



EUROJUST Report

Terrorism Convictions Monitor

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Introduction

The Terrorism Convictions Monitor (TCM) is intended to provide a regular overview of the terrorism-related developments throughout the EU area. The Monitor has been developed on the basis of **open sources information** available to the 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 21 of the TCM covers the period **September – December 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 a court in the Netherlands concerning a returnee from Syria.

The general objective of the TCM is to inform and invite the National Members to review, confirm and, if possible, complete the information retrieved from the various open sources. **The present issue is sent for information only as the reported court decisions have already been verified with the National Desks at Eurojust and used in the drafting of Eurojust's Contribution to the EU Terrorism Situation and Threat Report TE-SAT 2015.**

The National Correspondents for Eurojust 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 State¹

September - December 2014

Austria

December 2014

At a trial at the Regional Criminal Court of Vienna one defendant was convicted of **condoning and approving crimes** and given a two-month sentence. He had been prosecuted for having posted material on his Facebook page, which incited to violence against a certain group of people based on their religion. The material had been posted in the period 7 – 23 August 2014. The decision of the court is final.

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

Belgium

October 2014

The Criminal Court of Brussels upheld the conviction of three men who had been tried earlier in the year together with 16 other co-defendants on charges of leadership of a terrorist group or participation in and support to such a group. They had been brought to court in relation to their alleged involvement in acts in support of Al-Shabaab that had taken place in the period 2011-2013. In May 2014 all 19 defendants had been found guilty and given sentences of between ten months and 20 years (*for further details, please see TCM, issue 20*). In October, the court upheld the guilty verdicts and the five-year sentences of two of the three men who were **convicted of participation in and support to a terrorist group**. The conviction of **leadership of a terrorist organisation** of the third one was also upheld but his penalty was reduced from 20 to 18 years' imprisonment. The court also ordered the three to pay a fine.

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

November 2014

The Court of Appeal of Gent considered the appeal submitted against the conviction of three persons who had been found guilty of, *inter alia*, **participation and support to a terrorist group** by the Court of Dendermonde in February 2014. The three had been part of a neo-Nazi

¹ Some of the summaries included in this section are presented very briefly, as information on them was received by Eurojust by virtue of Council Decision 2005/671/JHA and no further details could be found in open sources.

group called *Bloed, Bodem, Eer en Trouw* (BBET), whose members had been brought to court for a number of offences, including plotting to cause chaos and terror by killing activists and politicians. In February, the Court of Dendermonde had convicted 11 BBET members of leadership of a terrorist group or participation in an activity of such a group. Other charges, including violations of the weapons law, had also been confirmed. The Court of Appeal acquitted the three appellants of participation and support to a terrorist group and sentenced them to 18 months' imprisonment and fines for violations of the weapons law and the racism law. The decision of the court is final.

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

December 2014

At the Court d'Assise of Brussels one defendant was tried for having set fire on a Shiite mosque in Brussels as a protest to the crackdown on fellow Sunnis in Syria. The attack had taken place in March 2012 and resulted in the death of the imam. The defendant admitted to setting the fire but denied having intended to kill the imam. He was quoted saying that he wanted to Shiite community to become aware of the situation in Syria at that time in which Sunnis calling for the falling of the regime had been abused. He had entered the mosque armed with an axe and a knife and started a fire by spilling petrol inside. He had been arrested at the crime scene. The court found him guilty of **arson causing death** and ordered a sentence of 27 years and a fine. The decision of the court is final.

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

Denmark

June 2014

The High Court sentenced two brothers of Somali origin to two years' imprisonment each. The two had been brought to court for having **attempted to get one of them to attend a terrorist camp** of Al-Shabaab and receive training there. In fact, he had travelled to Somalia but the court did not consider it proven that he had indeed received training there. When ruling on the case, the High Court made a different assessment of the evidence compared to the Copenhagen City Court and reduced the sentences given by the lower court. The decision of the court is final.

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

October 2014

The Copenhagen City Court acquitted ten defendants suspected to have raised at least DKK 130 million (USD 22 million) for ROJ TV, which was believed to have channelled the money to the Kurdistan Workers' Party (PKK). The money had been raised between 2009 and 2012. According to the media, the court wrote in the ruling that the reason for the acquittal was that the prosecution had not established sufficient evidence that the defendants had known or

should have known that a contribution to ROJ TV was indirect support to the PKK. The decision of the court has been appealed by the prosecution.

Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA/[The Local](#).

December 2014

The Copenhagen City Court found one defendant guilty of, *inter alia*, **incitement to terrorism, approval of committed terrorist attacks and racism** and sentenced him to four years' imprisonment. The man, who is known for his extremist views, had immigrated to Denmark in 1983 and received Danish nationality. He had been very active on the Internet and social media promoting violence and armed jihad. The man had been previously convicted of incitement to terrorism and sentenced to three-and-a-half years. In the present case the prosecution had requested the court to revoke his Danish nationality but the court rejected it. The decision of the court has been appealed by both the defendant and the prosecution.

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

Finland

December 2014

Finland's first ever terrorism trial resulted in the conviction of four individuals brought to court on charges of financing of the terrorist organisation Al-Shabaab. The Helsinki District Court heard that the four had transferred a total of EUR 3200 to Somalia. According to the prosecution, the money had been used to buy equipment and food for Al-Shabaab's soldiers. All defendants were given suspended sentences. Three of them received five months, while the fourth defendant was given one year and four months. In addition to the **terrorist financing** offence, he was also found guilty of **recruitment for terrorism** and **preparation of a terrorist offence**.

Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA/[Yle](#).

France

October 2014

The Paris Criminal Court convicted one defendant for **destroying a place of worship in connection with a terrorist enterprise** and sentenced him to a prison term of three years, half of which suspended. In August 2012 he had attacked a mosque in Libourne using *Molotov* cocktails. The attack had taken place at night and resulted in no casualties. According to the defence, the *Molotov* cocktails had been made using a bottle of wine as an expression of "distress and protest". It was claimed that at the time he had mental problems. In addition to the sentence, the court also ordered him to pay EUR 2 000 in damages and EUR 500 legal costs to the association that manages the mosque. The decision of the court is final.

Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA/[Le Point](#).

November 2014

Three defendants appeared at the Paris Criminal Court on charges of **leadership of a criminal association with the purpose to prepare terrorist acts**. They had been arrested in 2012 in Pakistan in the company of another Frenchman believed to be a former member of Al Qaida. The three had been sent back to France in April 2013, while the fourth person had been sent back some months later. The three claimed that they had intended to go to the Pakistani city of Lahore to study Islam and met the fourth man just before they had been arrested, as they had to drive in the same car to illegally cross the border from Iran. According to the court, the three had gone to the combat zone in Afghanistan using the route via Turkey and Iran, which was usually followed at the time by the jihadists. In Iran, they had stayed in a house used by smugglers affiliated with the Al Qaida network. The court found them guilty as charged and sentenced them to five years' imprisonment each, one year less than what was demanded by the prosecution. The decision of the court is final.

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

The Paris Criminal Court found one defendant guilty of **leadership of a criminal association with the purpose to prepare terrorist acts** and sentenced him to eight years' imprisonment. The court found that in late 2012 he had joined armed Islamist groups in Mali that had been engaged in an offensive against government forces. Several testimonies presented to the court, including those of two of his friends who had accompanied him to the airport on the day of his departure from France, suggested that the defendant had gone to Mali with the intention to participate in jihad. A Frenchman, who had fought along Al Qaida in the Islamic Maghreb (AQIM), claimed he had seen the defendant with weapons in hand. The defendant admitted he had travelled to Mali via Algeria but denied adhering to the concepts and methods of Islamist groups fighting there. He claimed he had never taken part in the fighting and had gone to Mali to take religious courses. According to him, he had been abducted by jihadists. The decision of the court has been appealed.

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

One person appeared at the Paris Criminal Court for having allegedly **joined jihadist groups fighting in Syria**. According to his defence, the man, a convert to Islam, had been in Syria for less than ten days with the intention to deliver first aid; he had indeed joined a group fighting against the Syrian president but had not participated in combat. As he had difficulties accepting the smoking restrictions imposed by the group, he had come back to France. The man had been arrested in January 2013 while planning to return to Syria. The court considered it proven that he had taken part in the fighting in Syria and sentenced him to seven years' imprisonment, as sought by the prosecution. A co-defendant, who had been **planning to travel to Syria to join the fighting**, was given a four-year prison term. He had been in contact with the other defendant and received money from him. He had also consulted various jihadist websites, including some containing instructions on how to make bombs. The decision of the court has been appealed.

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

The Court of Appeal of Paris heard the appeal submitted by one person against his earlier conviction of offence, including **membership of an association with a view to prepare terrorist acts, financing of terrorism**. In February 2014 he had been found guilty by the Paris Criminal Court and sentenced to eight years' imprisonment for handling stolen goods, document forgery, unauthorised possession and transportation of weapons and munitions. Some of those acts had been carried out in relation to a terrorist enterprise. The Court of Appeal ruled that two previous sentences of two and three years respectively should be absorbed by the penalty of eight years imposed in this case. The court ordered also banishment from the French territory and confiscation of assets. The decision of the court is final.

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

December 2014

The Court of Appeal of Paris upheld the conviction and penalty given to one person who had been found guilty of **criminal association with a view to commit a crime punishable with ten years of imprisonment**. The man, who had been sentenced to the maximum prison term envisaged, had been convicted in December 2013 for his role in a plot to free from jail two of his co-defendants in the trial. The plot had been prepared in the period January – May 2010. At that time the defendant had been on house arrest following his 2005 conviction for attempting to blow up the US Embassy in Paris. He is believed to have provided guidance to the Charlie Hebdo attackers and the shooter in the Jewish supermarket in January 2015, leading them to develop ties with other jihadists in Yemen and Iraq. The defendant had been rearrested in May 2011. The decision of the court is final.

