Combating terrorism: criminalisation of offences linked to terrorist activities. Framework Decision

2007/0236(CNS) - 28/11/2008 - Final act

PURPOSE: to update Framework Decision 2002/475/JAI on combating terrorism, in order to include in the concept of terrorism, public provocation to commit terrorist offences, as well as recruitment and training for terrorism.

LEGISLATIVE ACT: Council Framework Decision 2008/919/JHA amending Framework Decision 2002 /475/JHA on combating terrorism.

CONTENT: terrorism constitutes one of the most serious violations of the universal values of human dignity, liberty, equality and solidarity, respect for human rights and fundamental freedoms on which the European Union is founded. It also represents one of the most serious attacks on democracy and the rule of law. The terrorist threat has grown and rapidly evolved in recent years, with changes in the *modus operandi* of terrorist activists and supporters including the replacement of structured and hierarchical groups by semiautonomous cells loosely tied to each other. Such cells inter-link international networks and increasingly rely on the use of new technologies, in particular the Internet, which acts as a "virtual training camp". The Internet has allowed terrorists to provoke the public to commit terrorist offences; to recruit terrorists and to train terrorists at very low cost and risk.

It is therefore necessary to amend Council Framework Decision 2002/475/JHA of 13 June

2002 on combating terrorism in order to take account of his new reality and to extend the scope of its application.

Extension of the scope of Framework Decision 2002/475/JHA: the definition of terrorist offences, including offences linked to terrorist activities, should be further approximated in all Member States, so that it covers the following:

1) Public provocation to commit a terrorist offence: this will mean the distribution, or otherwise making available of a public message, that includes:

- public provocation to commit a terrorist offence;
- recruitment for terrorism;
- training for terrorism;
- aggravated theft;
- extortion;
- drawing up false administrative documents.

It should be noted that the expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism, falls outside the scope of this Framework Decision and, in particular, of the definition of public provocation to commit terrorist offences.

2) Recruitment for terrorism: this will mean soliciting another person to commit any of the offences list above.

3) Training for terrorism: this will mean providing 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 committing any one of the offences list above.

Aiding or abetting, inciting and attempting: for an act to be punishable, it shall not be necessary that a terrorist offence be actually committed.

Fundamental principles relating to freedom of expression: nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as freedom of expression, assembly, or of association, the right to respect for private and family life, including the right to respect of the confidentiality of correspondence. Furthermore, this Framework Decision shall not have the effect of requiring Member States to **take measures in contradiction of fundamental principles relating to freedom of expression, in particular freedom of the press and the freedom of expression** in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability.

Implementation and report: Member States shall take the necessary measures to comply with this Framework Decision by 9 December 2010. In the implementation of this Framework Decision, Member States shall ensure that the criminalisation shall be proportionate to the legitimate aims pursued and necessary in a democratic society and shall exclude any form of arbitrariness and discrimination.

ENTRY INTO FORCE: 9 December 2008.

TRANSPOSITION: by 9 December 2010, Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report drawn up from that information and a report from the Commission, the Council shall assess, by 9 December 2011, whether Member States have taken the necessary measures to comply with this Framework Decision.