crescent, Geneva, December 2003*, p. 19.
[15] Please see also Marco Sassòli, *Transnational Armed Groups and International Humanitarian Law*, Boston, 2006.
[16] Kraehenmann, S., *Foreign Fighters: A Critical Review of the Legal Issues*, The Geneva Academy of International Humanitarian Law and Human Rights, April 2014.

Court decisions

Four court decisions have been selected and presented below, as they appear relevant to the issues at stake. The first two decisions were rendered in the Netherlands with regard to two individuals who had planned to travel to Syria and join the armed jihad there. The argument of the applicability of IHL was brought up by the defence in both cases but was dismissed by the court. The third and fourth decisions, from the United Kingdom and Belgium, refer to acts carried out in Iraq and Afghanistan by insurgents. Extracts from these decisions have been selected and analysed due to certain similarities with the situation in Syria, e.g. the existence of a NIAC, armed insurgency, etc., as well as the relevance of the IHL issue.

The Netherlands: planned travel to Syria

In October 2013, the District Court of Rotterdam rendered two judgments in the cases of two defendants who were arrested prior to leaving or while on the way to Syria. The judgments are the first ones issued in the EU in relation to (aspiring) foreign fighters in Syria. Even though the defendants were acquitted of (preparation for) terrorism and convicted of, respectively, preparation for murder and of preparation for arson and spreading of materials inciting terrorism, in both cases the court pointed out that the offences should be considered in a terrorist framework, namely that of participation in the armed jihad in Syria. In both cases, the issue of IHL was invoked by the defence. Due to some similarities in the two judgments, they will be considered together in the summary that follows.[17] (*for some more information on the two judgments, please see TCM, issue 18, Chapter IV. Judicial Analysis*).

The facts

In the first case, the defendant had expressed his wish to travel to Syria and join the armed jihad there and had undertaken a series of preparatory activities, aside from booking tickets to Turkey and packing his suitcase. He had also visited websites where information about (violent) jihad and martyrdom was shared and had sent multiple messages, in which he had stated that he wanted to fight on the side of the mujahedeen and also fight for the establishment of an Islamic state or of the Sharia rule, etc. He had been arrested before he could leave for Syria. In the indictment, the prosecution brought as primary charges the commission of a terrorist crime and/or a crime of preparing and/or facilitating a terrorist crime, and, in case the primary charges did not lead to a conviction, subsidiary charges concerning the preparation to commit crime(s), including murder, punishable with eight or more years of imprisonment.

In the second case, the defendant had visited websites and made queries about homemade bombs and explosives, purchased 10 metres ignition fuse and one kilogramme of aluminium powder, as well as other materials that could be used to make explosives. He had also posted videos showing the execution of violent attacks and some jihadist texts on websites and engaged in discussions about armed jihad on the Internet. According to the prosecution, he had also visited websites where information about jihad and martyrdom was shared, obtained a travel visa for Saudi Arabia, and undertaken a trip to Turkey with Syria as final destination. He had

[17] The judgments are available at http://www.rechtspraak.nl/Organisatie/Rechtbanken/Rotterdam/Nieuws/Pages/Verdachten%20schuldig%20aan%20voorbereidingshandelingen.aspx.

been arrested in Germany before he could reach Syria. The defendant was charged with the commission of a terrorist crime and/or a crime of preparing and/or facilitating a terrorist crime (1A), and/or preparation to commit arson and/or cause an explosion (1B), and of distributing material inciting a terrorist crime (2).

The terrorism charges

In its deliberations, the court contemplated whether the acts committed by both defendants could be considered in the meaning of Article 134a[18] of the Criminal Code.

It ruled that, in the case of the first defendant, the booking of plane tickets to Turkey, the possession of a packed suitcase and possession of money could serve as de facto preparation for staying at another place. Thereby, these actions could no longer be considered as training, as indicated in the primary charges, but as de facto preparation and/or execution. The same considerations were applied to the other acts, which contained references to (armed) fighting, travel for jihad and possession of relevant information on data carriers, but could not be considered as training for jihad.

Similarly, in the case of the second defendant, the court ruled that the visiting of certain websites and the purchasing of certain items (e.g. ten metres ignition cord, one kilogramme of aluminium powder and a gas bottle) were preparatory for the commission of arson, while the obtaining of a travel visa to Saudi Arabia and a ticket to Turkey and the undertaking of a trip with destination Syria could serve as de facto preparation to stay at another place. Here again, the acts could no longer be considered as training, as indicated in 1.A, but as de facto preparation and/or execution. The same considerations were applied to the other acts, related to the search and possession of information and the search for contacts for a trip to Middle East countries. These acts could not be considered as training for jihad.

