



EUROJUST

Eurojust Expert Workshops on Violent Right-Wing Extremism and Terrorism

Summary of the Discussions

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Criminal justice across borders

Eurojust Expert Workshops on Violent Right-Wing Extremism and Terrorism

The Hague, 26 November and 3 December 2020 (videoconference)

Summary of the discussions

Eurojust Expert Workshops on violent right-wing extremism and terrorism brought together judicial practitioners and counter-terrorism (CT) experts to share experience and identify common legal and operational challenges in investigating and prosecuting offences committed by right-wing extremist and terrorist groups and lone actors. Participants in the workshops included Eurojust national correspondents for terrorism matters, representatives of judicial and law enforcement authorities from the EU Member States and partner third countries, representatives of the Office of the EU Counter-Terrorism Coordinator (EU CTC), the European Commission (DG JUST and DG HOME), Europol's European Counter-Terrorism Centre (ECTC), the EU Agency for Fundamental Rights (FRA), Interpol as well as Members from the National Desks and Liaison Prosecutors at Eurojust.

Welcoming remarks

The chair of the Eurojust Counter-Terrorism Team (CTT) welcomed the participants and underlined the growing threat that right-wing extremism and terrorism poses to security in the EU and beyond. In this context, the chair stressed the importance of exchanging information, at EU level, on judicial proceedings concerning all forms of terrorist offences, including right-wing motivated terrorist offences, in accordance with Council Decision 2005/671/JHA. The chair also outlined the varying national approaches concerning the legal qualification of crimes perpetrated by violent right-wing extremists and highlighted the necessity to identify common issues and work towards a common judicial response to the right-wing terrorist threat at EU and international level.

First session: Ongoing discussions and initiatives at EU level on violent right-wing extremism and terrorism

A representative of the EU CTC provided an overview of the EU's response to recent right-wing attacks, in particular the JHA Council conclusions of 8 October 2019 on right-wing violent extremism and terrorism that outline four strands of joint further work: (1) create a better situational overview of right-wing violent extremism and terrorism: (2) continue to develop and share good practices on how to strengthen the prevention, detection and addressing of violent extremism and terrorism: (3) address the spread of unlawful right-wing extremist content online and offline, and (4) cooperate with key third countries. A reference was also made to efforts that have already been made to advance their implementation.

A representative of DG JUST emphasised that the increased need for digitalisation of justice has become more evident due to the situation caused by COVID-19-related restrictions. The digitalisation of justice has been prioritised as the first aspect to step up the fight against terrorism. The Commission has also pushed forward the elaboration of the Counter-Terrorism Agenda for the EU, an overarching document addressing many aspects of CT-related activities. The Eurojust CTR is a tool that increases the coordination and exchange of information. A legislative proposal that will be presented at the end of 2021 will address exchanges on digital cross-border terrorism cases and identify possible further improvements to Eurojust's data-processing framework. Another legislative proposal is planned to focus on the JIT collaboration platform.

Representatives of the Commission outlined the ongoing activities based on the JHA Council conclusions of 8 October 2019. The Commission has started mapping out relevant national legal and policy frameworks and statistics to reach a better situational understanding of the phenomenon across the EU. Legal instruments can be fully effective if all Member States share a clear understanding of what can be defined as terrorism under Directive (EU) 2017/541 on combating terrorism. A possible common EU approach to defining violent right-wing violent extremism is being explored with Member States. Overall, the need to strengthen cooperation between all stakeholders involved, including law enforcement and judicial authorities, has been recognised.