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

Germany

September 2014

The Higher Regional Court of Hamburg sentenced one defendant to eight months' imprisonment after it convicted him of having acted as an accessory in the **promoting of membership and support to a foreign terrorist organisation**. The defendant had been commissioned by an acquaintance to convert some propaganda videos of the terrorist organisation Islamic State. The videos were to be distributed exclusively via the Internet. The decision of the court is final.

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

November 2014

A returnee from Syria was sentenced to three-and-a-half years (youth sentence) by the Higher Regional Court of Frankfurt after it found him guilty of **membership of a foreign terrorist organisation**. He had travelled to Syria in July 2013 and joined the Islamic State of Iraq and the Levant. His activities in Syria included receiving weapons training, participating in a military

offensive, fulfilling guard and medical duties and taking part in a recruitment campaign. The defendant admitted the facts. The decision of the court is final.

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

At the Higher Regional Court of Düsseldorf four defendants appeared in court for their alleged role in a plot to carry out attacks in Germany. In 2010 one of the defendants had spent some time in an Al Qaida training camp in the border area between Pakistan and Afghanistan. There, he had been instructed in the handling of explosive material and detonators. With the order of Al Qaida leadership to carry out terrorist attacks in Germany, he had returned to Düsseldorf in 2010. There he had recruited the other defendants to implement the attack plans. The man had also gathered information about the construction of explosive devices and begun the manufacturing of explosives. Two of the other defendants had been responsible for the logistics of the group, including the procurement of forged identity papers for the main defendant, who had been staying illegally in Germany, and the establishment of contacts with supporters in the area. Those three were found guilty of **membership of a foreign terrorist organisation** and sentenced to prison term between nine and five-and-a-half years. The fourth defendant, who was found guilty of **supporting a foreign terrorist organisation** and fraud, had illegally procured personal data to be used for ordering materials for manufacturing explosives. He had also committed a variety of Internet fraud acts. However, the court could not establish a connection between these fraudulent acts and the support to the organisation. He was handed down a prison term of four years and six months. The decision of the court is not final.

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

Greece

October 2014

Six defendants appeared at a court in Athens on a number of terrorism charges, including membership of a terrorist organisation, possession of weapons under aggravating circumstances, etc. Based on the available evidence, the court found them guilty of **possession of weapons under aggravating circumstances, theft in complicity under aggravating circumstances, forgery of official documents, robbery and theft**. Four of them were sentenced to 15 years and 11 months, one to 16 years and one to 11 years and six months. The decision of the court is not final.

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

November 2014

A court in Athens found one defendant guilty of **aiding in the commission of a murder, robbery, forgery, illegal possession of weapons and receiving stolen goods** and sentenced him to a prison term of 25 years. The defendant was acquitted of membership of a terrorist organisation and some other offences in the context of Article 187A, paragraph 1 of the Criminal

Code. The offences had been committed in the framework of a left-wing terrorist group. The decision of the court is not final.

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

Lithuania

October 2014

The Kaunas Regional Court found one defendant guilty of **abetting to commit terrorist crimes** and ordered an arrest for 14 days. He had been prosecuted for sharing a video on YouTube, which promoted the 11 September 2001 terroristic attack in the United States. He had uploaded sights from the attack, pictures of dying people and promoted the attack as righteous. The court considered his actions as a form of disrespect for the victims of the terrorist attack. The decision of the court is final.

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

December 2014

The Court of Appeal of Lithuania acquitted one defendant for his alleged role in a **terrorist attack**. The attack, carried out in September 2011, targeted two police cars that had been completely burnt. Two other suspected co-perpetrators had already been acquitted of the same charge by a lower court. The defendant was, however, found guilty of destruction of or damage to property.

Source: Information transmitted to Eurojust by virtue of Council Decision 2005/671/JHA/15min.

The Netherlands

December 2014

One returnee from Syria was sentenced to three years in prison after the court found him guilty of **preparation to commit murder and manslaughter with a terrorist purpose** and **spreading material that incited the commitment of terrorist crimes**. During his stay in Syria between July 2013 and January 2014 he had joined a jihadist group and taken part in the fighting. Upon his return, he had **spread material that incited the commitment of terrorist crimes** (for further details, please see chapter IV. Judicial Analysis).

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

December 2014

A court in The Hague acquitted one defendant of **recruitment for the armed struggle in Syria**, **incitement to terrorism** and **spreading of propaganda texts**. The defendant is the wife of the returnee, mentioned above, who was sentenced to three years' imprisonment on the same day.

The court considered it proven that she had tried to recruit two women to go to Syria and marry jihadist fighters but ruled that a woman who marries a jihadist fighter and travels along to Syria to take care of him does not directly participate in the armed struggle. She was also acquitted of recruiting her present and former husbands. The court, however, did not doubt her extreme jihadist views. It ruled further that there was no sufficient evidence that the material she had spread via social media and in writing had incited the commitment of terrorist crimes. She had been arrested at the central station of Rotterdam together with her husband in July 2013 while on their way to Syria. Her husband had been immediately released, while she had been kept by the police for some time. Following her release, in August 2013 she had joined him in Syria.

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

Spain

September 2014

The Audiencia Nacional found one defendant guilty of **causing terrorist destruction, illegal detention with a terrorist purpose, intended violent robbery with a terrorist purpose and violent robbery** and sentenced her to a total of 29 years, six months and one day in prison. The court acquitted her of **membership of a terrorist organisation** with which she was also charged. The woman had been prosecuted in relation to an attack that had taken place in Bilbao in December 2008. During the night before the attack, the driver of a vehicle had been abducted by some ETA members and tied to a tree in a forest area. The abductors had then loaded his vehicle with explosives and taken it close to the premises of the Basque television company Euskal Telebista. The device had exploded some time later causing damages to buildings and vehicles around; one person had been injured. The attack had been claimed by ETA in a communication to the newspaper *Gara* in February 2009. For the purposes of the present trial, the defendant had been surrendered by France where she is serving a sentence for membership of a terrorist organisation. The defence has submitted an appeal against the conviction.

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

One person was brought to court at the Audiencia Nacional on charges of **attacks on members of the security forces resulting in death and assassinations**. Together with some other members of an ETA command, he had plotted to kill members of the Guardia Civil that had been securing a cycling event in October 1980 in Salvatierra. For this purpose, they had stolen a car and changed its registration plates. They had parked the car at the gate of the cycling track and opened fire at three Guardia Civil members. Two of them had passed away instantaneously, while the third one had sought shelter under a vehicle but had been shot dead by the defendant. The assassins had then left the crime scene. In February 2010 the defendant had been arrested in France and surrendered temporarily to the Spanish authorities for the purposes of the present trial. The court found him guilty as charged and ordered him to serve 54 years in prison and pay compensation to the families of two of the victims.

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

One person, who had been a member of ETA's Araba command, was tried at the Audiencia Nacional on charges of **attack resulting in death** carried out by members of a terrorist organisation against an officer representing the authorities, concurring with **assassination**. The attack had been carried out in April 1980. The defendant, together with other members of the command, had stepped in a taxi and pushed the driver away. Then they had headed to the church where the victim, a police chief, had been at the moment. As the victim had exited the church, they had shot him three times, causing his instant death. The assassins had driven away in the stolen taxi. Considering the facts, the court found the defendant guilty as charged and sentenced him to 27 years' imprisonment. The defendant had been arrested in France and imprisoned for other offences. He had been temporarily surrendered to Spain for the purposes of the present trial.

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

October 2014

The Audiencia Nacional found one defendant guilty of **an attack related to an assassination** and two counts of **illegitimate use of a motor vehicle** and sentenced him to a total of 30 years and eight months' imprisonment. The defendant had been a member of ETA's *Donosti* command in 1995. Together with other command members, he had decided to assassinate a police inspector in San Sebastian. After they had collected the necessary information, they had attempted to execute the plan. The first attempt of May 1995 had been unsuccessful. In June the same year they had attacked the victim shooting him in the head as he had been leaving his home. The victim had passed away in October 1995 as a result of his injuries. The defendant had been surrendered by the French authorities in November 2013. The decision of the court is final.

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

One defendant, brought to court on charges of **causing terrorist damages**, was acquitted by the Audiencia Nacional. He had been prosecuted for his alleged role in an attack on the premises of a political party in Elgoibar, which had taken place in April 2008. The attack had been carried out via an explosive device which had been activated and caused significant damages on the building, apartments and vehicles parked in the vicinity. A warning of the upcoming explosion had been given in a telephone call to the traffic breakdown service DYA. The police had managed to cordon the area to minimise the impact. The attack had been claimed by ETA in a communication to the newspaper *Gara* in May 2008. The defendant had been previously convicted in France where he is still serving a prison sentence. He had been temporarily surrendered to Spain for the purposes of the present trial. The decision of the court is final.

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

The Supreme Court accepted the appeal submitted by a defendant who had been convicted in February 2014 by the Audiencia Nacional. At the lower instance, he had been found guilty of an **attempt to cause terrorist destruction** and **possession of explosive substances** and sentenced to one year imprisonment. According to the prosecution, 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 Lanestosa 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. (*for further details, please see TCM, issue 19*). The Supreme Court acquitted the appellant. The decision of the court is final.

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

The Audiencia Nacional found one defendant guilty of **collaboration with a terrorist organisation** and sentenced him to five years' imprisonment. He had been prosecuted for having facilitated some ETA members by providing them shelter at two houses in Vizcaya and Bilbao. During the house searches at the two addresses, the police had found various documents, including identification cards, driving licences, etc., as well as munitions, dynamite and other material to make explosives, the defendant's passport and his company records. [REDACTED]

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

November 2014

The Audiencia Nacional found one defendant guilty of **glorification of terrorism** and sentenced him to one year in prison. He had been prosecuted for having posted messages, photographs and texts on his Facebook profile with the intention to praise ETA terrorists and justify their actions, as well as to humiliate the victims of its attacks. At the time of his detention in April 2014, he had carried a mobile telephone used to connect to the Internet and carry out the above-mentioned activities. The decision of the court is final.