Therefore, the court ruled that the acts of both defendants could not be considered proven and qualified in the meaning of Article 134a of the Criminal Code. In the case of the second defendant, the court pointed also out that posting of videos and starting online discussion and the possession of information on jihadist ideology and martyrdom, as referred to in the indictment, in principle related to those who give training and not to those who seek to receive training.

In both cases, however, the court emphasized the seriousness of the offences and ruled that these acts should be considered in a terrorist framework, namely that of participation in the armed jihad in Syria.

IHL

In court, both defendants argued that since they merely wanted to participate in an armed conflict, the acts that they were preparing to commit were actually not criminal (terrorist) offences but acts under IHL; therefore, the criminal law regarding the preparation of terrorist acts would not apply. However, the court found that the preparatory acts in question were not related to planned activities that would be covered by IHL and rejected the claim.

[18] Unofficial translation: "He, who provided or attempted to provide opportunity, resources or information to himself or someone else for the commission of a terrorist crime or a crime of preparing or facilitating a terrorist crime, or acquired knowledge or skills or taught someone else, shall be punished with imprisonment of maximum eight years or a fifth category fine".

The sentences

The defendants were convicted of, respectively, preparation for murder, and of preparation for arson and spreading of materials inciting terrorism. In the case of the first one, the court took into consideration his established mental disorder and ruled that he should be placed in a psychiatric clinic for a period of one year. The second defendant was sentenced to a prison term of 12 months, four of which suspended, with a probationary period of two years.

The United Kingdom: attacks on military personnel in Iraq and Afghanistan

As reported in the TCM, issue 13, in February 2012 the Court of Appeal ruled that there was nothing in international law which required the broad definition of terrorism under the Terrorism Act 2000, as amended, to be read so as to exclude acts of war committed during an armed conflict. The ruling[19] was pronounced in relation to the case of one individual who had been prosecuted for supporting terrorism, as defined under Section 1 of the Terrorism Act, found guilty and sentenced to five years in prison. The Court of Appeal agreed that the trial judge's reply to the jury that an explosives attack on Coalition forces in Iraq was a terrorist attack within the meaning of the Terrorism Act 2000, was correct in law.

The appellant had uploaded videos onto the Internet, which, according to the prosecution, had encouraged the commission of terrorism, as defined in Section 1 of the Terrorism Act 2000. The videos had included scenes showing attacks on soldiers of the Coalition forces in Iraq and Afghanistan by insurgents. After retirement, the jury had asked some questions, including whether such attacks were terrorism within the definition in Section 1. According to the trial judge they did fall under this definition. The appellant stated that he had not been encouraging terrorism but self-defence, as he thought that force against the military was justified and that those who were fighting the Coalition forces were rightly resisting the invasion of their country.

Application of international and domestic law

The definition of terrorism in Section 1 of the Terrorism Act 2000 (as amended) includes, *inter alia*, acts by insurgents against the armed forces of a state anywhere in the world which seek to influence a government and are made for political purposes. It makes no exemption for those engaged in an armed insurrection and an armed struggle against a government.

The appellant, however, initially advanced that combatant immunity extended to immunity for those participating in acts against the military in armed conflict. The effect of this was that individuals possessing that status were immune from domestic criminal law, provided that they did not commit crimes unrelated to the armed conflict and war crimes. The provisions of the 1977 Additional Protocol I to the 1949 Geneva Conventions that he relied on, however, referred to international armed conflict and were therefore not material to the case.

He also argued that attacks on armed forces during a NIAC were not terrorism. He claimed that the definition of terrorism in international law had developed so that it excluded those engaged in an armed struggle against a government. That development was supported by the distinction made in IHL between attacks on the military and attacks on civilians by those engaged in all forms of armed conflict. Later, the defence advanced that in NIACs no combatant immunity was

[19] The ruling is available at BAILII.

accorded to the armed forces of the government or to armed insurgent groups. Their conduct was subject to domestic law and IHL did not apply.

According to the prosecution, insurgents in NIACs had no international legal status and no combatant immunity and their position was governed by domestic law; however, the position of the armed forces of the state was different to that of insurgents and they enjoyed combatant immunity under customary international law.

