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## **NEW EU CRIMINAL LAW APPROACH TO TERRORIST OFFENCES**

### **ABSTRACT**

*Acts of terrorism constitute one of the most serious violations of human rights and fundamental freedoms on which the European Union (EU) is founded. The threat from terrorism has grown rapidly in recent years after numerous terrorist attacks that occurred Europe lately. Taking into account the evolution of terrorist threats and too narrow legal framework EU on combating terrorism, EU decided to extend it by prescribing new terrorist offenses. Accordingly, EU adopted Directive 2017/541 on combating terrorism in 2017 by prescribing new rules in order to strengthen legal framework to prevent terrorist attacks. This is precisely the main reason why the first part of the paper covers the new EU concept of terrorist offenses. Special attention is dedicating to offenses related to terrorist activities. Furthermore, the author points out to the national legislative framework in order to examine whether the Criminal Code of the Republic of Serbia is in compliance with adopted EU framework on combating terrorism. Since terrorist attacks cause serious consequences on the population, the Directive 2017/541 complements the current legislation on the rights of victims of terrorism by imposing special provisions on its protection and support. For that reason, the second part of the article presents the scope of the rights of the victims of terrorism. In concluding remarks, the author highlights that, by adopting the Directive 2017/541, EU has developed a comprehensive criminal law response on preventing and combating terrorism. It also points out that criminal legislation of the Republic of Serbia, when it comes to the matter of combating terrorism, with certain exceptions, is already adjusted to EU framework. Finally, some recommendations for accelerating the implementation of adopted measures on combating terrorism are listed.*

**Keywords:** criminal law, EU , Directive 2017/541, terrorism

### **1. INTRODUCTION**

Since November 2015, several EU member states have been hit by episodes of terrorist violence. Moments of crisis count as focal points at which policymakers re-think frameworks for new decision-making. Although in EU legislation has existed the landmark Framework Decision 2002/475/JHA on combating terrorism, which established for the first time a common European definition of terrorism and a list of preparatory acts that the Member States were obliged to implement

in their national legal orders, the challenges posed by foreign terrorist fighters have called for new measures specifically addressed to tackle this evolutionary threat. In particular, it was necessary to effectively criminalize the travel of individuals to receive terrorist training as well as the dissemination of propaganda and the interaction with potential recruits through the Internet.<sup>1</sup> The recent terrorist attacks in EU highlighted the contradiction between the seemingly free movement of terrorists across Europe and the lack of EU-wide intelligence sharing, although most perpetrators of the attacks were known to the various security agencies in several EU member states.<sup>2</sup> The European Union declared that terrorist threat has grown and has rapidly evolved in recent years. Individuals travel abroad for the aim of terrorism, and when they return, these foreign terrorist fighters pose a heightened security threat to all Member States.<sup>3</sup>

Therefore, in 2016 started EU's inter-institutional negotiations on a new Directive on combatting terrorism, aiming to reinforce the EU's legal framework in preventing terrorist attacks, but also to complement the current legislation on the rights for the victims of terrorism.<sup>4</sup> The Directive is based on two main pillars: the definition of new forms of terrorism in order to overcome the gaps of the existing EU framework and the protection of victims of terrorism.<sup>5</sup> Eventually, new Directive on combatting terrorism adopted in 2017 (hereinafter: Directive 2017/541). Directive 2017/541 exhaustively lists a number of serious crimes, such as attacks against a person's life, as intentional acts that can qualify as terrorist offences when and insofar is committed with a specific terrorist aim, namely to seriously intimidate a population, to unduly compel a government or an international organisation to perform or abstain from performing any act, or to seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation. The threat to commit abovementioned intentional acts should also be considered to be a terrorist offense when it is established, on the basis of objective circumstances, that such threat was made with the terrorist aim. Beside terrorist offenses, Directive 2017/541 introduces offenses related to terrorist activities. These offenses are of a very serious nature as they have the potential to lead to the commission of terrorist offenses and enable terrorists

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<sup>1</sup> Muñoz A. G., *The Proposal for a New Directive on Countering Terrorism: Two Steps Forward, How Many Steps Back?*, European Papers, No.1, 2016, p. 759