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

The Supreme Court dismissed the appeal submitted by one person who had been found guilty of **possession of explosives with a terrorist purpose** and sentenced to six years' imprisonment. In January 2014. The defendant, who had been 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 (*for further details, please see TCM, issue 19*). The decision of the court is final.

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

Two defendants were sentenced to three years' imprisonment each after the Audiencia Nacional found them guilty of **possession of explosive devices** and **causing terrorist damages**. The two had been prosecuted for their role in a series of attacks against a number of bank entities carried out in Bilbao in October 2001. The attacks had been executed by a larger group of people using *Molotov* cocktails. The defence has submitted an appeal.

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

The Audiencia Nacional found one defendant guilty of **possession and storing of explosive substances or devices, storing of weapons of war and fire arms** and sentenced her to a total of 22 years of imprisonment. The defendant, who had been a member of ETA and a supporter of its *Buruntza* command, had stayed in an apartment in Cizúrquil. During the house search in August 2001, the police had found explosive material, mobile telephones, ampoules with mercury, timers, etc. They had also found grenade launchers, rifles, loaded pistols, forged documents, as well as papers regarding ETA's objectives and others written by the defendant herself. She had managed to flee to France in the summer of 2001. There, in March 2009 she had been convicted of criminal association. In March 2014, she had been surrendered to the Spanish authorities on the basis of an extradition request sent to France.

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

The Supreme Court admitted partially the appeal submitted by one person against her earlier conviction. In February 2014, she had been sentenced by the Audiencia Nacional to 11 years, one month and 15 days of imprisonment for **storing explosives** and of **conspiracy for illegal terrorist detention**. 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. (*for further details, please see TCM, issue 19*). In November 2014, the Supreme Court upheld the conviction for the charge of **storing explosives** and sentenced the appellant to six years' imprisonment. The decision of the court is final.

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

December 2014

The Supreme Court dismissed the appeal submitted by one person who had been found guilty of **membership of a terrorist organisation**. In May 2014 the Audiencia Nacional had sentenced him to eight years' imprisonment. He had been arrested in the framework of an investigation into the activities of the network Ansar Al Mujahideen. Since 2006, he had been involved in online propaganda activities and distributed all sorts of materials glorifying the jihad and various Salafist terrorist groups, as well as various training manuals. He had also administered a Paltalk forum and had been in charge of the management of a library with numerous jihadist propaganda materials, which he had spread via Ansar Al Mujahideen's network and the Internet. The defendant had also been a key member of the consultative council of the organisation's propaganda apparatus. The man had been arrested in March 2012. In his home, the police had found 214 000 archives on jihadist topics, CDs with jihadist propaganda, as well as thousands of audio- and video files, some of them concerning Iraq, Somalia, the countries of the Maghreb, Israel, the United Arab Emirates, etc. *(for further details, please see TCM, issue 20)*. The decision of the court is final.

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

At a trial at the Audiencia Nacional three defendants were brought to court for their alleged role in a plot to attack radio- and television antenna installations in 2012. The instructions for the attacks had been given by the separatist terrorist organisation Resistencia Galega. Two of the defendants had placed explosive devices in the vicinity of such an installation in Vigo. The third defendant had assisted by selling them explosive material and lending his car for the transportation of the explosives. The first attempt to blow up the installation had failed but the second one had resulted in damages of more than EUR 11 000. The attack had been claimed in a communication published on the Internet. Two of the defendants had then travelled to Moaña to do some surveillance on the premises of a political party that would be a next target. The court found them guilty of **placing explosive devices with a terrorist purpose**. One of them received a further guilty verdict for **membership of a terrorist organisation**. They received sentences of three and 11 years' imprisonment respectively. The third co-defendant was found guilty of **collaboration with a terrorist organisation** and sentenced to a prison term of three years. The defence has submitted an appeal against the conviction.

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

One defendant was ordered to serve 50 years in prison after the Audiencia Nacional found him guilty of an **attack against a member of the armed forces, membership of an armed group, possession of explosives and illicit possession of weapons**. The defendant was further acquitted of **storing of weapons of war** with which he was also charged. He had joined ETA in 1990 and become a member of the *Matalaz* command in 1991. As such he had been collecting information on members of the armed and security forces. In June 1991 an attack against a member of the police forces had been planned. As the members of the command had been heading towards the victim's car in order to place an explosive device, they had been stopped by

the police. Following their arrest, the police had found a bag with an explosive device, some weapons, as well as scissors, flashlights, screwdrivers and rubber gloves.

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

The Audiencia Nacional found one defendant guilty of three counts of a **tentative terrorist assassination, causing terrorist destruction and causing terrorist injuries** and sentenced him to a total of 71 years' imprisonment. Being part of ETA's *Katu* command, together with another person, he had placed two explosive devices on a tree close to a police station in Oviedo in July 1997. As a result of the explosion, one person had been injured and damages had been caused to some municipal and private property. [REDACTED]

[REDACTED] He had been convicted of collaboration with a terrorist organisation or an armed group respectively by a French court in 2006 and in 2011. The defence has submitted an appeal.

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

The Audiencia Nacional acquitted one defendant brought to court on charges of **glorification of terrorism**. He had been the administrator of a webpage created in February 2007, which had published information on a manifestation supporting Basque prisoners, welcome notes for released SEGI prisoners, photographs, images and texts related to other similar events. The defendant, however, had not been the only one who had had access and rights to post material on the webpage. The webpage had been shut down by a court order in June 2013.

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

United Kingdom

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[REDACTED]

In May 2014 two defendants had pleaded guilty to charges of **conspiring between 1 January 2012 and 16 September 2013 to attend a place used for terrorist training** knowing or believing that instruction or training would be provided there wholly or partly for purposes connected with the commission or preparation of acts of terrorism, contrary to section 8 (1) of the Terrorism Act 2006. One of them had also admitted **unlawfully having in his possession ammunition** to which section 1 (1) Firearms Act 1968 applied, namely five rounds of 7.62 x 36 rifle ammunition without holding a firearm certificate or being otherwise authorised. In November 2014, the latter was sentenced to four and a half years' imprisonment for the conspiracy and two years' imprisonment for the possession of the ammunition without a certificate to run concurrent. The other defendant was given three years' imprisonment for the conspiracy offence. They had been reported missing to the police in August 2013. In September 2013 they had been stopped by UK border officials in Calais on a ferry bound for Dover. Their car had been searched and rifle cartridges and an iPhone had been found. A number of photographs and video clips that had established that the brothers had been in Syria and that they had attended a terrorist training camp there had been found on the iPhone.

Source: *Crown Prosecution Service*.

One defendant was sentenced to 24 months' detention for the **possession of a document for terrorist purposes**, contrary to section 58 of the Terrorism Act 2000 (namely the '*Anarchist Cookbook*') and **making an improvised explosive device** (a 'nail bomb') contrary to section 4 Explosive Substances Act 1883. The man, who was a soldier, had been serving in Germany while the police had executed a search warrant at his residence. As a result, they had found items considered to be component parts to make incendiary explosive devices, a nail bomb and publications, including the '*Anarchist Cookbook*', a U.S. Army Improvised Munitions Handbook and US Army Guerrilla Warfare Handbook. The police had seized computers in which they had found content demonstrating the defendant's far right sympathies and mind set. He had also made searches on how to make improvised explosive devices. To the police, the man had admitted his interest in far right politics and making explosives but denied having terrorist purposes. He had pleaded guilty to both charges brought against him.

Source: *Crown Prosecution Service*.

The Kingston Crown Court found one defendant guilty of **disseminating a terrorist publication** contrary to section 2(1) and 2 (e) of the Terrorism Act 2006 and sentenced her to five years and three months' imprisonment. On four occasions she had transmitted electronically the contents of a terrorist publication, intending as an effect the direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism, or the provision of assistance in the commission or preparation of such acts, or being reckless as to whether her conduct would have such an effect. The disseminated material had included a picture of a suicide vest with the words *"Ishtishadee: sacrificing your life to benefit Islam"*; a series of messages containing details of a route from Turkey into Syria, and of a group which the recipient could join; a message saying *"Dear Sisters, If you love your sons your husbands and your brothers prove it by sending them to fight for the sake of Allah. Don't you want them to enter jannah without reckoning? Don't you want them to prepare for you a palace in jannah?"*; and an article entitled *'Sisters role in Jihad off the Battlefield'*, which set out a detailed blueprint for *'Raising Mujahid Children'*. All material had been transmitted via Facebook. Her actions had been uncovered when she had sent the above-mentioned route from Turkey to Syria to an undercover police officer, with whom she had a private conversation on Facebook. The route had been passed to her by a British man also recently convicted of terrorist offences. During the police raids in her home in October 2013, they had found images on her telephone of her two-year-old son wearing a turban and holding a toy assault rifle. Other pictures showed small children in Syria holding guns, and in one case a hand grenade. The prosecution claimed that the defendant had "extreme Islamist views". According to her lawyer, she was "inflexible" in her religious beliefs. She claimed she had not been suggesting killing innocent people when talking about jihad. In July 2014 the defendant had pleaded guilty to the charges.

Source: Crown Prosecution Service/BBC.