The court referred to a judgment of the Appeals Chamber of the Special Tribunal for Lebanon: *Interlocutory Decision on the Applicable Law: Terrorism, Homicide, Conspiracy, Perpetration, Cumulative Charging* (16 February 2011), where it was pointed out that "acts of terrorism can constitute war crimes, but States have disagreed over whether a distinct crime of terrorism should apply during armed conflict" and whether acts of freedom fighters in times of armed conflicts should be considered as terrorist. The Appeals Chamber concluded that "... an overwhelming majority of States currently takes the view that acts of terrorism may be repressed even in time of armed conflicts to the extent that such acts target civilians who do not take an active part in armed hostilities; these acts, in addition, could also be classified as war crimes (whereas the same acts, if they are directed against combatants or civilians participating in hostilities, may *not* be defined as either terrorist acts or war crimes, unless the requisite conditions for war crimes were met)."

With regard to the question whether an attack by insurgents on military forces of a government was terrorism, in its reasoning the court examined also the practice of some states on the definition of terrorism. In some domestic legislations (e.g. Canada, South Africa), as well as some international instruments (e.g. the Convention of the Organisation of the Islamic Conference on Combating International Terrorism, the Convention on the Prevention and Combating of Terrorism made by the Member States of the Organisation of African Unity) attacks on the military by insurgents were excluded from the definition of terrorism. The practice of other states (e.g. Australia) did not contain such exclusion. Furthermore, the Manual on the Law of Non-International Armed Conflict published by the International Institute of Humanitarian Law in San Remo (2006) was quoted to read that "[o]ne of the hallmarks of international armed conflict is that lawful combatants who are *hors de combat* are entitled to prisoner of war status. This is not the rule in non-international armed conflicts and, as a result, captured personnel of armed groups may be put on trial for treason or other crimes, and heavily punished." A reference was also made to a ruling from 2010 ([2010 EWHC 1445 (Admin)) related to Afghanistan, where the court made clear that insurgents could be prosecuted by the Afghan government for terrorism.

Further on, the defence claimed that there was a clear distinction in the laws related to armed conflict (IHL) between attacks on civilians and attacks on military forces in both IAC and NIAC. Arguing that attacks on the military, as distinct from civilians, in the course of such conflicts should not be designated as terrorism, it referred to the ICRC's view that IHL was based on a premise that certain acts of violence in war – against military objectives and personnel – were not prohibited, while acts of "terrorism" were by definition prohibited and criminal. According to the ICRC, the two regimes should not be blurred given the different logic and rules that apply.

Conclusion of the court

In its ruling, the Court of Appeal concluded that, although international law may well develop through state practice or *opinio juris* a rule restricting the scope of terrorism so that it excluded some types of insurgents attacking the government's armed forces from the definition of

terrorism, the necessary widespread and general state practice or the necessary *opinio juris* to that effect had not yet been established. It went on to say that there was nothing in international law, which would exempt those engaged in attacks on the military during the course of an insurgency from the definition of terrorism. It concluded also that there was no rule of international law, which required to read down Section 1 of the Terrorism Act 2000 in order to exempt those who attacked the military forces of a government or the Coalition forces in Afghanistan or Iraq from the definition in the Act.

Belgium: IHL in the context of terrorism in Iraq[20]

Although relating to the conflict in Iraq rather than Syria, the Belgian judgment in the so-called "KARI" case can be seen as instructive on the matter. It deals, *inter alia*, with the question whether Al Qaida in Iraq and the individuals committing or preparing terrorist attacks in its name could be seen as part of the armed conflict.

Introduction

In June of 2008, the Court of Appeal in Brussels confirmed a guilty verdict for terrorist offences against three out of five defendants rendered in January of the same year, partly modifying the sentences.

The suspects were first detained a few weeks after a female Belgian citizen became the first European female suicide bomber of Al Qaida in Iraq on 9 November 2005. Little more than an hour later, her husband, a Belgian of Moroccan origin, was killed by U.S. soldiers in Iraq before he could commit an attack himself. Beginning in 2004, investigators had uncovered a network of Al Qaida affiliates based in Belgium, which had facilitated the journey of four persons to Iraq with the aim of participating in the terrorist activities of that group in Iraq.