<sup>2</sup> Bureš O., *Intelligence sharing and the fight against terrorism in the EU: lessons learned from Europol*, European View No.1, 2016, p. 58

<sup>3</sup> Bartko R., *Challenges of Fight Against Terrorism*, Polish Political Science Yearbook No.1 2017, p. 316

<sup>4</sup> Baker-Beall C., *The European Union's Fight Against Terrorism: Discourse, Policies and Identity*, 2016, [<https://www.europenowjournal.org/2017/11/01/the-european-unions-fight-against-terrorism-discourse-policies-and-identity/>] Accessed 5 March 2018

<sup>5</sup> Muñoz, *op.cit.* note 1, p. 760

and terrorist groups to maintain and further develop their criminal activities, justifying the criminalization of such conduct.<sup>6</sup>

However, although Directive 2017/541 integrates to the counter against terrorism in a comprehensive way, some non-governmental organizations are warning that the overly broad language of the new EU Directive on combating terrorism could lead to criminalising peaceful acts as well as to the suppression of the exercise of freedom of expression protected under international law and other unjustified limitations on human rights. According to these non-governmental organizations Directive 2017/541 requires states to criminalise a series of preparatory acts that may have a minimal or no direct link to a violent act of terrorism, and may never result in one being committed such as the case with the offences of travelling or receiving training for terrorist purposes which are not adequately defined.<sup>7</sup>

## 2. NEW EU CONCEPT OF TERRORIST OFFENSES

EU legislation on terrorist offenses was adopted in 2002, shortly after the 9/11 attacks on the US, and was updated in 2008. Council Framework Decision (hereinafter: FD) 2002/475/JHA on combating terrorism sought to align the Member States' legislation and established a first-ever common EU definition of terrorist offenses. It furthermore required the Member States to introduce provisions in their criminal codes penalizing terrorism and prepared a harmonized list of acts constituting terrorist offenses and their corresponding penalties. It was later amended by Council FD 2008/919/JHA to include three new offenses: the public provocation to commit a terrorist offense, recruitment for terrorism, and providing (but not receiving) training for terrorism.<sup>8</sup> Although FD has introduced an extended approach to terrorist offenses, it must be noted that the EU Member States have different past experiences involving terrorism and therefore not all of them share the same approach or sense of urgency when addressing this issue. However, since some of them have been affected by the foreign fighters phenomenon it was obvious that current EU framework on combating terrorism must be improved. Faced with home-grown terrorism and the foreign fighters phenom-

<sup>6</sup> Directive (EU) 2017/541 Of The European Parliament And Of The Council of 15 March 2017 on combating terrorism, (2017) OJL 88/6

<sup>7</sup> The European Network Against Racism, *European Union Directive on Counterterrorism is Seriously Flawed*, 2016  
[<http://enar-eu.org/European-Union-Directive-on-Counterterrorism-is-Seriously-Flawed>] Accessed 5 March 2018

<sup>8</sup> Voronova S., *Combating terrorism*, European Parliamentary Research Service, Bruxelles, 2017, p. 3  
[[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599269/EPRS\\_BRI\(2017\)599269\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599269/EPRS_BRI(2017)599269_EN.pdf)] Accessed 22 March 2018

enon, the EU has sought to reinforce its counter-terrorism arsenal. Furthermore, as part of a global approach to tackling this threat, the criminal justice response has been developed at both international and European level. In 2014, the United Nations Security Council adopted Resolution 2178, obliging UN members to criminalise the act of travelling or attempting to travel to another country for terrorist purposes, or for providing or receiving terrorist training, as well as financing or facilitating such travel, whereas the Council of Europe adopted an Additional Protocol to its Convention on the Prevention of Terrorism.<sup>9</sup>