[REDACTED]

[REDACTED]

2. Other Court Decisions of Interest

September - December 2014

European Court of Justice

October 2014

In a [judgment](#) of the General Court (Sixth Chamber) in joined cases T-208/11 and T-508/11, dated 16 October 2014, the court annulled, on procedural grounds, the Council measures maintaining the Liberation Tigers of Tamil Eelam (LTTE) on the European list of terrorist organisations. The LTTE had been placed on the EU list relating to frozen funds of terrorist organisations since 2006. The decision to maintain the LTTE on the list had referred to, *inter alia*, decisions of Indian authorities. According to the LTTE, their confrontation with the Government of Sri-Lanka had been an 'armed conflict' within the meaning of international law, subject only to international humanitarian law and not to anti-terrorist legislation. It had also been claimed that the maintenance on the list relating to frozen funds had been based on "unreliable grounds which do not derive from decisions of 'competent authorities' within the meaning of Common Position 2001/931/CFSP".

In its ruling, the court stated that EU law on the prevention of terrorism also applied in 'armed conflicts' within the meaning of international law and rejected the claim that the existence of an armed conflict precluded a possible application of EU law with regard to the LTTE. As regards the decisions of Indian authorities relied upon by the Council, the court found that the Council had not carried out a thorough examination as to whether the legislation of the third State ensured protection of the rights of defence and of the right to effective judicial protection equivalent to that guaranteed at EU level. The court found that the imposed measures had been based on "factual imputations derived from the press and the Internet", and not on "acts examined and confirmed in decisions of competent authorities, as required by Common Position 2001/931 and case-law". The court stressed, however, that the annulments did not imply any "substantive assessment of the question of the classification of the LTTE as a terrorist group within the meaning of Common Position 2001/931". The court ruled that the effects of the annulled measures would be maintained temporarily in order to ensure the effectiveness of any possible future freezing of funds.

Source: [European Court of Justice](#).

December 2014

In a judgment in the case of Hamas vs Council (T-400/10), the Court of Justice annulled, on procedural grounds, the Council measures maintaining Hamas on the European list of terrorist organisations but ruled that the effects of the annulled measures should be maintained for a period of three months, or, if an appeal is brought before the Court of Justice, until this appeal is closed, in order to ensure the effectiveness of any possible future freezing of funds. Hamas had

contested the measures maintaining the organisation on the list established by virtue of Council Decision of 27 December 2001 establishing the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. The list had been the result of the adoption of Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism, which requires the freezing of the funds of those included on the list. According to the court, the contested measures were based not on acts examined and confirmed in decisions of competent authorities but on factual imputations derived from the press and the internet, contrary to what the Common Position and the case-law of the Court requires. In its judgment, the court stressed that the annulments, on fundamental procedural grounds, did not imply any substantive assessment of the question of the classification of Hamas as a terrorist group within the meaning of the Common Position.

Source: European Court of Justice.

European Court of Human Rights

September 2014

The European Court of Human Rights (ECtHR) issued a judgment in the case of a Tunisian national extradited from Belgium to the United States in October 2013 (application no. 140/10). The Tunisian, who appealed the extradition, is to stand trial in the United States for offences linked to Al Qaida-inspired acts of terrorism for which he is subject to a maximum life prison sentence. The ECtHR ruled against the extradition, which had taken place before the end of the proceedings before the court. In its ruling, the court pointed out that in cases of extradition it had to assess the risk incurred by the applicant under Article 3 of the European Convention of Human Rights (prohibition of inhuman or degrading treatment) before his possible conviction in the United States. The US legislation does not provide for parole in cases of life prison sentences; however, there are several possible means of reducing such sentences. The court found that the explanations given by the US authorities on sentencing and their references to the applicable provisions of US legislation governing sentence reduction and Presidential pardons were very general and vague and could in no way be deemed sufficiently specific. The court found also that Belgium had breached its obligations under Article 34 of the ECHR (right of individual application), as the government's actions had made it more difficult for the applicant to exercise his right of application. The applicant, who is in solitary confinement in a US prison, has been deprived of direct contact with his representative before the court. The ECtHR ruled that the Belgian state is to pay EUR 60 000 in respect of non-pecuniary damage to the applicant.

Source: European Court of Human Rights.

December 2014

The ECtHR considered the case of four applicants convicted in the United Kingdom in relation to the 21 July 2005 attempted bomb attacks (application nos. 50541/08, 50571/08, 50573/08, and 40351/09). They claimed that there had been a temporary delay in providing them with access

to a lawyer and the admission of the statements they had made in the absence of lawyers at their subsequent trials was a violation of Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance) of the ECHR.

The first three applicants had been arrested shortly after the failed attacks. They had temporarily been refused legal assistance in order to conduct the so-called “safety interviews” (interviews conducted urgently for the purpose of protecting life and preventing serious damage to property).² During the interviews the applicants had denied any involvement in or knowledge of the events of 21 July. At the trial, they had acknowledged their involvement but claimed that the bombs had been a hoax and had never been intended to explode. The statements made at their safety interviews had been admitted at trial. The fourth applicant had been initially interviewed by the police as a witness. He had incriminated himself by explaining the assistance he had provided to one of the suspects. At that stage, he had not been arrested and advised of his right to silence and to legal assistance by the police. Instead, they had continued to question him as a witness and taken a written statement from him. He had been subsequently arrested and offered legal advice. His written statement had been admitted as evidence at his trial.

In its ruling, the ECtHR referred to the Grand Chamber judgment *Salduz v. Turkey*, in which the court mentioned the possibility of restricting access to a lawyer for “compelling reasons”; however, it pointed out that may be necessary, in the interests of fairness, to exclude from any subsequent criminal proceedings any statement made during a police interview in the absence of a lawyer. Recognising the exceptionally serious and imminent threat to public safety at the time of the applicants’ initial police interviews, the court ruled that this threat had provided compelling reasons which had justified the temporary delay in allowing an access to lawyers. In the case of the first three applicants, the restrictions had not been the result of a systemic application of a legal provision denying legal advice but of an individual decision in each case and the police had carefully adhered to the legislative framework in place. The decision not to arrest the fourth applicant fearing that he might stop disclosing important information had also been a reasonable one. The ECtHR noted that the trial judge had given rigorous consideration to the circumstances surrounding the safety interviews and explained why he believed the admission of statements made in those interviews would not jeopardise the applicants’ right to a fair trial. As to the fourth applicant, the trial judge had examined carefully his challenge to the admission of his statement at trial and had concluded that there was no oppression and nothing to suggest that the statement was unreliable. The ECtHR noted also that, further to the applicants’ statements, there had been a great deal of other incriminating evidence against them.

With six votes to one, the ECtHR ruled that no undue prejudice had been caused to the applicants’ right to a fair trial as a result of the failure to provide access to a lawyer before and during the safety interviews, or to caution or provide access to a lawyer during the fourth applicant’s initial police interview, followed by the admission of the statements made during those interviews at trial. It concluded that there had been no violation of Article 6 § 1, read in conjunction with Article 6 § 3 (c), of the ECHR. One of the judges expressed a dissenting opinion.

Source: *European Court of Human Rights*.

² The Terrorism Act 2000 envisages that such interviews can take place in the absence of a solicitor and before the detainee has had the opportunity to seek legal advice.

II. Comparative Analysis

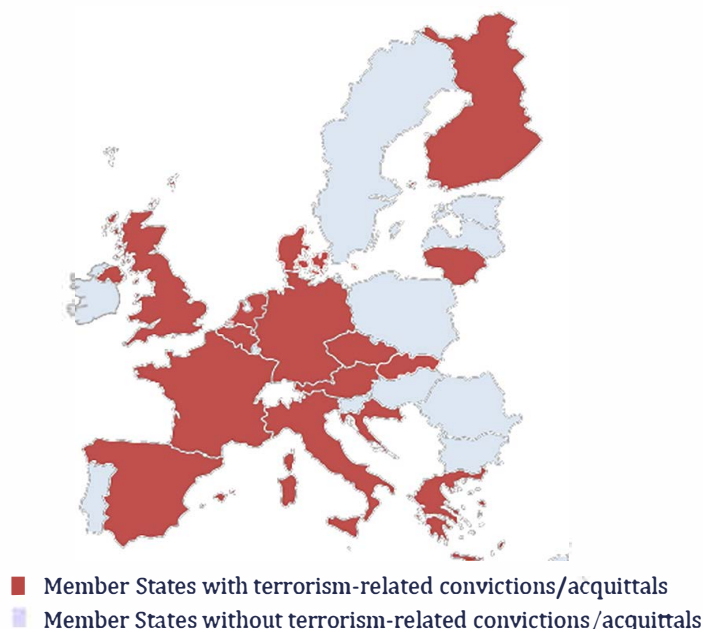
The Year 2014 in Numbers

The present chapter contains quantitative and qualitative analysis of data collected by Eurojust by virtue of Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences, according to which Member States shall collect all relevant information concerning prosecutions and convictions for terrorist offences and send it to Eurojust. This information covers the data that is available for the entire year 2014. The chapter summarises the key findings of the analysis of the quantitative data, providing clarifications where needed. The analysis below will also be used in the Eurojust contribution to the EU Terrorism Situation and Trend Report (TE-SAT) 2015.

Court proceedings, verdicts and individuals in concluded court proceedings

In 2014, 15 EU Member States reported to have concluded a total of 180 court proceedings in relation to terrorism (*please see figure 1 below*).³ In addition to this number, the Supreme Court in Italy considered 14 cases in which the submitted appeals were declared inadmissible or rejected, or the case was returned to a lower court for re-trial. Those 14 cases concerned 54 individuals that are not included in the numbers below.

Figure 1



³ Contributions containing information on terrorism-related court decisions in 2014 were sent by the following Member States: Austria, Belgium, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Lithuania, the Netherlands, the Slovak Republic, Spain

No information on possible terrorism-related verdicts was received from Ireland.