The trial of the group and the subsequent appeals procedure had to address several problematic issues:

- Admissibility of evidence obtained abroad (including suspicions of torture of witnesses in Algeria and problems with electronic communications obtained through U.S. service providers),
- Definition of terrorist groups under Belgian criminal law,
- Possible qualification of the actions in Iraq as falling under IHL and therefore excluded from the scope of the Belgian criminal law regarding terrorism.

The last issue is of particular interest since it touches upon fundamental problems with regard to terrorist acts under criminal law and will be examined in detail in the following.

The case

The case concerns six defendants in total, all of them Belgian residents. They stood accused of having, under Articles 137-140 of the Belgian Criminal Code, participated in, incited or aided and

[20] The Case Analysis Unit would like to thank the Belgian National Desk at Eurojust for providing the full text of the judgment, which allowed for the comprehensive study and analysis of its relevant parts.

abetted, the activities of a terrorist group, provided useful information or aiding materials to such a group or financed its activities, knowing that their participation contributed to committing a crime of a terrorist group between January 2004 and December 2005. One of them, hereinafter referred to as AA, was accused of being the leader, while the others were tried as members. Other offences included the forging of official documents and false statements to authorities regarding the loss of IDs etc., with the purpose of covering up the identities of group members that they were hiding in Belgium and collecting social benefits under false names to finance terrorist activities. One allegedly owned a prohibited weapon. Concealment of stolen goods was also raised.

The Belgian intelligence first became aware of the extremist circle that had formed around three brothers of Moroccan origin in early 2004. Although signs regarding a possible connection to Al Qaida's number two leader at that time came up at an early point, the federal anti-terror police was sceptical until sources in Turkey confirmed the link. From this point onwards, police started monitoring AA's online and telephone communication and it did not take long to establish him as the group's leader. Investigators soon figured out that one brother of AA had most likely already died fighting in Iraq (his identity was later used to fraudulently obtain documents) and that three other members of his circle had travelled to Iraq. But the overall aim of the group remained impossible to uncover. There were no signs of preparing an attack in Europe.

In the beginning of November, it became clear that the Belgian couple had travelled to Iraq via Italy, Turkey and Syria. Upon their arrival at the Syrian-Iraqi border, AA provided help by setting them up with his local Al Qaida contacts via telephone. From this point, there was no communication until directly after the female Belgian committed her suicide attack. Her husband then called AA to tell him the news. The call was intercepted and traced to the husband's location, where he was surrounded and killed by U.S. forces before he could carry out an attack of his own.

The identification of the deceased terrorists quickly led to the defendants' arrests.

Legal issues

A. The issue of IHL and terrorism under Belgian law

As claimed by the defence, according to Article 141bis of the Belgian Criminal Code, the terrorism related offences under Title Iter of the Code – of which the defendants were accused – did not apply to "the activities of armed forces during an armed conflict as defined and governed by international humanitarian law (...)"[21] The defendants in the case argued that the activities which they supported in Iraq were part of a guerrilla war of independence against the U.S. occupation and thus an armed conflict. According to them, the Al Qaida linked groups active in the conflict were "armed forces" and "freedom fighters", not terrorists. Therefore, they saw the terrorism-related provisions as non-applicable.

B. Reasoning

While the court agreed that even after the official transfer of power in June 2004, Iraq continued to find itself in a state of armed conflict, it argued that this did not automatically mean that the law of armed conflict applied to all (para-) military activity carried out by all kinds of groups

[21] Unofficial translation. Original wording: "Le présent titre ne s'applique pas aux activités des forces armées en période de conflit armé, tels que définis et régis par le droit international humanitaire (...)."

during that time and in that area. Rather, the criterion of "armed forces" required some standards to be fulfilled by those forces in order for the exception of Article 141bis to apply.

Referring to a report by the International Committee of the Red Cross and the Red Crescent, as well as scholarly writings, the court stressed that IHL was in place to prevent certain inhumane acts during a given armed conflict by holding the parties liable for such acts committed by them. In order to create liability, however, the armed forces involved needed to be so structured and organised that it is actually theoretically possible for them to impose the rules of IHL on their combatants and to enforce adherence to these rules.