For that reason, at EU level, by 2015, a majority of Member States had started criminalizing *receiving* terrorist training whereas some Member States had made *travel* undertaken by foreign fighters a criminal offense. From that time, it was clear that EU should express its views on the foreign fighters phenomenon.<sup>10</sup> Since, returning foreign terrorist fighters pose a heightened security threat to all Member States it was completely undisputed that EU should ensure new and updated approach for combating terrorism, criminalizing offenses related to this phenomenon more comprehensively. On the other side, some theorists criticized the proposal for imposing extraordinarily wide-reaching obligations without offering the necessary guarantees regarding fundamental rights. With regard to the criminal offense of traveling abroad for terrorist purposes, there is opinion advocated that such action should only be criminalized when the terrorist purpose of the travel is proven from objective, factual circumstances. Furthermore, when it comes to the criminal offense of public provocation, some experts suggest that it should be criminalized only when it causes a danger in a concrete case that terrorist offenses may be committed.<sup>11</sup>

Anyway, Directive 2017/541 introduces new approach for combating terrorism defining three categories of conduct to criminalize: terrorist offences (Article 3), offences relating to a terrorist group (Article 4), and offences related to terrorist activities (Articles 5 to 12), which mainly cover preparatory acts, such as public provocation, recruitment, providing or receiving of training and travelling abroad for terrorism. New elements are also introduced in the general provisions, includ-

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<sup>9</sup> Voronova S., *Directive on combating terrorism*, European Parliament, 2017 [http://www.europarl.europa.eu/RegData/etudes/ATAG/2017/599254/EPRS\_ATA(2017)599254\_EN.pdf] Accessed 11 March 2018; The United Nations Security Council adopted Resolution 2178 [http://www.un.org/ga/search/view\_doc.asp?symbol=S/RES/2178%20%282014%29] Accessed 22 March 2018;

<sup>10</sup> Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, Council of Europe Treaty Series-No. 217

<sup>10</sup> Voronova, *op.cit.* note 8, pp. 3-4

<sup>11</sup> Vestergaard J., *Foreign Terrorist Fighters*, University of Copenhagen, Copenhagen, 2018, p. 276

ing extended grounds for criminalizing aiding or abetting, inciting and attempting, as well as establishing jurisdiction for the offense of providing terrorist training, whatever the nationality of the offender. Finally, Directive 2017/541 contains specific provisions on the protection of victims of terrorism.<sup>12</sup>

## 2.1. OFFENSES RELATED TO TERRORIST ACTIVITIES

According to the Directive 2017/541 offences related to terrorist activities are the following: public provocation to commit a terrorist offence (Article 5), recruitment for terrorism (Article 6), providing training for terrorism (Article 7), receiving training for terrorism (Article 8), travelling for the purpose of terrorism (Article 9), organising or otherwise facilitating travelling for the purpose of terrorism (Article 10), terrorist financing (Article 11) and other offences related to terrorist activities such as aggravated theft, extortion with a view to committing one of the terrorist offences as well as drawing up or using false administrative documents with a view to committing one of the terrorist offences or offences relating to a terrorist group and travelling for the purpose of terrorism.

Criminal offence *public provocation to commit a terrorist offence* is prescribed as distribution, or making available by any means, whether online or offline, of a message to the public, with the intent to incite the commission of one of the terrorist offences listed in Directive 2017/541, where such conduct, directly or indirectly, (for example by the glorification of terrorist acts), advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed. The intent to incite terrorism requires some purposeful knowledge of how the speech online or offline will impact a wider community and actually motivate violence. Moreover, this criminal offense would be punishable only if there is a causal link between an individual's speech and the likelihood of a violent terrorist act being committed. The causal relationship between speech and violence helps to ensure that there is a concrete threat associated with a potential act of violence. Therefore, all acts must have a requisite intent and a causal relationship to a potential act of violence. Finally, the speech must be public in nature, nonetheless, it can be difficult to define exactly every public/private distinction as it occurs on the Internet. In this regard e.g. instant messaging, Facebook posting, or members-only websites should not be punishable. On the other side, public Twitter and Instagram accounts should be punishable, since it is a truly public forum capable of reaching a wide public audience.<sup>13</sup> However, the critique on the scope of the