In case a verdict pronounced in 2014 was appealed and the appeal was concluded before the end of the year, Eurojust counted the proceeding as one and reported only on the latest/final verdict.

The court proceedings concluded in 2014 involved 444 individuals, 72 of which were female. Six of those individuals appeared in court several times for different offences.⁴ As a result, the total number of verdicts pronounced for terrorism-related offences in 2014 amounts to 452.

Figure 2 - Number of individuals in concluded court proceedings for terrorist offences per EU Member State in 2012, 2013⁵ and 2014, as reported to Eurojust

MEMBER STATE	2012	2013	2014
AUSTRIA	2	1	2
BELGIUM	24	8	46
CYPRUS	0	1	0
CROATIA	0	0	1
CZECH REPUBLIC	1	8	1
DENMARK	9	8	13
FINLAND	0	0	4
FRANCE	98	49	36
GERMANY	16	14	11
GREECE	8	9	10
IRELAND	0	8	0
ITALY	14	8	4
LITHUANIA	0	2	4
NETHERLANDS	1	4	5
PORTUGAL	1	0	0
ROMANIA	0	1	0
SLOVAK REPUBLIC	0	0	1
SPAIN	198	141	191
SWEDEN	3	0	0
TOTAL	400	313	444

⁴ In Spain, there were five individuals who were tried up to 4 times in 2014 in different court proceedings and in France there was one individual who faced trial twice for separate terrorist offences.

⁵ The data for the previous years corresponds to the data reported in the respective TE-SAT reports.

In addition to the verdicts included in this number, there was one case in Spain in which, further to the individuals tried for terrorist offences, four legal entities were brought to court for suspected administering of funds for ETA generated by 114 associations, cultural and recreational centres (for further details on the case, please see section *Type of terrorism*).

As in previous years, Spain remains the country where the majority of terrorism verdicts were rendered. In 2014, there was also an increase in the number of individuals convicted or acquitted for terrorist offences by the courts of Belgium, Denmark, Spain [REDACTED] [REDACTED] For the first time in 2014 Croatia, Finland and the Slovak Republic reported a terrorism-related court decision to Eurojust.

Some of the reported verdicts are final while others are pending judicial remedy due to the fact that appeals have been submitted.⁶

Type of terrorism

As in previous years, separatist terrorism continued to be the dominant type of terrorism in court proceedings in 2014.⁷ The vast majority of separatist terrorism verdicts (92%) were pronounced in Spain. Courts in Denmark, France, Lithuania and Germany also issued verdicts in relation to separatist terrorism. A large part (49) of the female defendants in the concluded court proceedings in 2014 appeared in court in relation to separatist terrorism acts, which confirms a tendency observed in recent years.

As in 2013, all court decisions pronounced in Austria and the Czech Republic in 2014 concerned religiously inspired terrorism. Also the verdicts pronounced in the Netherlands and Finland in 2014 concerned religiously inspired terrorism only.

A closer look at the court decisions concerning the other types of terrorism reveals that, as in 2013, all relevant verdicts in Greece in 2014 related to left-wing terrorism. Right-wing terrorism verdicts were pronounced in Belgium and France.

⁶ According to Council Decision 2005/671/JHA, the information to be submitted to Eurojust is in relation to final convictions. Due to the specifics of reporting, Member States submit information on both final and not final decisions. Therefore, reference is also made to those decisions pending judicial remedy and they were included in the reported numbers.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Figure 3 - Number of convictions and acquittals in 2014 per EU Member State and per type of terrorism, as reported to Eurojust

MEMBER STATE	Religiously inspired	Separatist	Left wing	Right wing	Not specified	TOTAL
AUSTRIA	2	0	0	0	0	2
BELGIUM	35	0	0	11	0	46
CROATIA	0	0	0	0	1	1
CZECH REPUBLIC	1	0	0	0	0	1
DENMARK	3	10	0	0	0	13
FINLAND	4	0	0	0	0	4
FRANCE	33	3	0	1	0	37
GERMANY	10	1	0	0	0	11
GREECE	0	0	10	0	0	10
ITALY	2	0	2	0	0	4
LITHUANIA	2	2	0	0	0	4
NETHERLANDS	5	0	0	0	0	5
SLOVAK REPUBLIC	0	0	0	0	1	1
SPAIN	2	191	1	0	4	198

Convictions and acquittals

In 2014, all reported terrorism-related prosecutions in Austria, Croatia, the Czech Republic, Finland, Germany, Greece and the Slovak Republic resulted in convictions.⁸ Germany is the only Member State that has reported no acquittals in the period 2010-2014.

In 2014 acquittals constituted 24% of all verdicts pronounced for terrorist offences.⁹ The percentage of acquittals in 2013 was similar (23%), indicating a downward trend compared to 2011 and 2012 when the percentage of acquittals was higher (31% and 30% respectively). Twenty-eight of the 72 female defendants in the concluded court proceedings reported in 2014 were acquitted. The majority of the acquitted females (27) were brought to court on charges related to separatist terrorist acts.

The verdicts in relation to separatist terrorism in 2014 had the highest acquittal rate (46%) unlike in previous years, when the highest acquittal rate was reported for verdicts related to

⁹ In one case in Lithuania the Supreme Court reverted the 2013 acquittal ruled by the Court of Appeal and returned the case for trial at the Court of Appeal. The verdict is included in the numbers as an acquittal pending re-trial at the Court of Appeal.

left-wing terrorism. In 2014, the prosecutions related to left-wing terrorism were the most successful as the relevant verdicts did not contain any acquittals.¹⁰

Figure 4 - Number of verdicts, convictions and acquittals per EU Member State in 2014, as reported to Eurojust

MEMBER STATE	CONVICTIONS	ACQUITTALS	TOTAL	ACQUITTALS in %
AUSTRIA	2	0	2	0%
BELGIUM	41	5	46	11%
CROATIA	1	0	1	0%
CZECH REPUBLIC	1	0	1	0%
DENMARK	3	10	13	77%
FINLAND	4	0	4	0%
FRANCE	35	2	37	5%
GERMANY	11	0	11	0%
GREECE	10	0	10	0%
ITALY	2	2	4	50%
LITHUANIA	1	3	4	75%
NETHERLANDS	4	1	5	20%
SLOVAK REPUBLIC	1	0	1	0%
SPAIN	114	84	198	42%
TOTAL	345	107	452	24%

Penalties

The court proceedings for terrorist offences resulted in prison sentences of between 14 days and 299 years. In some cases (part of) the sentence was suspended or made conditional for a certain period of time. In other cases guilty verdicts were handed down but no penalty was ordered yet.

The average prison sentence imposed in the EU Member States in 2014 for acts of terrorism was six years, which is lower than the reported average for 2013 (ten years).¹² It should, however, be taken into consideration that the severity of the penalty in each case would depend on the

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

respective offence and cannot serve any comparative purposes. Also, in some Member States the average penalty is calculated on the basis of one or two convictions, while in others it is based on a considerably higher number of convictions.

Figure 5 - Average sentences (excluding non-prison penalties) per Member State in 2014, as reported to Eurojust

MEMBER STATE	Average sentence in years
AUSTRIA	1
BELGIUM	5
CROATIA	1
CZECH REPUBLIC	1
DENMARK	3
FINLAND	1
FRANCE	5
GERMANY	4
GREECE	16
ITALY	10
LITHUANIA	<1 ¹³
NETHERLANDS	2
SLOVAK REPUBLIC	25
SPAIN	9

The majority (70%) of the penalties handed down with the guilty verdicts in 2014 were of up to five years' imprisonment, which presents an increase compared to 2013 (47%). The percentage of penalties of ten and more years (13%) decreased significantly from the percentage reported in 2013 (33%). Left-wing terrorism verdicts in 2014 received the highest average prison sentence (14 years). This average decreased compared to 2013 (18 years). The average prison sentence given for separatist and religiously inspired terrorist offences in 2014 remained the same as in 2013 (13 years and four years respectively).¹⁴

In some cases, in addition to imprisonment, convicted individuals were imposed restrictions on their civil rights, banned to enter the national territory upon completion of their prison term or ordered to do community service. Occasionally, national courts imposed a pecuniary penalty as the only penalty or in combination with a prison term. In Germany, a youth sentence was ordered to one defendant found guilty of terrorist offences.

¹³ In Lithuania one individual was given a sentence of 14 days' imprisonment.

III. Legal Update

September - December 2014

European Institutions

September 2014

Commission Implementing Regulation (EU) No 934/2014 of 1 September 2014 amending for the 219th 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 entry under the heading 'Natural persons'.

Source: *Official Journal of the European Union*.

The "Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism" {SWD(2014) 270 final} was published. The report focusses on the measures Member States have taken so far to implement the new offences, including the related ancillary offences and the respective penalties. The description and analysis in this report are primarily based on the information Member States provided, supplemented by publicly available information and findings of an external study. The Commission published also a [staff working document](#) accompanying the report, which contains an overview of the legislative measures adopted by Member States to transpose the three new offences introduced by the 2008 Framework Decision.

Source: *EUR-LEX*.

Commission Implementing Regulation (EU) No 1022/2014 of 26 September 2014 amending for the 220th 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 entry and replacing two other entries under the heading 'Natural persons'.

Source: *Official Journal of the European Union*.

October 2014

Council Implementing Decision 2014/701/CFSP of 8 October 2014 implementing Decision 2011/486/CFSP concerning restrictive measures directed against certain individuals, groups,

undertakings and entities in view of the situation in Afghanistan was adopted. The Decision amends Annex to Decision 2011/486/CFSP by adding five individuals associated with the Taliban to the list set out in the Annex and replacing 14 other.

Source: Official Journal of the European Union.

