

CONFRONTING TERRORISM IN THE EUROPEAN UNION

TodorPanaiotovKolarov, Ph.D.

Lecturer, Varna Free University

In the summer of 2012 with the terrorist attack on Burgas Airport, Bulgaria joined the EU Member States (MS) that have experienced recent problems with terrorist activities on their territory. As terrorism is one of the most serious violations of principles of liberty and democracy, fundamental freedoms and human rights, the events prompted this brief overview of the problems on EU level and the response of the Union to such threats.

Terrorism is not unknown phenomenon in the EU MS. Britain and Ireland had experienced ethno-national and separatist terrorism with religious admixture for decades. Spain has had continuous issues with separatist terrorism which had spilled over in France. France in turn had encountered issues with religiously inspired and ethno-national and separatist terrorism. With the increased openness of the EU, in which people, ideas, technology, capital and resources move freely, free movement of terrorism, its financing and movement of terrorists became easier. EU response was intensification of co-operation in the fight against terrorism following terrorist attacks in the United States in 2001, in Spain in 2004 and UK in 2005.

Applying the systematic delineation of terrorist activities in EU MS used in the Europol TE-SAT reports, terrorism in Europe could be divided in the following groups: (i) religiously inspired terrorism; (ii) ethno-national and separatist terrorism; (iii) left-wing terrorism and anarchist terrorism; (iv) right-wing terrorism and (v) single issue terrorism. It is noteworthy that the 2012 Europol

TE-SAT Report for the first time replaced “Islamic terrorism” rubric with “Religiously inspired terrorism”. Although at this point the exclusive focus of this section of the report deals with Islamic terrorism, the change accounts of possible change in the trend in this subsection as past experience shows.

This subject matter systematic delineation is of course not evenly spread throughout EU and different MS encounter problems in one or more of the above areas. These terrorist problems have their historic, socio-economic and political roots. This is best demonstrated by the ethno-national and separatist terrorism rubric in the TE-SAT report under which Ireland, France and Spain have led in number of terrorist acts for several years. As TE-SAT reports have indicated for several years ETA was one of the main culprits for this established trend in Spain, while IRA is responsible for the problems experienced by Ireland. At the same time France has had no reported instances of left-wing terrorist activities since 2010, while Greece has an established record of problems related to left-wing terrorism. As a matter of fact this is the only type of terror Greece encountered in 2011.

This in turn has impact on their legal and institutional framework. Although all MS strengthen their anti-terrorism institutions, those that experience greater problems at this point have more elaborate anti-terrorism institutional structures. For example in Spain the institutional framework includes a specialized court that deals with terrorism cases. Another instance is the United Kingdom where police has extended powers when it comes to anti-terrorism investigations.

It is pivotal however that those powers do not encroach upon human rights. When discussing terrorism offences under national laws we should keep into

consideration the European Court of Justice case law on the subject. This case law raises a host of issue related to freedom of speech, freedom of association and the right of a fair trial. For example under the UK Terrorism Act of 2000 a senior police officer may designate specified areas or places in which an officer in uniform may stop and search vehicles, drivers or pedestrians if that is deemed necessary for the prevention of acts of terrorism. The power may only be exercised for the purpose of searching for articles of a kind which could be used in connection with terrorism. However unlike in the general “stop and frisk” rubric the officer who conducts the search is not obliged to give “reasonable grounds to suspect” that the searched vehicle or individual could have terrorism-related items. As UK Dallinson v Caffrey (1965) case demonstrates this is an important element in the two-prong test for all stop and searches but those under the Terrorism Act of 2000. The provision was challenged before the European Court of Human Rights. In the Gillan and Quinton v. UK (2010) case this provision was ruled to be in violation of the European Convention of Human Rights and struck down. Nevertheless it demonstrates that all such legislative initiatives should be closely monitored for compliance with human rights obligations of the Member States.