As the current version of the above-mentioned report states: "...it is widely recognised that a non-state party to a NIAC means an armed group with a certain level of organisation. International jurisprudence has developed indicative factors on the basis of which the "organisation" criterion may be assessed. They include the existence of a command structure and disciplinary rules and mechanisms within the armed group, the existence of headquarters, the ability to procure, transport and distribute arms, the group's ability to plan, coordinate and carry out military operations, including troop movements and logistics, its ability to negotiate and conclude agreements such as cease-fire or peace accords, etc. Differently stated, even though the level of violence in a given situation may be very high (in a situation of mass riots for example), unless there is an organised armed group on the other side, one cannot speak of a NIAC."[22]

The court found that such a level of organisation and discipline was not present here. Furthermore, it pointed out that IHL, as meant by its creators, could only be applied if the actors accused of violations were clearly identifiable. In the "classical" armed conflict, this is usually the case because of uniforms and other emblems clearly labelling the participants as belonging to one or the other party. In cases of terrorism-like actions, on the other hand, the clandestine nature of the activities, the many independent sub-branches of organisations such as Al Qaida, which usually have a cell structure, and the possibility of lone actors "unauthorised" by the core of the group make the classification as an "armed group" under IHL improbable and in most cases impossible.

In particular, the court pointed out the following factors:

- The Belgian jihadists in question arrived in Iraq not with the intention to take part in the ongoing hostilities but to commit terrorist crimes. Notably, in the opinion of the court, the acts were not specifically linked to the conflict in Iraq but to their notion of "global jihad" against their enemies as a whole, of which Iraq was just one opportune stage. To prove this, the court relied on the telecommunication between the participants, during which constant reference to the *overall fight* against the "infidels" was made and the importance of carrying out the "will of Allah" and advancing the "cause of Islam" *wherever possible* was stressed.
- Upon arrival in the region, the Belgian jihadist couple did not have any contacts and could not figure out how and where to carry out their planned suicide bombings. Only after AA set them up with one of his Al Qaida contacts, who in turn recommended them to one of the leading figures of Al Qaida in Iraq, were they able to align themselves with a group there. This showed, according to the court, that the defendants were not as such part of an organised group within the Al Qaida network but more independent sympathizers who only got endorsed by the organisation once they – that is, the

[22] 31st International Conference of the Red Cross and the Red Crescent, Report: *International Humanitarian Law and the challenges of contemporary armed conflicts*, Geneva 2011, p.8.

individuals they supported – approached them on the ground in Iraq. Thus, aside from the fact that Al Qaida itself probably did not fulfil the criteria for an "armed group" under IHL, the Belgian group in question was not initiated and administered by Al Qaida core.

- It was noted that none of the participants were able to make any substantial statements regarding the name, structure and command of the organisation or organisations they joined.
- Finally, the communication between the defendants did not contain any information about the alleged armed groups they joined. Contrary to the defendants' court statements, the court did not deem it sufficient that the conversations would occasionally contain phrases such as "boss", "patron" or "that is well organised" in order to establish that they had joined an organised armed group in Iraq. Although AA claimed to have identified a responsible commander of certain Sunnite armed groups in Iraq, he could not prove that the four Belgians he helped travel to Iraq actually joined a group under the command of this person.

The court, therefore, found that the exception of Article 141bis did not apply.[23]

Conclusions

With a view to the highly differing national legislation on terrorism, a general answer to the question of foreign fighters and IHL cannot be found. With specific regard to Syria, it also has to be taken into account that for the individual European fighters their motivation, action on the ground and groups joined vary significantly, which makes assessment on a case-by-case basis a necessity. In conclusion, several points could be highlighted:

- On the one hand, the existence of IHL as *ius in bello* means that in the context of armed conflict, not all activities that would be considered a crime in times of peace, such as killing a person, are punishable by criminal law. Only if they violate a protected person *or* are not committed within the context of the conflict do they constitute crimes, in the former case war crimes, in the latter case "ordinary" criminality.
- The question in which of these categories – war criminals or ordinary criminals – foreign fighters fall (or whether this question is actually relevant at all) is answered differently by different legislative systems in Europe and also depends on the circumstances of the individual cases.
- The "KARI" judgment shows some valid arguments against the qualification of terrorist crimes under IHL, but in other cases the results might turn out differently. Notably for Syria, as compared to Iraq, one might argue that some fighters may be more directly linked to the FSA as the "official" opposition group and often operate alongside them – then again, the level of infighting between the rebel groups could be a strong argument

[23] It also ruled that, contrary to a motion by some of the defendants, it was not necessary to obtain, via letters rogatory to Iraqi and U.S. authorities, more detailed information about the exact circumstances of the deaths of the Belgian couple in Iraq in order to decide about the qualification of their deeds under IHL. Furthermore, it found it superfluous to rule on whether an attack against primarily military targets – as carried out by the Belgian female – could be defined as terrorism.

against the presence of an organised armed group that could meet the criteria mentioned in the "KARI" judgment.