<sup>12</sup> Voronova, *op.cit.* note 8, p. 6

<sup>13</sup> Rediker E., *The Incitement of Terrorism on the Internet: Legal Standards, Enforcement, and the Role of the European Union*, Michigan Journal of International Law, No. 2, 2015, pp. 346-348

offense refers to the content of the speech that falls within the range. Thus, Directive 2017/541, like FD before, not only includes those acts that directly incite the commission of terrorist acts but also allows for the criminalization of indirect provocation to terrorist offenses e.g. where previous statements made by a terrorist could be understood by supporters as an appeal to continue terrorist activities.<sup>14</sup> Hence, in the scope of that broadly accepted definition of indirect incitement could be classified criminal acts that are not legitimate.<sup>15</sup> The term “distribution” refers to the active dissemination of a message advocating terrorism, while the expression “making available” refers to providing that message in a way that is easily accessible to the public, for instance, by placing it on the Internet or by creating or compiling hyperlinks in order to facilitate access to it. The term “to the public” makes it clear that private communications fall outside the scope of this provision. In order to make a message available to the public, a variety of means and techniques may be used. For instance, printed publications or speeches delivered at places accessible to others, the use of mass media or electronic facilities, in particular, the Internet, which provides for the dissemination of messages by e-mail or for possibilities such as the exchange of materials in chat rooms, newsgroups.<sup>16</sup>

Freedom of expression is one of the essential foundations of a democratic society and applies, according to the case-law of the European Court of Human Rights, not only to ideas and information that are favorably received or regarded as inoffensive but also to those that offend, shock or disturb. However, in contrast to certain fundamental rights which are absolute rights and therefore admit no restrictions, Article 10, paragraph 2 of the ECHR lays down the conditions for restrictions on the exercise of freedom of expression.<sup>17</sup> The question is where the boundary lies between indirect incitement to commit terrorist offenses and the legitimate voicing of criticism. In this regard, Explanatory Report to the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism suggests that indirect provocation to terrorist violence could cover “the dissemination of messages praising the perpetrator of an attack, the denigration of victims,

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<sup>14</sup> EUR-Lex, EU rules on terrorist offences and related penalties, 2015 [<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A13168>] Accessed 8 March 2018

<sup>15</sup> Ginkel B., *Incitement to Terrorism: A Matter of Prevention or Repression?*, The International Centre for Counter-Terrorism, The Hague, 2011, p. 1

<sup>16</sup> Explanatory Report to the Council of Europe Convention on the Prevention of Terrorism, 2005, Council of Europe Treaty Series-No. 196, p.12 [<https://rm.coe.int/16800d3811>] Accessed 22 March 2018

<sup>17</sup> European Convention on Human Rights [[https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)] Accessed 22 March 2018

calls for funding for terrorist organizations or other similar behavior.”<sup>18</sup> ECHR in the case *Döner and Others v. Turkey* has stated that although freedom of expression could be legitimately curtailed in the interests of national security, territorial integrity, and public safety, those restrictions still had to be justified by relevant and sufficient reasons and respond to a pressing social need in a proportionate manner.<sup>19</sup> Furthermore, ECHR in the case *Müdür Duman v. Turkey* concerned the complaint by a local leader of a political party that his conviction on account of illegal pictures and publications found in the office of his party had amounted to an unjustified interference with his right to freedom of expression, stressed out that his conviction constituted an interference with his rights under Article 10 since there was no indication that the material in question advocated violence, armed resistance or an uprising and finding that the applicant’s conviction had been disproportionate to the aims pursued, namely the need to protect public order and to prevent crime as part of the fight against terrorism.<sup>20</sup> Moreover, in the case *Ürper and Others v. Turkey* concerning the applicants complained about the suspension of the publication and dissemination of their newspapers, considered propaganda in favour of a terrorist organization, ECHR taking into account role of the press found in particular that less draconian measures could have been envisaged by the Turkish authorities, such as confiscation of particular issues of the newspapers or restrictions on the publication of specific articles.<sup>21</sup>

