COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

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

SUMMARY

OF THE THEMATIC ASSESSMENT REPORT ON THE IMPLEMENTATION OF ARTICLE 7 "TRAINING FOR TERRORISM" OF THE COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM (CETS No 196)

Secretariat of Terrorism Division
Information Society and Action against Crime Directorate, DG I

codexter@coe.int - http://www.coe.int/terrorism

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 30 May 2014, the Convention has been ratified by 32 States. In addition, 12 States have signed but not yet ratified the Convention.

At its 6th meeting, on 12 and 13 November 2013, the Group of Parties to the Convention decided to devote its second thematic assessment report to Article 7 of the Convention.

Article 7 deals with the provision of training for terrorism. It does not oblige States Parties to criminalise the receiving of training for terrorism ("passive training"). The provision stipulates that:

"1. For the purposes of this Convention, "training for terrorism" means to provide 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.

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

The Group of Parties decided in addition to the assessment of the implementation of Article 7 also to examine the implementation of certain other provisions of the Convention which are linked to the application of Article 7. These are Article 8 (irrelevance of the commission of a terrorist offence), Article 9 (ancillary offences), Article 10 (liability of legal entities), Article 11 (sanctions and measures), Article 12 (conditions and safeguards) and Article 17 (jurisdiction).

The Group of Parties also agreed to include a series of questions relating to the application in the States Parties themselves and between them of Article 7. The Group of Parties decided to make it voluntary for States Parties whether or not to reply to these questions.

The Group of Parties agreed on a template for the assessment of Article 7 containing a series of questions grouped under the following main headings:

- The transposition of Article 7
- Possible amendments to Article 7
- The transposition of Articles 8 – 10 in respect of criminal acts pursuant to Article 7
- Sanctions and measures in respect of criminal acts pursuant to Article 7
- Conditions and safeguards in respect of the application of Articles 7 and 9
- Establishment of jurisdiction
- Additional information

This template questionnaire was distributed to the States Parties to the Convention, which were asked to send in their replies by 28 February 2014. 27 States Parties submitted replies.

The Group of Parties examined the replies to the template questionnaire at its meeting on 5 May 2014 and prepared the present summary of the thematic assessment report. The thematic assessment report is a confidential document. However, the Rules of Procedure of the Group of Parties (doc. GOP (2012) 1) prescribes in Rule 11, that the Group shall adopt a summary of the Thematic Assessment Report for the attention of CODEXTER. The present summary, which has been adopted by the Group of Parties in accordance with the aforesaid Rule 11, contains the main elements of the report.

Thus, the thematic assessment report and its summary do not attempt to provide a detailed comparative analysis of all relevant aspects of the criminal law systems in the 27 responding States Parties, but instead provide a snapshot of the state of implementation of Article 7 and some related provisions thereby enabling the Committee of Experts on Terrorism (CODEXTER) to address possible shortcomings in the Convention itself or its interpretation.

2. Overview of the State of implementation

The transposition of Article 7:

Article 7 has been transposed by the responding States Parties in two different ways, either by introduction of a separate offence in domestic criminal law or specific terrorism-related legislation, or by subsuming the offence of recruitment under a number of (usually already existing) provisions in domestic criminal law and/or specific terrorism-related legislation.

It should be underlined, that there is no legal obligation for States Parties under the Convention to transpose Article 7 in their domestic law in a particular manner. Whether a State Party chooses to introduce a new specific provision on the training for terrorism in its domestic law, or prefers to rely on already existing provisions, or a combination of such provisions, in its domestic law, for the purpose of transposing Article 7 of the Convention, both approaches fulfil the requirements under international treaty law. The choice remains strictly within the discretion of States Parties, as long as the method of transposition does not affect the ability of a State Party to apply the Convention effectively. If a State Party relies on existing criminal law provisions, according to which the provision of training for terrorism is considered as an ancillary offence, that State Party must however take special care that the ancillary offences to Article 7 enumerated in the Convention can also be adequately criminalised under its domestic law.

The information submitted by States Parties on the definition of the terms “explosives”, “firearms”, “other weapons” and “noxious or hazardous substances” in their domestic legislation shows, that even if some minor differences exist between States Parties in this regard, these differences are not of a nature which would in any way diminish the efficacy of the Convention. It should be noted that the Explanatory Report to the Convention in paragraphs 118 to 121 contains some (non-binding and non-exhaustive) guidance as to the interpretation of the aforesaid terms. The Group of Parties is satisfied that the definitions used by the responding States Parties do not run contrary to this guidance.

The Group of Parties finally notes that none of the responding States Parties have reported encountering any specific legal problems in the process transposition of Article 7 in their domestic legislations.

Possible amendments to Article 7:

The Group of Parties notes firstly, that the majority of responding States Parties do not see any need for amending the provision. One State Party has informed the Group of Parties that it has gone beyond the criminalisation obligation contained in Article 7, by establishing as an offence the mere dissemination of procedures for the manufacture of destructive devices, for which the penalties imposed are increased by the fact that the dissemination has taken place via electronic communication networks (particularly the Internet).

Criminalisation of the receiving of training for terrorism:

The Group of Parties notes that a large majority of the responding States Parties have criminalised or are considering criminalising the receiving of training for terrorism in their domestic legislation – either as a separate offence or construed as a preparatory act to the terrorist offence or as attempt

to commit a terrorist offence. Some States Parties have not taken any position on the need for introducing a criminalisation of the receiving of training for terrorism at international level, whereas others support such an initiative. One of the reasons cited is that criminalising a potential terrorist at an earlier stage (i.e. when he/she is still seeking to be trained/undergoing training) will further strengthen the ability of States to protect their citizens and infrastructure against terrorism.