- Also, the consequences of a possible application of IHL are unclear and contrasting depending on the national legislation.

The pending trials on foreign fighters in the EU Member States are going to show whether the issue of IHL as a defence to a terrorist conviction gains importance in these proceedings and if so, how national courts and possibly even international bodies will deal with it.

VI. The Way Ahead

Ongoing/Upcoming Trials

January - April 2014

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

Thus far, it has been reported that 46 members of Sharia4Belgium will be prosecuted on suspicion of participation in a terrorist organisation, 16 of them are believed to have had a leading role. The majority of them are thought to be currently outside of Belgium and some may have died in the Syrian conflict. On 16 April 2013, the Belgian authorities conducted a large-scale action against Sharia4Belgium. It was followed by two other actions carried out in December 2013 and in March 2014. As a result of the latest one, a big number of house searches and arrests were executed. It was conducted in the framework of three federal terrorism-related investigations linked to travel of young people to Syria to join the armed jihad there. During the operation 74 persons were questioned and 25 were brought to the investigating judge; arrest warrants were issued for 13 of them, ten were provisionally released and two minors were placed in a special establishment. The items seized in the 55 house searches included a total of EUR 16 000, a bulletproof vest, a walkie-talkie, several packed backpacks with hiking and climbing gear, more than 40 mobile phones, more than 60 SIM-cards (of which 20 registered on the same address), dozens of computers, notebooks, USB-sticks, removable hard discs, documents and propaganda material, etc. The objective of the police operation was to disrupt the recruitment of young people for jihad in Syria. As a result of it, the involved facilitation networks were destabilised.

Source: Openbaar Ministerie/De Standaard.

Three men were deported from Kenya to Belgium where they face trial on terrorism charges together with 16 others. The men – a Belgian, a French and an Algerian nationals – are accused of fighting alongside Al-Shabaab insurgents. In July 2013, they had been found guilty of entering Kenya illegally, allegedly from Somalia. It has been reported that one of the three appeared in photographs brandishing a knife with which he promised to "cut the throat of infidels". It is believed that the advances by African Union troops and infighting within Al-Shabaab are the reasons for some foreign fighters to leave the insurgents.

Source: The East African.

France

A French judge has charged two high school students with criminal conspiracy in connection with a terrorist enterprise and placed them under court supervision. The minors ran away from their homes in Toulouse to allegedly join the fighting in Syria. They flew to Turkey from where they entered into Syria. They were flown home and interrogated by investigators. According to their statements, they managed to cross the Turkish-Syrian border although one of them denied having travelled to a jihadist training camp. The defence has claimed that the boys' trip was for humanitarian reasons and had nothing to do with any terrorist enterprise.

Source: The Voice of Russia.

The Paris Criminal Court has charged two women with criminal conspiracy in connection with a terrorist enterprise. The prosecution claims that they were involved in the disappearance of a 15-year-old girl who is believed to have travelled to Syria to fight alongside jihadist rebels. The girl allegedly stayed in the house of one of the two. The other, who resides in Paris with her four children, was suspected of preparing to leave for Syria to join her husband and support the jihadists fighting the government forces.

Source: Zee News.

Three men and one woman have been charged in relation to their alleged involvement in organising travel to Syria for the purpose of waging jihad. They have been suspected of organising training in the Paris region and contacting French facilitators living in Syria. According to the intelligence services, those facilitators help the aspiring fighters to make their way to Syria and join the insurgent groups. The woman is accused of organising a system of fake consumer credit to finance jihadists. Together with two of the others, she had been placed in provisional detention. The fourth suspect has been conditionally released.

Source: Zee News.

Germany

The Federal Prosecutor's Office has accused one person of five charges of recruiting members for the foreign terrorist organisation Islamic Movement of Uzbekistan (IBU) online. Under several alias names, he distributed videos as well as sound recordings and texts of the IBU on the Internet. The militant-Islamist propaganda messages glorified the armed combat of IBU against the "enemies of Islam", the killing of infidels and participation in violent Islam. By doing this, he wanted to recruit members and supporters for the terrorist organisation, which is active in Afghanistan and Pakistan.

Source: Generalbundesanwalt.