Moreover, criminal offense *recruitment for terrorism* is prescribed as soliciting another person to commit or contribute to the commission of one of the listed terrorist offenses. Solicitation can take place by various means, for instance, via the Internet or directly by addressing a person. For the completion of the act, it is not necessary that the addressee actually participates in the commission of a terrorist offense or that he or she joins a group for that purpose. Nevertheless, for the crime to be completed, it is necessary that the recruiter successfully approach the addressee. The solicitation effectively takes place regardless of whether the addressees of the solicitation actually participate in the commission of a terrorist offense or

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<sup>18</sup> Explanatory Report to the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, *op. cit.* note 16, p. 11

<sup>19</sup> *Döner and Others v. Turkey* - 29994/02, Judgment 7.3.2017, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-11421%22%5D%7D>] Accessed 19 April 2018

<sup>20</sup> *Müdür Duman v. Turkey*, application no. 15450/03, <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-5191081-6425326%22%5D%7D>] Accessed 19 April 2018

<sup>21</sup> *Ürper and Others v. Turkey*, (application nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07), <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-2899247-3189363%22%5D%7D>] Accessed 19 April 2018



join an association or group for that purpose. On the other hand, this provision requires that the recruiter intends that the person, he or she recruits, commits or contributes to the commission of a terrorist offense or joins an association or group for that purpose.<sup>22</sup>

Furthermore, Directive 2017/541 makes a difference between *providing* training for terrorism and *receiving training for terrorism*. Precisely, these two offenses are prescribed as providing or receiving instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the terrorist offences listed in Directive 2017/541. This provision covers the receiving of such training both in person, for instance, by attending a training camp run by a terrorist association or group, and through various electronic media (for instance, Internet). In this way, it also addresses self-training for terrorism. Anyway, the receiving of training must take place with a terrorism-related purpose and an intention to commit a terrorist offense. To be found guilty of the offense, an individual must provide the training for the purpose of committing a terrorist offense, knowing that the skills are intended to be so used. This appears to require a double intention—on behalf of both the instructor and the instructed.<sup>23</sup> This article criminalizes the supplying of know-how for the purpose of carrying out or contributing to the commission of a terrorist offense. For such conduct to be criminally liable, it is necessary that the trainer know that the skills provided are intended to be used for the commission of or the contribution to commit a terrorist offense.<sup>24</sup> The receiving of training for terrorism may take place in person, e.g. by attending a training camp run by a terrorist association or group, or through various electronic media, including through the Internet. However, the mere fact of visiting websites containing information or receiving communications, which could be used for training for terrorism, i.e. “self-study”, is not enough to commit the crime of receiving training for terrorism. The perpetrator must normally take an active part in the training e.g., the participation of the perpetrator in interactive training sessions via the Internet. The participation in otherwise lawful activities, such as taking a chemistry course at university, taking flying lessons or receiving military training provided by a State, may also be considered as unlawfully committing the criminal offence of receiv-

<sup>22</sup> Explanatory Report to the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, *op. cit.* note 16, pp. 12-13

<sup>23</sup> Cian M., *EU Counter-Terrorism Law : Pre-Emption and the Rule of Law*, Oxford : Hart Publishing, 2012, 73

<sup>24</sup> Explanatory Report to the Council of Europe Convention on the Prevention of Terrorism, *op.cit.* note 16, pp. 13-14



ing training for terrorism, only if it can be demonstrated that the person receiving the training has the required criminal intent to use the training thus acquired to commit a terrorist offence.<sup>25</sup>

When it comes to *travelling for the purpose of terrorism* Directive 2017/541 makes a difference between travelling to a country other than Member State and travelling to Member State for the purpose of committing, or contributing to the commission of, a terrorist offence, for the purpose of the participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group, or for the purpose of the providing or receiving of training for terrorism. Preparatory acts are undertaken by a person entering that Member State with the intention to commit or contribute to the commission of, a terrorist offense shall be punishable as a criminal offense. Depending on the tradition of legal systems, the act of traveling for the purpose of terrorism could normally be criminalized as a separate criminal offense or as a preparatory act to the main terrorist offense, or depending on the circumstances as an attempt to commit a terrorist offense.<sup>26</sup>