Currently, the major problems MS experience are with religiously inspired and ethno-national and separatist terrorism. As figures 1 and 2 below indicate these are the two rubrics that contribute to a larger extend to the problems that EU experiences in its anti-terrorism efforts. Although the 2012 TE-SAT report provides information of a constantly decreasing terrorist activities in the EU, religious and ethno-national and separatist terrorism continue to be the undisputed leaders among all terrorist activities in the EU. At the same time Member States have experienced no significant problems with right-wind terrorism for the past 2

years. However it should be kept into consideration that terrorism trends are constantly changing and may vary significantly from year to year. For example while TE-SAT 2011 report does not attribute special attention to the so-called “lone actors” in TE-SAT 2012 report there is a special subchapter on those. At the presentation of the 2012 report in April 2012 Rob Wainwright, Director of Europol, noted “77 people in Norway and another 2 in Germany were killed in 2011 by ‘lone actors’. Looking ahead, lone actors will continue to pose a threat...” Another aspect that cannot be neglected is that one type of terrorism may catalyze another type of terrorist activity as its response. This is the reason for the constant vigilance of Member States on all fronts which is crucial for the timely prevention of “vicious circle” negative spiral trends.

On EU level terrorism issues were discussed at the European Council meetings in Tampere (1999). Presidency Conclusions of Tampere European Council, called for maximization of benefit through cooperation between MS’ authorities when investigating and for joint investigative teams as a first step, to combat serious trans-border crimes, explicitly mentioning terrorism.¹ The next year European Council in Feira (2000) also addressed the matter. Following terrorism incidence in Europe Presidency Conclusions of Feira European Council reiterated EU’s determination to continue the fight against terrorism by taking advantage of the possibilities offered by the Treaties in order to enhance and intensify anti-terrorism cooperation among Member States. Feira Council Conclusions pay special attention to Euro-Mediterranean partnership in the greater anti-terrorist effort. Terrorist attacks on American soil in 2001 had catalyzing effect on adoption of the Framework Decision 2002/475/JHA on combating terrorism, which is

¹Point 43 of Tampere European Council Presidency Conclusions

amended by Framework Decision 2008/919/JHA - the latter being the focus of this study.

The Hague and Stockholm programs paid special attention to terrorism. The Hague² program is a centerpiece in the anti-terrorism strategy of the EU. It established that EU must have a comprehensive, integrated and coherent approach to terrorism. The program underscores the importance of focusing on terrorism recruitment and financing, prevention, risk analysis, protection of vulnerable infrastructure and consequence management. The program builds on the Feira European Council conclusions which stressed the importance of cooperation with Mediterranean partners. The Hague program pushed further the limits of international cooperation in combating terrorism by elaborating on strengthening cooperation with third countries.

In the Stockholm program³ European Council reaffirmed its counter-terrorism strategy consisting of four pillars: prevention, pursuit, protection and response, emphasizing on the importance of prevention. The European Council noted that threat from terrorists remains significant. It noted that it is evolving in an attempt to evade the response of the international community and EU to combat it. The program demonstrates that the Union sees the problem as a continuous if not growing threat. The Council notes that “all tools are deployed in the fight against terrorism”. Considering the focus of this project we recall that the “European Council stresses the importance of better understanding the methods used for

²The Hague Program: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice (Official Journal C 236 of 24.9.2005).

³The Stockholm Program — and open and secure Europe serving and protecting citizens (Official Journal C 115 of 4.5.2010)

dissemination of terrorist propaganda, including on Internet.”Another focal point in the program is the issue of terrorist financing.

As underscored in Hague and Stockholm programs integrated and coherent approach that relies of concerted efforts by all EU MS is needed in order to achieve results in curbing terrorism. In order to ensure that it is necessary to define a common criminal law approach in the EU toward this phenomenon.The Stockholm program reads that terrorism as a constantly evolving and adapting to evade the measures that are taken by the international community in its attempts to combat it. This is a clear message that the threat that all MS are confronting is of such magnitude that only concerted efforts can yield results.

Approximation of criminal law should help the combat terrorism related offences more effectively, by promoting a full and effective judicial cooperation between MS. The difficulties which may exist in this field should and are taken into account by the EU when reviewing this Framework Decision with a view to considering whether the results from its application is satisfactory and whether further steps in this area are necessary.