Four men have been charged in relation to the attempted bomb attack on Bonn's main train station on 10 December 2012 and the foiled assassination attempt on the leader of the Pro NRW political party in March 2013. According to the authorities, one of them left a homemade pipe bomb on a platform at Bonn's train station, which was supposed to explode shortly after and

cause a lot of casualties. The mechanism failed to activate due to a design flaw or an unstable ignition device. Together with the other three accused, he is believed to have set up a radical Islamist group aiming to carry out firearms and explosives attacks against leading members of the Pro NRW party. They were arrested shortly before they carried out their plan to kill its leader on 13 March 2013. The plan was in response to the party's Islam-critical election campaign. Their intentions to commit terrorist attacks in Germany were also influenced by an audio message of the Islamic Movement of Uzbekistan (IMU) with the title "Death to Pro NRW". The charges against the four include establishing a terrorist organisation, conspiracy to murder and a violation of the Arms Act.

Source: Generalbundesanwalt.

The Netherlands

Two men have been charged with plotting terrorist offences in Syria, as the prosecution believes they were preparing to take part in terrorist attacks. The two were arrested in Germany in August 2013. They were thought to have been on their way to Syria, where they intended to join the fighting between the government forces and the insurgents. Awaiting their trial, they have been released from custody by the Court of Arnhem. They are obliged, however, to wear ankle tracking devices and are not allowed to leave the country. The court ordered them also to stay away from airports.

Source: Dutch News.

Spain

In January 2014, the judge in charge ordered the provisional detention of one individual suspected of membership of a terrorist organisation. The man had allegedly been part of a network dismantled by the police in Ceuta in the summer of 2013. The network is suspected of having sent at least six groups of Spanish and Moroccan fighters to Syria. It is believed to have links with Belgium, Morocco, Turkey and Syria. It had allegedly recruited and sent fighters to Syria with the purpose of waging jihad and seeking martyrdom. The network had links with the Jabhat Al Nusra and the Islamic State of Iraq. So far in the case, the judge in charge has ordered the provisional detention of ten suspects and has issued an arrest warrant for another one, all charged with membership in a terrorist organisation.

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

The United Kingdom

Two young men arrested in January 2014 will face trial in July this year. The two were detained as they arrived at Heathrow airport on a flight from Turkey. The authorities believe they had travelled to Syria and had connections to terrorists there.

Source: FARS News Agency.

A female student who planned to take a flight to Istanbul was arrested at Heathrow airport with £ 16 500 hidden in her underwear. The authorities believe the money, which was wrapped in cling film, was intended for jihadists in Syria. She is to face trial together with another young woman, who was arrested in London on the same day on suspicions of being part of a scheme to make money available for terrorist activity. Both had allegedly tried to send money to a suspected British terrorist fighting in Syria. The two women were remanded in custody before they could appear in court.

Source: The Telegraph.

Following a police action in Manchester, the police held three men and one woman in detention on suspicion of being involved in the commission, preparation or instigation of acts of terrorism related to Syria. One of them has been charged with the intention of assisting others to commit acts of terrorism and engaging in conduct in preparation for giving effect to this intention. According to the police, the action was part of an operation running since the autumn of 2013, when it became known that people from the area had left for Syria and was not linked to any imminent threats in the United Kingdom.

Source: The Guardian.

Following a number of arrests carried out in Birmingham, the authorities have pressed charges in relation to terrorist offences linked to Syria. One of the charged individuals, a former Guantánamo Bay detainee who spent three years there without any charges, has been accused of providing terrorist training and of funding terrorism overseas. A mother and her son have been charged with facilitating terrorism overseas for their alleged involvement in a terrorist funding scheme. The three are remanded in custody. According to the police, the Birmingham arrests were not linked to any threat to public safety.

Source: The Guardian/Almanar.

A man, who travelled to Syria together with four others, has been accused of engaging in conduct in preparation of terrorist acts. According to the prosecution, the evidence clearly shows that he planned for and travelled to Syria with the intention of attending a training camp. The training was to include the use of firearms and the purpose of fighting was to pursue a political, religious or ideological cause. In discussions with others, he shared his intention to become a martyr. He left the United Kingdom in October 2013 taking a commercial flight to Turkey and was arrested at Gatwick airport upon his return later that month.[24]

Source: The Telegraph.

[24] In May 2014 the man was convicted as charged. The outcome of the trial will be reported in the next issue of the TCM.

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