Although, the right to freedom of movement is enshrined in Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, as well as in Article 12 of the International Covenant on Civil and Political Rights of the United Nations, the seriousness of the threat posed by foreign terrorist fighters warrants a robust response which, on the other hand, should be fully compatible with human rights and the rule of law.<sup>27</sup> In this context, it should be emphasized that criminal offense of *traveling for the purpose of terrorism* does not contain an obligation for Member states to introduce a blanket ban on or criminalization of, all travel to certain destinations. Neither does this criminal offense oblige Member states to introduce administrative measures, such as the withdrawal of passports. The act of traveling is only concerned with criminalization under two particular conditions. Firstly, the real purpose of the travel must be for the perpetrator to commit or participate in terrorist offenses, or to receive or provide training for terrorism, in a State other than that of nationality or residence. Secondly, the perpetrator must commit the crime intentionally and unlawfully.<sup>28</sup> Anyway, the act of traveling to another country

<sup>25</sup> Explanatory Report to the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, Council of Europe Treaty Series-No. 217, p. 6. [<https://rm.coe.int/168047c5ec>] Accessed 22 March 2018

<sup>26</sup> *Ibid.*, p. 9

<sup>27</sup> International Covenant on Civil and Political Rights  
[<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>] Accessed 22 March 2018

28 *Ibid.*, p. 7

should be criminalized if it can be demonstrated that the intended purpose of that travel is to commit, contribute to or participate in *terrorist offenses*, or to *provide or receive training* for terrorism. This provision also includes traveling for the purpose of *participating in the activities of a terrorist group*. Both travels to third countries and to the EU Member States are covered, including those of the nationality or residence of the perpetrator.<sup>29</sup>

Additionally, Directive 2017/541 prescribes *organizing or otherwise facilitating traveling for the purpose of terrorism* as a criminal offense too. Accordingly, any act of organization or facilitation that assists any person in traveling for the purpose of terrorism knowing that the assistance thus rendered is for that purpose, is punishable as a criminal offense. The term organization covers a variety of conducts related to practical arrangements connected with traveling, such as the purchase of tickets and the planning of itineraries. The term facilitation is used to cover any other conduct than those falling under organization which assists the traveler in reaching his or her destination e. g. the act of assisting the traveler in unlawfully crossing a border. In addition to acting intentionally and unlawfully, the perpetrator must know that the assistance is rendered for the purpose of terrorism.<sup>30</sup>

Finally, Directive 2017/541 lists criminal offense of *terrorist financing* as providing or collecting funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit, or to contribute to the commission of, either terrorist offences or offences related to terrorist activities. This provision implements FATF Recommendation No. 5, stating that terrorist financing should be criminalized even absent a link to a specific terrorist act as money laundering predicate offenses.<sup>31</sup> Moreover, this provision complements International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999. According to this Convention the notion of funds describes as assets of every kind, whether tangible or intangible, movable or immovable, however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.<sup>32</sup> Anyway, the funds may come from a single source, e.g. as a loan or a gift which is provided to

<sup>29</sup> Voronova, *op.cit.* note 8, pp. 6-7

<sup>30</sup> Explanatory Report to the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, *op. cit.* note 21, p. 9

<sup>31</sup> The Financial Action Task Force, The FATF Recommendations, FATF Secretariat, Paris, 2016, 13

<sup>32</sup> International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999

the traveler by a person or legal entity, or from various sources through some kind of collection organized by one or more persons or legal entities. The funds may be provided or collected “by any means, directly or indirectly”. In addition, essential elements of the criminal offense include that the perpetrator acts intentionally and unlawfully with the knowledge that the funds are fully or partially intended to finance the traveling abroad for the purpose of terrorism.<sup>33</sup>