Framework Decision 2002/475/JHA on combating terrorism, which is amended by Framework Decision 2008/919/JHA provide for substantive and procedural harmonisation of the national legislation of the MS. It provides specific and common definitions of terrorist offences in all EU countries. The framework decision defines a terrorist group as a structured organisation consisting of more than two persons, established over a period of time and acting in concert, and refers to directing a terrorist group and participating in its activities as offences relating to a terrorist group. The discussed EU law obliges MS to criminalize

certain intentional acts which are linked to terrorist activities even if no terrorist offence is committed. These include: public provocation to terrorism; recruitment of terrorists; training of terrorists; other offences linked to terrorist activities, including but not limited to aggravated theft and extortion; drawing up of false administrative documents with a view to committing terrorist offences or participating in the activities of a terrorist group.

MS must insure that their national legislative framework provides for effective, proportionate and dissuasive criminal penalties. In addition, EU countries must ensure that penalties are imposed on legal entities where it is shown that the individuals represent or control the legal entity involved in the commission of a terrorist offence.

Framework Decision also provides for procedural requirements to MS particularly in establishing jurisdiction over terrorist offences and where they refuse to render or extradite a person suspected or convicted of such an offence to another country.

Like in MS anti-terrorism legislation on EU level has to be compliant with the obligations of the Union under the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union. In this plane the role of the Court of the European Court of Justice is notable. In a series of cases European Court of Justice developed important case law which should be kept into consideration in the prospective assessment. Although there is no case law directly related to Framework Decision 2002/475/JHA on combating terrorism or Framework Decision 2008/919/JHA which amends it, there are other keynote cases that should be kept in mind such Yusuf and Kadi and OMPI. European Court of Justice has jurisdiction over new measures and will have jurisdiction over pre-

Lisbon measures in this field from 1 December 2014, subject to possible UK opt-out by 1 June 2014 from all pre-2010 police and judicial cooperation in criminal matters acts.

There are two implementation reports on the transposition of Framework Decision 2002/475/JHA. The former dated 2004⁴ and the latter -2007⁵. The second report notes that the transposition of the base provisions is satisfactory. Yet, the Commission concludes that most of the main deficiencies identified in the first report persist. The main concern continued to be the provisions that establish a common definition of terrorism. Another issue is the harmonisation of penalties for offences related to a terrorist group. Lastly, criminal liability of legal entities for terrorism continues to be an issue.

In conclusion it could be noted that there is unanimity among EU MS that they need to confront the terrorism issue with coordinated and uniform approach on supranational level. The Union has undertaken political initiatives and legislative steps in this direction while being mindful of the international and European human rights standards. Yet the deficiencies in implementing the EU norms on a national level persist.

⁴COM(2004) 409 final – Official Journal C 321 of 28.12.2004.

⁵COM(2007) 681 final – Official Journal C 9 of 15.1.2008.

ПРОТИВОДЕЙСТВИЕТО НА ТЕРОРИЗМА В ЕВРОПЕЙСКИЯ СЪЮЗ

(РЕЗЮМЕ)

През лятото на 2012 с терористичния атентат на бургаското летище, България се присъедини към държавите членки (ДЧ) на ЕС, които изпитаха наскоро проблеми с тероризъм на тяхна територия. Тъй като тероризмът е едно от най-сериозните нарушения на принципите на свободата и демокрацията, основните свободи и човеки права, тези събития предизвикаха написването на настоящия кратък преглед по посочената проблематика, който да се отговори на въпроса какъв е отговорът на този феномен на ниво ЕС. Статията представя систематизацията, установена от Европол относно разновидностите на терористична дейност в ЕС, разглежда опитът на някои ДЧ, както и становището на Европейския съд за правата на човека по предриетите от ДЧ мерки на национално ниво. Проследяват се политическите и законодателни инициативи в Съюза, довели до приемането на актове на ниво ЕС, като единствен най-ефективен отговор на проблема. Посочва се обаче, че ДЧ имат редица пропуски при въвеждането на тези унифицирани правила в националния си правен ред.