Council Implementing Regulation (EU) No 1057/2014 of 8 October 2014 implementing Article 11(1) and (4) of Regulation (EU) No 753/2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan was adopted. The Regulation amends Annex I to Regulation (EU) No 753/2011 by adding five individuals associated with the Taliban to the list set out in the Annex and replacing 14 other.

Source: Official Journal of the European Union.

Commission Implementing Regulation (EU) No 1058/2014 of 8 October 2014 amending for the 221st 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 adding 14 entries and amending one other entry under the heading 'Natural persons'. It also adds, under the heading 'Legal persons, groups and entities', two entries - Ansar Al-shari'a in Tunisia (AAS-T) and Abdallah Azzam Brigades (AAB), operating in Lebanon, Syria and the Arabian Peninsula.

Source: Official Journal of the European Union.

November 2014

Commission Implementing Regulation (EU) No 1193/2014 of 4 November 2014 amending for the 222nd 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 entry under the heading 'Natural persons'.

Source: Official Journal of the European Union.

Commission Implementing Regulation (EU) No 1273/2014 of 28 November 2014 amending for the 223rd 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 adding, under the heading 'Legal persons, groups and entities', two entries - Ansar Al Charia Derna and Ansar Al Charia Benghazi both operating in Libya.

Source: Official Journal of the European Union.

France

November 2014

On 13 November 2014, a new law strengthening the provisions relating to the combat against terrorism entered into force in France. The new law introduces several measures to be taken on the administrative, investigative and judicial level. The measures include expanding the competencies and discretion of various organs, such as the prosecutor's office, the courts, and the investigation services. Changes in the Criminal Code, Code of Criminal Procedure, and in administrative provisions are envisaged under the new law. The law introduces a new offence, individual planning and/or preparation of a terrorist attack, to incriminate terrorist acts committed by "lone actors". A penalty of ten years of imprisonment and a fine of 150 000 Euro is incurred. The law extends the scope of application of Article 421-1 on terrorist conspiracy by including offences related to explosive materials. It reinforces the provisions related to inciting and glorifying of terrorist acts, including when committed via the Internet, by providing for harsher punishment of such offences. The law introduces procedures for faster exchange of information on possible terrorism-related situations. It also envisages that a magistrate will be instituted in each prosecution office as a reference point for matters related to terrorism cases in order to facilitate and speed up the exchange of information. It provides for administrative arrangements that allow travel ban for individuals suspected of having the intent to participate in terrorist activities.

Source: National Desk of France at Eurojust.

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.

Procedure: The Hague Court¹⁵

Date of decision: 1 December 2014

Introduction

On 12 April 2013 an investigation, code-named “Context”, was launched in relation to the travel to Syria of a considerable number of youngsters from the Hague area. The defendant, who was also subject of this investigation, is a returnee from Syria. He was arrested, together with his wife, on 17 July 2013 at the central station of Rotterdam. As there was no suspicion at the time regarding the defendant, he was immediately released. He travelled to Syria from Amsterdam, via Düsseldorf and Istanbul in the end of July 2013. His wife joined him in Syria in August 2013 after she was released from the police. The defendant left Syria in January 2014 and returned to the Netherlands in the beginning of February 2014. He allegedly prepared to wage jihad while in the Netherlands, joined a jihadist group in Syria and, upon return, spread material that incites the commission of terrorist offences. In the courtroom a university professor on (counter-) terrorism was also heard as an expert on the matter.

The indictment

The defendant was charged in conformity with the summons, as amended by the prosecution at the hearing of 22 July 2014 (*pro forma*) and 29 September 2014 (*pro forma*). The charges were, as follows:

Accused Fact 1

Primary charges

In the period 1 March 2013 – 3 February 2014 in the Netherlands and in Syria, the defendant had:

- (1) Conspired to commit murder and/or manslaughter with a terrorist objective, and/or

¹⁵ The ruling of the court is available at www.rechtspraak.nl.

- (2) Prepared the commission of murder and/or manslaughter with a terrorist objective, and/or
- (3) Provided himself opportunity, resources or information, or acquired knowledge and/or skills to commit terrorist offences, including murder and causing explosions.

According to the indictment, under all three charges, the defendant had committed all or some of the following acts:

- A. Visit one or more websites where information on (the purchase of) outdoor gear was shared;
- B. Visit one or more websites where information on jihad, (armed fighting in) Syria, the Taliban, terrorism was shared;
- C. Express, via chat messages, his wish to go to (the conflict zone in) Syria, to take part in the armed fighting, to die in the jihad (as a martyr) and/or (by that) refer to terrorist organisations, such as the Islamic State (IS), also the Islamic State of Iraq and Shaam (ISIS) and the Islamic State of Iraq and Levant (ISIL), Jabhat al-Nusrah, or (terrorist) organisations related to IS, Al Qaida and/or another terrorist organisation; refer to one or more articles on the website www.dewarerelegie.nl (including "Jihad in Syria is a duty for every Muslim" and/or "Council of the Verdicts of the Azhar University: Jihad in Syria individual duty");
- D. Have one or more documents, writings, images, files, data/information carriers containing information about jihadist ideology and/or martyrdom (including audio files with songs about the jihad);
- E. Get information about the travel to the conflict zone in Syria;
- F. Take a trip to Turkey (via Germany), with Syria as a final destination;
- G. Take part in or contribute to the armed jihad in Syria, with a terrorist objective, fought by the (terrorist) organisation IS, also ISIS and/or ISIL, Jabhat al-Nusrah, or terrorist organisations related to the IS, Al Qaida, or a terrorist organisation advocating the violent jihad;
- H. Have or carry one or more firearms and/or camouflage outfit.

Subsidiary charge

In case none of the three primary charges would lead to a conviction, the prosecution brought the subsidiary charge of preparation to commit murder and/or causing an explosion (without a terrorist objective).

Accused Fact 2

In the period 1 March 2013 – 23 April 2014 in the Netherlands (and/or in Belgium) the defendant had spread material that incited to commit a terrorist offence, or possessed such material with a to view to spreading it.

According to the indictment, the defendant had committed all or some of the following acts:

- A. Express, via chat messages, his wish to go to (the conflict zone in) Syria, to take part in the armed fighting, to die in the jihad (as a martyr) and/or (by that) refer to terrorist organisations, such as the Islamic State (IS), also the Islamic State of Iraq and Shaam (ISIS) and the Islamic State of Iraq and Levant (ISIL), Jabhat al-Nusrah, or (terrorist) organisations related to IS, Al Qaida and/or another terrorist organisation; refer to one or more articles on the website www.dewarereligie.nl (including "Jihad in Syria is a duty for every Muslim" and/or "Council of the Verdicts of the Azhar University: Jihad in Syria individual duty");
- B. Spread jihadist YouTube videos and jihadist documentation via WhatsApp;
- C. Possess one or more songs about the jihad;
- D. Place a photograph on (the public profile of) his personal Facebook page, on which he appeared with a Kalashnikov in his hands, with the text "We are both fighters";
- E.
 - 1. Place on (the public profile of) his personal Facebook page images of flags of the Islamic Caliphate, flags that could be linked to the jihad in Syria and to terrorist organisations (such as IS, or ISIS and/or ISIL and/or Jabhat al-Nusrah, or (terrorist) organisations related to IS, Al Qaida and/or other terrorist organisations;
 - 2. Possess one or more photographs of himself with a Kalashnikov in his hands and/or other images related to the jihad in Syria and/or terrorist organisations (such as IS, also ISIS and/or ISIL, Jabhat al-Nusrah, or (terrorist) organisations related to IS, Al Qaida and/or other terrorist organisations;
- F. Possess a poster used by the terrorist organisation IS, also ISIS and/or ISIL, Jabhat al-Nusrah, or terrorist organisations related to IS and/or Al Qaida.

The evidence

Prior to the departure to Syria

The defendant met a woman via Instagram around March 2013 and married her according to the Islamic law in Antwerp on 10 July 2013. The two were planning to leave for Syria a week later. On 17 July 2013 both were arrested at the central station of Rotterdam. As there was no suspicion at the time regarding the defendant, he was immediately released. The police seized the luggage the defendant and his wife carried. In one of the bags it found, among others, new outdoor clothing, which the defendant intended to use in Syria, as well as a black headband with a religious Arabic text on it and the defendant's laptop. The investigation into his browser history revealed that in the period 2 – 5 July 2013 he visited websites concerning (the purchasing of) outdoor gear, jihad, (the armed fighting in) Syria, the Taliban and terrorism. YouTube audio files with songs about jihad and martyrdom that were downloaded in the period March – July 2013 were also found on the laptop, as well as chat messages from the period 28 – 30 June 2013. In those chat messages, the defendant talked about death in jihad, referred to

jihadist terrorist organisations, such as Jabhat al-Nusrah, IS and the Al Qaida-related organisation Ansar al-Sharia, as well as to articles placed on the website www.dewarereligie.nl.

The police seized also a mobile telephone where a SMS from a Syrian number was stored. The SMS explained that the defendant had to reach Antakya, Turkey. The investigation revealed that the number was used by a woman who travelled to Syria around 12 July 2013 and married a jihadist. She was located in an ISIS-controlled area in Syria and was in direct contact with jihadists and their wives.

During the stay in Syria

During his stay in Syria, on 12 August 2013 the defendant uploaded a new Facebook profile photograph on which he was to be seen carrying a Kalashnikov. A reaction to the photograph mentioned doing jihad every day together. In response to it, the defendant replied “[...] we both are fighters”. On 5 October 2013 the defendant sent a SMS to his mother from his Syrian telephone number in which he explained that he was unexpectedly asked to take part in an attack. She replied by asking him to always say “Goodbye” to her before he goes to the battlefield. The examining of a laptop seized after the defendant’s arrest on 23 April 2014 revealed that it was used in the period of his stay in Syria to connect to WIFI networks named “islamic-front” and “islamic-front 2”.¹⁶

After return from Syria

Since 2 March 2014 the defendant had been using a Facebook account in which, under user information he mentioned “Started Working at Fisabilallah”¹⁷, indicating also “Military Service” in the fill-in field. Both his Facebook cover and profile photographs showed a flag of the Islamic Caliphate, with part of Al Qaida’s flag added to the cover photograph. The defendant changed the photographs several times, including by adding swords to the images.