### **3. PROVISIONS OF CRIMINAL CODE OF THE REPUBLIC OF SERBIA ON COMBATING TERRORISM AND SERBIAN CASE LAW**

Before Law on amendments from 2012 had adopted, Criminal Code of Republic of Serbia made the distinction between terrorism and international terrorism. In this regard, Law on amendments from 2012 brings a number of important novelties regarding the prescription of criminal acts of terrorism.<sup>34</sup> First of all, Article 391 of the Criminal Code specifies the core criminal offense of terrorism (regardless whether an act was administered against the Republic of Serbia, a foreign state or international organizations) with numerous forms of execution.<sup>35</sup> Furthermore, when it comes to offences related to terrorist activities Law on amendments from 2012 introduces provisions on the following criminal acts: public instigation of terrorist acts (Article 391a), recruitment and training for terrorist acts (Article 391b), use of deadly device (Article 391c), destruction and damaging of a nuclear facility (Article 391d), endangering of person under international protection (Article 392), financing terrorism (Article 393), terrorist conspiracy (Article 393a). At first, glance, compares to Directive 2017/541 Criminal Code of the Republic of Serbia provides wider criminal law protection criminalizing conducts such as the use of a deadly device, destruction and damaging of a nuclear facility, endangering of the person under international protection and terrorist conspiracy. However, on the other side Criminal Code of the Republic of Serbia missed prescribing acts of traveling for the purpose of terrorism as well as organizing or otherwise facilitating traveling for the purpose of terrorism as a criminal offense too. Bearing in mind that focus of this section of the paper is on the issue whether the Criminal Code of the Republic of Serbia is in compliance with adopted EU framework on combating terrorism, the further analysis shall be limited only to those criminal offenses criminalizing by Directive 2017/541. In the Special Department for or-

<sup>33</sup> Explanatory Report to the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, *op. cit.* note 21, p. 8

<sup>34</sup> Law on amendments of Criminal Code of Republic of Serbia Official Gazette of RS, No. 121/2012

<sup>35</sup> Kolarić D., *Nova Konceptija Krivičnih Dela Terorizma U Krivičnom Zakoniku Republike Srbije*, Crimen 1/2013, p. 57

ganized crime of the High Court in Belgrade is ongoing criminal proceedings, against seven persons for criminal offenses public instigation of terrorist acts (Article 391a), recruitment and training for terrorist acts (Article 391b) financing terrorism (Article 393) of the Criminal Code.<sup>36</sup>

*Public instigation of terrorist acts* (Article 391a) is defined as expression or dissemination ideas that directly or indirectly instigate a criminal act of terrorism. The expression of ideas should be considered an announcement of one's own beliefs, while the dissemination of ideas should be understood as the further verbalization of one's belief related to another person.<sup>37</sup>

In abovementioned criminal proceedings against one defendant an indictment has been filed since there was justified suspicion that this person has committed the criminal offence of *public instigation of terrorist acts* under Article 391a of the Criminal Code by continuously, publicly expressing and disseminating ideas that directly instigate a criminal act of terrorism referred to in Article 391 of the CC, during 2013 and early 2014, on its Facebook profile, in a section that is available to all users, by setting out a series of content that glorify an organization declared by the United Nations as a terrorist - the Islamic State of Iraq and Levant "Shama" (IDIL), propagate its actions, invite to fight, violence and murders and show recording of the same, display maps of the territory controlled by "IDIL" and call for suicide actions in Raska, Belgrade and Rome.

*Recruitment and training for terrorist acts* (Article 391b) are actually two crimes but which are prescribed in the same article. Recruitment comprises acts of recruiting another person to commit or take part in the commission or to join the terrorist conspiracy. Training for terrorist acts is considered as giving instructions on how to make and use explosive devices, firearms or other weapons or dangerous or harmful matter, or exercising another person to commit or take part in the commission of terrorism. These are two types of preparatory actions that are incriminated by Criminal Code of the Republic of Serbia. Recruitment is calling and getting someone for the execution of abovementioned acts. It can be accomplished by various actions that are similar to an act of incitement (persuasion, promise or giving money, etc.). However, in case of this crime, it is enough that a recruiting operation was undertaken and it is not necessary that someone was recruited. That is the basic difference in relation to the act of incitement.<sup>38</sup>

<sup>36</sup> Milena Rašić, *Terrorizam - krivična dela u našem zakonodavstvu*, Bilten Vrhovnog kasacionog suda, broj 2/2016, Intermex, Beograd