Second session: Examples of national approaches and challenges in investigating and prosecuting violent right-wing extremist and terrorist offences

A representative of the Belgian judicial authorities provided examples of the use by right-wing extremists of social media to spread hate messages and online propaganda, in particular towards young people. Some experiences of the Belgian judicial authorities with the prosecution of hate crimes and right-wing extremist and terrorist offences were presented, as well as the national legal provisions under which these offences are mostly prosecuted, i.e. the Belgian Antiracism Law, the Negationism Act or the Anti-Discrimination Law. Prosecution on terrorism charges was mentioned in relation to one case, where in 2014, 14 members of a local right-wing extremist group were brought to a Belgian court and 10 of them were found guilty of leadership or participation in a terrorist organisation. Reference was also made to different coordination mechanisms set up to better apprehend the development of the violent right-wing extremist phenomenon, raise awareness among local authorities and strengthen cooperation between all involved actors from the judiciary as well as from the law enforcement and intelligence services. An overview of legal and operational challenges identified by the Belgian authorities in relation to the investigation and prosecution of right-wing extremist and terrorist cases was shared with the participants.

A representative of the German judicial authorities depicted the rising threat posed by right-wing extremism and terrorism in Germany, which culminated in three major attacks over the last 2 years. Recent attacks as well as the assessment of the right-wing extremist threat have highlighted the variety of potential victims of violent right-wing motivated crimes and the heterogeneity of perpetrators. The identification and monitoring of extremist groups and potential lone actors was presented as a growing issue for all authorities concerned. It was also highlighted that, beside criminal law provisions on murder and organised crime, the existing national and EU counter-terrorism legislation provides an adequate and sufficient legal framework for the investigation and prosecution of right-wing extremist and terrorist offences. In this respect, reference was also made to Directive (EU) 2017/541 on combating terrorism and to some additional terrorist offences introduced, which can be used to initiate investigations on offences perpetrated by right-wing extremist groups. In relation to the Directive, it was stressed that its implementation will help achieve a more coherent approach in prosecuting all types of terrorism. Based on the German experience, some best practices for enhancing the response to right-wing extremism and terrorism were presented and the need for effective cooperation and communication with all competent actors from the judiciary, the police and intelligence services, highlighted. Emphasis was also put on the importance of building upon the expertise of actors from civil society working on the analysis of the right-wing extremist threat and to engage in a broader cooperation at EU and international level, including via Eurojust, to define common judicial strategies towards right-wing extremist and terrorist activities.



Third session: Sharing of experience and best practice: Inputs from EU Member States, third countries and key partners

A representative of the Finnish judicial authorities referred to a recent decision rendered by the Finnish Supreme Court, in which the Supreme Court held that the Nordic Resistance Movement (NRM), an unregistered association, had acted in a way that is significantly unlawful and had to be disbanded. Among other things, the association had published information that had to be considered as incitement against an ethnic group and, thus, was unlawful. The representative of the **German judicial authorities** noted that the prohibition of associations is an important element in combating these kinds of organisations. In Germany, militant right-wing organisations are primarily prohibited for actively acting against the constitutional order or pursuing a criminal intent. If a prohibition is imposed, violating such an order constitutes a criminal offence.

The Deputy National Member for Austria described the legislation concerning crimes in the context of National Socialism, which would also cover cases of online propaganda. The law on the prohibition of the National Socialist Party foresees strict punishments. A convicted person may be sentenced to 10 years of imprisonment for less severe crimes, and 20 years up to lifetime imprisonment for the most severe offences. Additionally, a xenophobic motive can serve as an aggravating circumstance. Over recent years, there have been a considerable number of right-wing extremism cases but none have been prosecuted for terrorist offences. Most of the cases in Austria concern propaganda or the damaging of property.

The Deputy National Member for Greece mentioned a judgment handed down in October 2020, which recognised the organisation 'Golden Dawn' as a criminal organisation. Some of its members were convicted with multi-year imprisonment penalties, among others, for the acts of setting up, directing and participating in a criminal organisation and for hate crimes, acts of physical violence and assaults.

A representative of the Swedish judicial authorities shared some experiences from an investigation concerning eco-fascism. In this case, the target was suspected of unlawfully entering the property of a man who previously ran a mink farm in a building. Having entered the property, the target allegedly set that building on fire with serious risk of the fire spreading to other buildings. Eco-fascism is an ideology closely linked to right-wing extremism, combining ecologism and National Socialism. The members of this organisation see themselves as a resistance movement, defending the people and the nation.