The examining of the defendant’s iPhone seized during his arrest on 23 April 2014 revealed that he had sent, via WhatsApp, links to YouTube videos, a photograph and a document to some of his contacts in April 2014. The videos were in Arabic, with either English or Dutch subtitles, and called for participation in the armed jihad, discussed the fatwa (approval) of the jihad in Syria and the duty of each Muslim to join the armed jihad. The photograph promoted joining the fighting in Syria by applying directly at the website ikwilnaarSyrië.nl. The document contained an interview with the Al Qaida leader about the mujahedeen and the armed jihad in Syria. Various photographs on the phone showed the defendant holding a Kalashnikov in one hand and pointing in the air with the other. On some of the photographs he wore a camouflage outfit.

The laptop seized after the defendant’s arrest on 23 April 2014 contained numerous documents, images and files with radical Islamist material, images of fighters with Islamist flags, explosives and weapons and information concerning the jihadist ideology and martyrdom.

¹⁶ “Islamic front” is the English translation of the name of a Syrian fighting group, al-Jabhat al-Islamiyyah.

¹⁷ “The path of Allah”.

The prosecution case

The prosecution pleaded to the court to:

- (i) declare the defendant not guilty of the primary charge (1) under Accused Fact 1 (conspiracy);
- (ii) declare it lawfully and convincingly proven that the defendant had committed the offences described in primary charges (2) and (3) under Accused Fact 1;
- (iii) declare it lawfully and convincingly proven that the defendant had committed the offence described in Accused Fact 2.

The prosecution asked the court to sentence the defendant to a prison term of three years, reduced with the time spent in custody.

With regard to primary charges (2) and (3), the prosecution claimed that the defendant had carried out the preparatory acts, as charged, in order to wage violent jihad. From the SMS exchange with his mother it seemed that he had actually participated in the armed fighting. It was established that the defendant had the objective to kill others. Also, it could be proven that the defendant acted with a terrorist objective, as defined in Article 183a of the Criminal Code. It did not matter which group he joined, as all groups that were fighting in Syria at that time met the criteria in the definition of a 'terrorist objective'.

The prosecution claimed that Dutch criminal law is applicable in cases of non-international armed conflict (NIAC) and members of the armed groups in such a conflict do not enjoy a status that excludes them from prosecution and trial for common offences, including terrorist offences.

With regard to the material, mentioned in Accused Fact 2 of the indictment, it was considered as inciting as it (a) contained calls for participation in terrorist fighting, (b) glorified terrorist violence, thus (indirectly) inciting such violence, and (c) called for recruiting people and/or collecting funds for such fighting. In addition to the spreading of violent jihadist ideology, the defendant had jihadist songs and images to spread.

The defence case

According to the defence, the defendant was an aid worker in Syria and there was no evidence that he took part in the fighting. If the court would consider that he did, it would not mean that it was with a terrorist objective. Fighting against the terror reign of the Syrian president is not terrorism.

Notably, the defence contested the right to prosecute the acts indicted under Accused Fact 1 and asked for a non-guilty verdict with regard to those under Accused Fact 2. If the court would nevertheless order a penalty, a prison term equal to the time spent in pre-trial detention would suffice. In particular, according to the defence, there was a NIAC in Syria and therefore the conditions that make terrorist offences punishable were not applicable. In case proven that the defendant had participated in the armed fighting, he would fall under the protection of the

Geneva Conventions and could only be prosecuted for war crimes. The defence also claimed that the defendant was not charged for any acts that could individually be attributed to him. Concluding, the defence pleaded that there was no right to prosecute with regard to what was indicted under Accused Fact 1.

In his statements, the defendant claimed he wanted to emigrate to Syria as he thought that there he could live in a country with a strong Islamic culture and could better practise his religion. He travelled to Syria also because of the injustice caused by the oppressive regime of the Syrian president. He wanted to help the people there.

The defendant claimed that he stayed in the area of Bab al Hawa in Syria and worked for an aid organisation. He denied going to the combat area and participating in the armed fighting. At the hearing, the defendant stated that there were numerous fighting groups, such as Jabhat al-Nusrah, the Free Syrian Army, the Islamic Front and ISIS, in the area where he stayed and none of them had control. He declared that he left when the groups started fighting one another.

The defendant, who recognised himself as a Salafist, stated that he was a supporter of the introduction of the sharia in Syria. According to him, a mujahed could also be an aid worker, besides a fighter, if he followed the path of Allah. He admitted to have discussed dying as a martyr in chat messages and stated that he would have died as a martyr if he had died as an aid worker.

At the hearing, the defendant referred to a chat concerning the armed jihad, which he considered righteous in the fight against the Syrian president. He explained that he agreed with the establishment of an Islamic state but did not agree with the way in which it was done in Syria. The videos that he sent to others upon his return were just showing opinions. He explained the lack of photographs on Facebook showing his aid work with the fact that his religion forbade him to show off with charity work. He found the photographs of himself with the Kalashnikov cool. According to him, he shot many times but this was for fun and he never shot at people. The flags on the Facebook photographs were used by Al Qaida but also by others. The headband with the religious Arabic text, which the police found in his bag on 17 July 2013, was given to his wife by a friend. The headband was a common mujahedeen band, worn by fighters in Syria.

According to the defence, the material referred to under Accused Fact 2 of the indictment was not inciting and the boundaries of freedom of speech were not crossed.

The ruling of the court

International Humanitarian Law

According to several reports of influential non-governmental organisations, during the period referred to in the indictment there was a NIAC in Syria. In conformity with the Geneva Conventions and existing case law, in a NIAC it is not legitimate for members of organised armed groups – other than members of the State's armed forces – to resort to violence. This opinion is also shared by influential writers on this topic. Civilians who participate in hostilities in a NIAC (whether or not as members of an organised armed group) do not enjoy a status similar to that

of combatants, or have right to use violence in accordance with the rules, as set out by IHL. They do not enjoy any immunity from prosecution for participating in the hostilities.

The court ruled that IHL is not exclusively applicable in a NIAC. In relation to that, the court referred to a recent judgment of the Court of Justice (CoJ) of the EU, dated 16 October 2014.¹⁸ In that judgment, *inter alia*, the CoJ ruled that “[...] the applicability of international humanitarian law to a situation of armed conflict and to acts committed in that context does not imply that legislation on terrorism does not apply to those acts.” Further, the CoJ is of the opinion that “[...] the existence of an armed conflict within the meaning of international humanitarian law does not exclude the application of provisions of EU law concerning terrorism to any acts of terrorism committed in that context.” The CoJ pointed out that “[...] apart from the fact that an armed conflict may undeniably give rise to acts corresponding, by their nature, to terrorist acts, international humanitarian law expressly classifies such acts as ‘terrorist acts’ that are contrary to that law.” The CoJ concluded that it was wrong to claim that “[...] in international law, the notions of armed conflict and of terrorism are incompatible.” According to the CoJ, it was apparent that “[...] the fact that terrorist acts emanate from ‘freedom fighters’ or liberation movements engaged in an armed conflict against an ‘oppressive government’ is irrelevant. Such an exception to the prohibition of terrorist acts in armed conflicts has no basis in European law or even in international law. In their condemnation of terrorist acts, European law and international law do not distinguish between the status of the author of the act and the objectives he pursues.”

The ruling of the CoJ is fully in line with a ruling of the Supreme Court of the Netherlands, dated 7 May 2004, in which, *inter alia*, the Court declared it wrong to consider that in the case of a NIAC, IHL was exclusively applicable, thus excluding the applicability of common criminal law. Therefore, the criminalisation of violations of IHL in a NIAC, as mentioned in Article 6 of the Law on international crimes, does not mean that such acts, or other acts committed in relation to a NIAC, cannot be punishable (also) under common criminal law.

Different legal regimes, including Dutch criminal law and the provisions related to terrorist offences, are applicable during armed conflicts. Therefore, participation in the armed conflict in Syria (and Iraq) is punishable under Dutch law, and not only for those who join jihadist groups.

According to the court, contrary to what was claimed by the defence, the defendant was charged with punishable acts that could be attributed to him personally. Therefore, there was no reason to reject the right to prosecute.

¹⁸ Judgment of the General Court (Sixth Chamber, Extended Composition), 16 October 2014, in Joined Cases T-208/11 and T-508/11 (*for further details, please see section 1.2. Other Court Decisions of Interest*).

Accused Fact 1

Conspiracy

The defendant was acquitted of conspiracy to commit murder and/or manslaughter with a terrorist objective, set out in primary charge (1).

Preparation and participation in the armed fighting

The court pointed out that the defendant had travelled to Syria and joined a jihadist terrorist group. By doing so, he had carried out preparatory acts aimed at the commission of murder and manslaughter with a terrorist objective. The court did not rule out that the defendant might want to travel to Syria again.

The court considered it proven that the defendant had visited websites with information on (the purchase of) outdoor gear, jihad, terrorism and related topics. He had stored a huge amount of digital material, from which it seemed that he adhered to the jihadist ideology and glorified martyrdom. Contrary to the claims of the defendant, the court considered that, because of his belief, he wanted to go to Syria to take part in the armed fighting. He had considered it as his religious duty. He had inquired about the trip to Syria from someone who had been in the conflict zone and openly supported ISIS.