Other States Parties point to some inherent problems in criminalising the receiving of training, e. g. the difficulty of proving that the recipient of the training is also intending to carry out a terrorist offence, as well as the importance of avoiding potential conflict between an obligation to criminalise the receiving of training for terrorism and the obligations flowing from the right to freedom of expression and the right to access information.

In this regard, the Group of Parties finds that the fact that a large majority of the responding States Parties have, in one or another way, already criminalised or are considering criminalising the receiving of training at national level is an important indicator that such criminalisation is also called for at the international level in order to further enhance international co-operation to prevent and combat terrorism.

Hence the Group of Parties wishes to refer the question of criminalisation of the receiving of training for terrorism to CODEXTER for a more in-depth examination, taking into account the various arguments *pro et contra*, which have been put forward by the responding States Parties.

The transposition of Articles 8 – 10 in respect of criminal acts pursuant to Article 7:

The Group of Parties takes note that all responding States Parties apply Article 8 in full, thus not making the commitment of the offence of providing training for terrorism dependant on the actual commission of a terrorist act. The Group of Parties considers that, due to the inherent dangerousness of any act of training for terrorism – whether ultimately successful or not, and regardless of whether a terrorist act is in the end committed as a result of that act of training or not – it is of the utmost importance to provide for criminal sanctions in all cases of providing training for terrorism. The drafters of the Convention have been very clear in this regard, cf. paragraph 127 of the Explanatory Report, and consequently a State Party has no margin of appreciation when it comes to transposing Article 8 in its domestic law.

The Group of Parties notes with satisfaction that States Parties have in practice adopted a very uniform approach to the criminalisation of the ancillary offences enumerated in Article 9.

This is mainly due to the fact, that these ancillary offences are of a common nature and hence already form part of the general provisions of the criminal codes of most States Parties.

The Group of Parties is satisfied that Article 10 has been transposed by all responding States Parties in their domestic legislations. Even if some differences in the approach can be observed from the replies submitted by States Parties, these differences do not appear to pose any real, practical hindrance to the proper application of the Convention between States Parties.

Sanctions and measures in respect of criminal acts pursuant to Article 7:

The Group of Parties takes note that all responding States Parties have met the legal requirements laid down in Article 11, paragraphs 1 and 3.

Concerning the implementation of Article 11, paragraph 2, (previous convictions pronounced in foreign States for offences set out in the Convention) the Group of Parties takes note of the fact that States Parties are only obliged to transpose this provision to the extent permitted by domestic law. Some States Parties have implemented this provision in such a way that they allow for their courts to take into account previous convictions for offences under the Convention pronounced in virtually any foreign State, while others have adopted a more restrictive approach. The Group of

Parties, bearing in mind the importance of bringing terrorists to justice and combat recidivism, wishes however to underline the relevance of the fullest possible application of this provision for the global fight against terrorism.

Conditions and safeguards in respect of the application of Articles 7 and 9:

The Group of Parties wishes to underline the immense importance of adhering to human rights obligations and the principle of rule of law in preventing and combating terrorism in a democratic society.

The Group of Parties therefore observes with satisfaction that all responding States Parties provide for adequate legislative and procedural safeguards, including by applying normal procedural criminal law safeguards to terrorism cases without any restrictions.

In this context the Group of Parties also considers it as an encouraging sign that States Parties do not distinguish between "ordinary" crime cases and terrorism cases when designating the authorities responsible for assessing that human rights and procedural criminal law safeguards are adequately applied. In both cases, these are in the majority of States Parties functionally independent institutions for the protection of human rights at national level, including in particular the courts.

Such an approach ensures that terrorism cases are not inadvertently subjected to different standards for applying human rights obligations and the rule of law from what applies to other criminal cases, and at the same time contributes to denying perpetrators of terrorist acts the ability to present themselves to the general public as being denied justice.

Establishment of jurisdiction

The Group of Parties notes with satisfaction that all responding States Parties have fully transposed all mandatory elements of Article 14 (jurisdiction). The very slight variations found are down to the differences in the legal systems of States Parties and do not pose any obstacle to the proper implementation of the Convention between them.

Additional information

The Group of Parties is fully aware that the added value of any international legal instrument lies in its practical application. Hence, there is a need to establish to which degree States Parties actually make use of the Convention as a legal basis for their co-operation in preventing terrorism.

The Group of Parties takes due note of the fact that almost all of the responding States Parties have, on a voluntary basis, submitted information on relevant case law and/or statistic information about the practical application of the provisions on "*aut dedere aut judicare*", extradition and international co-operation in criminal matters.

It appears from the replies, that in practice only a few criminal cases on providing training for terrorism have so far been prosecuted by the competent authorities of States Parties. Given the difficulties in proving beyond reasonable doubt that a person has been providing training for terrorism, this is hardly a surprise. The Group of Parties expects that in the future more criminal cases concerning the provision of training for terrorism will be brought before the competent courts of States Parties and intends to revisit this question at later stage.

The Group of Parties also notes that the relatively small amount of statistical information gained from the replies to the questionnaire is insufficient for the Group of Parties to pronounce itself on the efficacy of the Convention as a legal basis for international co-operation in criminal matters, extradition and the adherence of States Parties to the principle of *"aut dedere aut judicare"* based

on the statistics available at the time of the drafting of this report. The Group of Parties intends to revert to this question in the future.