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GROUP OF PARTIES TO THE COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM [CETS NO. 196]

SUMMARY

**THEMATIC ASSESSMENT REPORT ON THE IMPLEMENTATION OF ARTICLE 6
“RECRUITMENT FOR TERRORISM” OF THE COUNCIL OF EUROPE CONVENTION
ON THE PREVENTION OF TERRORISM
(CETS No 196)**

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1. Introduction

The Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) was opened for signature in Warsaw on 16 May 2005 and entered into force on 1 June 2007. As of 1 October 2013, the Convention has been ratified by 30 States. In addition, 14 States have signed but not yet ratified the Convention.

At its 3rd meeting, on 11 April 2012, the Group of Parties to the Convention decided to devote its first thematic assessment report to Article 6 of the Convention.

Article 6 deals with one of the core issues of prevention of terrorism, namely the recruitment for terrorism. The provision stipulates that:

“1 For the purposes of this Convention, "recruitment for terrorism" means to solicit another person to commit or participate in the commission of a terrorist offence, or to join an association or group, for the purpose of contributing to the commission of one or more terrorist offences by the association or the group.

2 Each Party shall adopt such measures as may be necessary to establish recruitment for terrorism, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.”

However, an assessment of the implementation of Article 6 by States Parties will necessarily also touch on the implementation of certain other provisions of the Convention which are linked to the application of Article 6. In this respect, the Group of Parties identified Article 8 (irrelevance of the commission of a terrorist offence), Article 9 (ancillary offences), Article 10 (liability of legal entities), Article 11, paragraph 2 (ability for domestic courts to take into account previous final convictions pronounced in foreign States), and Article 12 (conditions and safeguards) as particularly pertinent for the assessment of the implementation of Article 6.

The Group of Parties also agreed to include questions relating to the role of a broader strategy, encompassing various measures in the prevention of terrorism. As having such a strategy is not a legal requirement under the Convention, the Group of Parties decided to make it voluntary for States Parties whether or not to submit such information.

The thematic assessment report contains an analysis and synthesis of the state of implementation in States Parties based on the replies received, as well as certain general and specific recommendations to States Parties adopted by the Group of Parties.

Thus, the thematic assessment report does not attempt to provide a detailed comparative analysis of all relevant aspects of the criminal law systems in the 28 States Parties, which have provided information to the Group of Parties, but instead provides a snapshot of the state of implementation of Article 6 and some related provisions thereby enabling the Committee of Experts on Terrorism (CODEXTER) to address possible shortcomings in the Convention itself or its interpretation.

The Group of Parties takes note that none of the States Parties have made declarations or reservations with regard to the provisions of the Convention covered by this thematic assessment report.

2. Overview of the state of implementation

Article 6

Article 6, paragraph 2, obliges States Parties to criminalise the recruitment for terrorism, when committed unlawfully and intentionally. According to Article 6, paragraph 1, recruitment consists in the act of soliciting another person to commit or participate in the commission of a terrorist offence, or to join an association or group for the purpose of contributing to the commission of one or more terrorist offences by the association or the group.

Whereas all States Parties criminalise the recruitment for terrorism in full accordance with the obligations flowing from the Convention, the transposition of Article 6 into their domestic legislations has been done in different ways. 15 States Parties designate recruitment for terrorism as a separate offence. 2 States Parties are in the process of introducing amendments to their legislation, which will make recruitment for terrorism a separate offence. 11 States Parties do not designate recruitment for terrorism as a separate offence.

Similarly, there are significant differences in the way that States Parties deal with terrorist associations or groups under their domestic criminal law systems (see also under Article 10 (below)). Whereas all States Parties have provisions dealing with criminal and /or terrorist groups, States Parties apply different criteria for a criminal/terrorist group to qualify as such under its domestic law.

Some States Parties only recognise natural persons as perpetrators of crimes, even though these individuals may commit the crimes in the framework of an association or group. Consequently these States Parties do not hold the association or group as such criminally responsible, though membership of a terrorist association or group may be considered as an aggravating circumstance when prosecuting the individuals concerned. Other States Parties, in addition to natural persons, also hold legal entities (including certain forms of associations or groups) criminally responsible for acts committed by their members and in their interest. Penalties for legal entities generally include the imposition of fines and the dissolution of the legal person in question.