The court did not consider it plausible that the defendant had only rendered humanitarian aid in Syria. The defendant did not want to name the aid organisation he claimed he had worked for and gave only a general description of its structure and activities. He claimed he had stayed in the area of Bab al Hawa. According to open sources, in the same period Bab al Hawa had been under the control of anti-government forces and ISIS fighters had been active there; also bomb attacks and terrorist acts had been committed in the region. No reports had been found from which to conclude that aid organisations had been active there. According to a witness statement, aid organisations preferred to get donations and goods, rather than volunteers. No indication was found on the data carriers seized from the defendant that he had contributed to any aid in Syria. On the contrary, he had several photographs of him taken with Kalashnikov in one hand and pointing to the sky with the other, meaning there was no other god but Allah. Upon return from Syria, he had claimed to have followed 'Military Service'.

Based on these facts and circumstances, the court concluded that the defendant had achieved his goal of taking part in the armed fighting in Syria. In this context, the court referred to the content of SMS messages which the defendant had sent to his mother in which he had clearly stated that he had participated in an armed attack. Furthermore, the court ruled it proven that while in Syria he had joined one of the jihadist armed groups active in the region.

Murder and/or manslaughter with a terrorist objective

The acts described in A.-H. under Accused Fact 1 above led to the conclusion that the defendant had the objective to prepare for the commission of murder and/or manslaughter. Even though the searches on the Internet (regarding the purchase of outdoor clothing) and the travel to Syria were not punishable acts as such, the combination of all acts and the ideology of the defendant deduced the objective of preparing for murder and/or manslaughter.

The court considered it proven that the defendant carried out preparatory acts aimed at committing murder and manslaughter in the framework of the armed jihad in Syria. As set out in Article 83a of the Criminal Code, a terrorist objective is understood to mean “the objective to cause serious fear in (part) of the population in a country and/or to unlawfully force a government or international organisation to do something, not to do something, or to tolerate certain actions and/or to seriously disrupt or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation.”

This definition is in line with the Council Framework Decision 2002/675/JHA of 13 June 2002 on combating terrorism. It concerns offences committed with a terrorist objective in any country. Based on the discussions at the Dutch Parliament when the draft law implementing the Council Framework Decision had been discussed, the court concluded that Article 83a, in conjunction with Article 83 of the Criminal Code, concerned also offences committed with a terrorist purpose against a regime with disputable reputation or, as was the case in Syria, a definitely abject regime. In this context, the court referred also to the judgment of the Court of Justice of the European Union, mentioned above.

The fact that the purpose of the jihadist fighting groups is to overthrow the government and establish an Islamist society falls under what is provided for in Article 83a of the Criminal Code. The aim of those groups is to destroy the fundamental political system in Syria and set up an Islamist state. The violence used by those groups raised grave fear in a huge part of the population. As the defendant took great interest in the developments in Syria and was informed about the jihadist terrorist organisations there, this must have been perfectly clear to him before he travelled to Syria to join one of those organisations and participate in the violent jihad.

Therefore, the court concluded that the defendant was guilty of preparation to commit murder and manslaughter with a terrorist objective, described in Article 83a of the Criminal Code.

Applicability of Article 134a of the Criminal Code¹⁹

When deliberating on primary charge (3), the court referred to a motion by the Lower House of the Dutch Parliament calling upon the government to criminalise the participation in terrorist training, in accordance with the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005.²⁰ At the time, the existing law was not sufficient to criminalise participation in terrorist training under all circumstances. Therefore, the new Article 134a of the Criminal Code was intended to address this gap. The court referred to the deliberations in the Dutch Parliament when adopting the new article and pointed out that there was a strong indication that the Article did not concern acts that were not related to terrorist training.

¹⁹ The original Dutch version of the article reads as follows: “Hij die zich of een ander opzettelijk gelegenheid, middelen of inlichtingen verschaft of tracht te verschaffen tot het plegen van een terroristisch misdrijf dan wel een misdrijf ter voorbereiding of vergemakkelijking van een terroristisch misdrijf, dan wel zich kennis of vaardigheden daartoe verwerft of een ander bijbrengt, wordt gestraft met gevangenisstraf van ten hoogste acht jaren of geldboete van de vijfde categorie”.

²⁰ Article 7 of the Convention creates an obligation to criminalise the providing of “instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose.”

According to the court, the defendant provided himself opportunity, resources and information to commit murder or manslaughter with a terrorist objective. There was no evidence that he acquired knowledge or skills for the commission of the above, or that he provided himself opportunity, resources and/or information for other charged terrorist offences. The court ruled that none of the proven acts was related to the giving of or participation in terrorist training. Therefore, they cannot be qualified in the meaning of Article 134a.

Accused Fact 2

The court ruled that, as incitement takes place in public, the Internet can be considered as a public domain in case the public has access to the Internet page where the inciting material appears. The spreading of inciting material does not require achieving any result. The perpetrator does not need to know that the acts to which the material incites are punishable. What is important is that the perpetrator wants to make public the content of the inciting material.

The defendant was declared guilty of spreading inciting material. He had tried to incite others to commit terrorist offences. He had been most active after his return from Syria and had not distanced himself from what he had experienced there. He had used the fact that he had been a jihadist fighter to motivate others to follow his example.

In particular, in a long chat session with a friend, the defendant had explained why he saw it as his religious duty to go to Syria to take part in the armed jihad. To make a strong point, he had sent his friend two links to the articles mentioned in the indictment. These articles were of an undoubted inciting nature and the defendant knew that. As the link had been sent to one person, this act could not be seen as meant to give publicity to the content of the material. Therefore, it could not be considered as spreading of inciting material, as provided for in Article 132 of the Criminal Code.

From the available evidence it seemed like the defendant had spread the material mentioned in (B), (D) and (E-1) under Accused Fact 2. This fact was not objected by the defence. The court ruled that the videos, photographs and the mentioned document were of an undoubtedly inciting nature. The message contained in the material (indirectly) called for the commission of terrorist offences (in this case murder with a terrorist objective). The fact that some of the material originated from a public source did not obstruct the finding of guilt.

The court ruled that Article 10 of the European Convention on Human Rights, referred to by the defence and concerning the freedom of speech, did not provide refuge for those who incite to terrorist offences or spread material that incites to such offences.

The defendant was acquitted of the charges in relation to the other acts described under Accused Fact 2.

The sentence

The court sentenced the defendant to a prison term of three years. The penalty is based on Articles 57, 83, 83a, 96 (2), 132 (3), 288a, 289, 289a (2) of the Criminal Code.

The penalty in this case was intended to send a strong message to others who may have the same intentions as the defendant. When determining the penalty, the court recognised that it was not known if the defendant had committed violence against human life while taking part in the armed fighting and if yes, what violence exactly he had committed. The court ruled that, despite the fear that returnees from Syria would carry out terrorist attacks in the Netherlands, such fear cannot play a role on the penalty imposed on the defendant. In fact, he was to be punished for the crimes he had committed and not for what he could possibly do in the future.

The court disregarded the advice of the probation officer to give the defendant a (partially) conditional prison sentence, containing a number of terms, including the defendant's participation in a de-radicalisation programme. The court endorsed the view of the prosecution to set terms on a possible conditional release depending on the evaluation of the defendant during detention.

V. The Way Ahead

Ongoing/Upcoming Trials

September - December 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.

France

A non-governmental organisation that claims to be a humanitarian charity has been accused of raising funds for jihadist groups in Syria. The organisation was set up in Paris in 2012 to provide medical and food aid to the war-torn Syrian population. One of its directors is accused of embezzling the organisation's funds before joining an armed group in Syria at the beginning of 2014. The case was brought to court in November 2014.

Source: [France 24](#).

Germany

In an ongoing trial in Stuttgart one defendant has been brought to court for joining a group in Syria allied to the Islamic State. He was arrested after he returned to Germany. He was sent back to Europe to get some supplies for the group, as they were struggling to transfer money without being detected by the authorities. According to the available information, the group used Western Union to send money to a contact in Turkey, who would then arrange to transfer it to Syria. Applications, such as WhatsApp, as well as SMS were used to communicate with one another. As a result of the monitoring of Western Union transactions, the group became more cautious. On one occasion EUR 1 000 was sent to Turkey but it was not collected. The defendant's brother is also on trial for suspected aiding and abetting the jihadists. He collected EUR 10 000 for the group but they hesitated how to transfer the money to Syria. The sum was also too big to be given to a secret courier. The defendant, who was injured in battle and unable to hold a gun any more, was then sent to Germany to buy some supplies. Among the items he bought were a night vision device for EUR 4 018, ten pairs of combat trousers for EUR 190 each, and four sports watches from the supermarket Aldi for EUR 28 each.

Source: [The Telegraph](#).

United Kingdom

Five men arrested at the end of November and beginning of December have been charged with several offences, including preparation of acts of terrorism, assisting others to travel to Syria, and conspiracy to possess false identity documents. A sixth man has also been charged with possession of articles in connection to the commission, preparation and instigation of acts of terrorism and offences under the Immigration Act 1971, as part of the same case. According to the prosecution, two of them attempted to leave the United Kingdom holding false documents in the back of a lorry and planned to travel to Syria to fight for Islamic State (IS) militants. Two others allegedly helped to produce the false documents. A fifth man is suspected of having helped the attempted travel to Syria and had intentions to go to Syria himself at a later stage.

Source: BBC.

A British returnee from Syria has pleaded guilty to preparing for acts of terrorism, attending a camp, receiving training and possessing firearms. He is suspected to have joined the militant group the Rayat al-Tawheed, which has links to the Islamic State. He faked his own death to try to return to the United Kingdom undetected. He was arrested in Dover in June 2014. His cousin who drove to Serbia to collect him and bring him back to the United Kingdom, as well as another person who provided him with funds, have also been charged.

Source: BBC.

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