A representative of the Italian judicial authorities (National Antimafia and Counterterrorism Directorate) noted the difficulties in defining right-wing-related acts as terrorism and prosecuting them under the CT legislation. Instead, prosecutors prosecute under other penal statutes incidents caused by violent right-wing extremism and dangerous acts perpetrated through social media: often they use anti-discrimination and hate crime legislation. In 2018, the Italian Criminal Code was amended to include an article concerning propaganda and instigation of crimes for the purposes of discrimination. Additional challenges are posed by the use of social media, the internet and the darknet, including for planning of acts and activities. The involvement of minors in such groups and activities should be underlined. Search engines enable access to content and groups that may further polarise the situation.

A representative of the Norwegian judicial authorities gave an account of the case concerning the attacks in Oslo and on the island of Utøya in 2011, in which 69 persons were killed and more than 30 wounded. The case led to amendments to the Norwegian Criminal Code, including the introduction

of a maximum penalty of 30-years imprisonment for an aggravated terrorist attack, while previously the maximum penalty for a terrorist attack was 21 years. Another recent case in Norway concerned the attack on a mosque in Oslo in August 2019, committed by a radicalised, 21-year-old Norwegian national. The perpetrator was charged with murder and the commission of a terrorist act, by attempting to kill other persons. The murder was considered racially motivated but not an act of terrorism. The perpetrator was sentenced to the maximum penalty of 21 years' custody.

The Liaison Prosecutor for Ukraine at Eurojust pointed to the difficulty of classifying certain types of misconduct as related to the activities of a terrorist organisation. At present, the Ukrainian authorities make an assessment on a case-by-case basis. In particular, in a recent decision, the Supreme Court ruled that if the aim of an organised crime group act is to violate public security and incite an armed conflict, it is to be treated as a terrorist activity even in cases where there is no decision on recognition of the group as a terrorist organisation. Tracing persons is also a challenge and further difficulties are posed by the use of social media.

Representatives of Europol informed the participants about Europol's activities in relation to right-wing extremism and terrorism. It was pointed out that cases of violent extremism or intent to perform violent extremism are reported to Europol in the framework of Analysis Project Dolphin, alongside terrorism cases. It is within Europol's mandate to work on this data, as well as on hate speech, xenophobia and racism. Europol's Analysis Project Dolphin, together with Europol's EU Internet Referral Unit, assists Member States with their online investigations and with the identification of individuals disseminating violent and extremist content online. Europol confirmed its commitment to continue supporting Member States, also in cooperation with Eurojust.

Representatives of Interpol presented Interpol's activities in relation to right-wing extremism and terrorism and pointed to the possibility of issuing notices and diffusions. They mentioned also the Interpol proposal/concept on right-wing extremism and terrorism, which focuses on online activities, and the report published in September 2020, which focuses on acts of terrorism. Interpol referred also to similarities between right-wing and left-wing extremism, and the importance of a proper definition. Several challenges were pointed out, including addressing the activities taking place before a violent act is committed, freedom of speech considerations, etc.

Concluding remarks and way forward

The workshops have outlined that various countries face similar challenges, and also differences in the legal frameworks and approaches related to the investigation and prosecution of right-wing extremist and terrorist crimes. They have also emphasised the need for national judicial practitioners and CT experts in the EU and beyond to reinforce cooperation and work towards a common judicial approach to respond to the growing terrorist threat posed by extreme right-wing movements and ideologies. While exchanging information at operational and strategic levels among EU Member States, and with key third States, was presented as crucial in view of this common endeavour, the role of Eurojust in assisting national authorities to coordinate cross-border investigations on terrorism cases, including right-wing extremist and terrorist cases, was brought to the attention of the participants. EU representatives and national authorities were invited to share further experiences and best practices concerning the investigation and prosecution of right-wing extremism and terrorism cases with Eurojust.



Eurojust, Johan de Wittlaan 9, 2517 JR The Hague, The Netherlands
www.eurojust.europa.eu • info@eurojust.europa.eu • +31 70 412 5000
Twitter & LinkedIn: @Eurojust