As foreseen by the drafters of the Convention, the term “solicit” has in practice been translated (and to a certain degree interpreted) differently in accordance with the various legal systems of the States Parties, varying from persuasion to instigation and in certain instances including also persuasion by means of threats.

Concerning the concepts of “unlawfully” and “intentionally”, which are specifically referred to in Article 6, paragraph 2, the details of the two concepts may vary slightly according to differences in legal traditions and systems, however all States Parties operate in their criminal law systems with legal provisions and/or binding guidelines defining and interpreting these concepts in a comprehensive manner.

Article 8

Article 8 stipulates that for an act to constitute an offence under Articles 5 to 7, it shall not be necessary that a terrorist offence be actually committed.

27 States Parties have replied that this is indeed the case in their domestic legislation.

In the case of one State Party, the obligation in Article 8 has been fulfilled insofar as a “public call for terrorism” is concerned, but may not be applicable for other forms of recruitment.

Article 9

Article 9 obliges States Parties to criminalise a number of acts as ancillary offences to the offences established in Articles 5 to 7 of the Convention. These ancillary offences consist in:

- Participation as an accomplice in an offence (paragraph 1, letter a)
- Organising or directing others to commit an offence (paragraph 1, letter b)
- Contributing to the commission of an offence (paragraph 1, letter c, i and ii)
- Attempt to commit an offence (paragraph 2)

All 28 States Parties have general provisions or a combination of general and terrorism-specific provisions in their criminal codes covering the ancillary crimes enumerated above. One State Party has provided information that it has directly incorporated Article 9 in its Criminal Act.

Article 10

Article 10 of the Convention obliges States Parties to establish, in accordance with their legal principles, the liability of legal entities for participation in the offences set forth in Articles 5 to 7 and 9 of the Convention. The liability of legal entities may be criminal, civil or administrative, cf. paragraph 2, and shall be without prejudice to the criminal liability of the natural persons having committed the offence, cf. paragraph 3.

As noted under Article 6 (above), States Parties do not have a uniform approach to the liability of legal entities, which may be of a criminal, civil or administrative nature.

Article 11, paragraph 2

Article 11, paragraph 2, stipulates that a State Party shall take the necessary measures to enable its courts to take into account, to the extent permitted by domestic law, previous final convictions pronounced in foreign States for offences covered by the Convention.

27 States Parties have replied that their law is compliant with the obligation contained in Article 11, paragraph 2.

One State Party has not taken any legal measures to ensure that its domestic courts can take previous final convictions pronounced in foreign States into account when deciding a criminal sentence.

Article 12

Article 12 obliges States Parties to ensure that the establishment, implementation and application of the criminalisation under Articles 5 to 7 and 9 of the Convention are carried out while respecting human rights obligations undertaken by them under international law.

In this regard particular reference is made to the right to freedom of expression, freedom of association and freedom of religion.

Furthermore, Article 12 paragraph 2, obliges States Parties to ensure that the implementation and application of the obligation to criminalise the offences set out in Articles 5 to 7 and 9 is subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society. Any form of arbitrariness, discriminatory or racist treatment should be excluded when implementing and applying the aforesaid provisions of the Convention.

All States Parties have replied that the obligations contained in Article 12 are implemented either through guarantees in their constitutions, or through their adherence to international human rights

instruments (or a combination of these two). In some States Parties safeguards are also found in relevant parts of their criminal codes.

As regards the issue of assessing whether the implementation and application of the obligations to criminalise offences established under the Convention is done while respecting human rights, it is clear from the replies that in all States Parties the normal measures to guarantee human rights at domestic level in other forms of criminal cases apply also to terrorism cases.

Similarly, all States Parties confirm that all criminal procedural guarantees, including the principle of “equality of arms” between prosecution and defence are fully applicable to terrorism cases.

Additional Observations

12 States Parties have on a voluntary basis provided information on their national strategies to prevent and combat terrorism.

Several of these strategies have highlighted the need for outreach and the establishment of cooperation with various relevant non-state actors and communities for the purpose of more effective prevention of radicalisation.