<sup>37</sup> *Ibid.*, p. 60

<sup>38</sup> *Ibid.*, pp. 62-63

Accused are charged with *recruitment and training for terrorist acts* (Article 391b) in a way that they were continuously recruiting members of the Islamic religion in the Republic of Serbia, especially among younger persons, by radicalizing them through organized regular religious lectures and creating and maintaining a misconception about the circumstances concerning their fellow countrymen in Syria and in other countries, by which they were strengthening and increasing their willingness to use violence and violent struggles. Some of the defendants organized the procurement of books, propaganda material and other literature with contents that propagate and called to violence and its distribution during religious ceremonies. The defendants are charged that, with the aim to commit attacks on the life, body and freedom of others, by the use of weapons and other violent methods, by activating explosive devices, causing explosions and fires, destroy state and public facilities, and in order to intimidate the population and with the aim of violently creating a future global Islamic state - caliphate, used previously legally registered Association of Islamic Youth Sandzak "Furkan" in Novi Pazar, whose premises were used exclusively as a religious object - mesjid, and using for the same purpose as mesjid and building in Zemun - Backi Ilovik, gathered a large number of persons on a religious basis with the aim of religiously radicalizing them, and with the help of like-minded people and other extreme selafian communities, such as in Gornja Maoča in Bosnia and Herzegovina, recruited persons to join the terrorist association and organized regular meetings and a number of lectures, tribunes and seminars in religious facilities in Raska, Novi Sad, Sremcica, Zemun, Smederevo, the Furkan mesh and other places, providing the presence of leading extremist religious authorities, both from the Republic of Serbia, as well as from Bosnia, Austria and other countries.

*Financing terrorism* (Article 393) is prescribed as directly or indirectly giving or collecting funds with the intention to use them or knowing that they will be used, fully or partially, either for commission of terrorism or other abovementioned offences related to terrorist activities or for financing of persons, a group or organized crime group who intend to commit these acts.

Other defendants were charged that they were continuously collecting funds in order to finance the travels of persons and their residence in the Syrian Arab Republic and that they also disposed of these funds, and also planned, prepared and organized in the continuity the departure of several citizens of the Republic of Serbia and other countries firstly to camps for terrorist training, and then to the battlefield and that they organized in the premises of the mesh fur "Furkan" in Novi Pazar, a reception for resting, equipping and providing the necessary information before continuing their travel. One defendant was charged that in Istanbul, the Republic of Turkey welcomed and received persons who were headed to

Syria, and financed and organized their transfer from Turkey to camps for terrorist training in northern Syria and the other defendant was charged with organizing the reception, accommodation and military training of newcomers in the city of Azaz. Acting in such an organization from the Furkan mesh in Novi Pazar in 2013, at least 12 persons were sent to the Syrian Arab Republic in order to join the "IDIL". Some of the defendants were charged for joining the armed section of the terrorist organization "IDIL", where they took part in combat units, and one of them, according to the indictment, commanded one such unit.

According to the indictment, one of the defendants was in charge of financing the departure to Syria, by obtaining money from the members and sympathizers of the Furkan Association from abroad, and also financed his and departure of several other persons to join the terrorist organization, through a bank account. At the same time, one defendant was charged with having recruited some people for going to Syria and joining "IDIL", and, in order to strengthen their intentions and using their insufficient knowledge of religious regulations, suggested that they should go to Gornja Maoča for a discussion with a person with high religious position, who suggested and advised them that they should make a decision to leave for Syria, that a house would be provided to them in Syria in the city of Azaz, that there would be one defendant there, that he would be in touch with him and that he would consult with him about religious issues and issues of jihad, they will have to obey a head of military unit they are deployed in, they will be on the border, go through the training, to get a pancir and not to be sent immediately to the front. The same defendant was also in charge of providing telephone and personal contacts with the persons who were taking shelter at the Turkish-Syrian border, and then the reception in Syria.

#### **4. THE SCOPE OF THE RIGHTS OF THE VICTIMS OF TERRORISM**

In EU framework there is Directive which in a comprehensive manner deals with the issue of protection of all victims of crime. Precisely, it is about Directive 2012/29/EU of the European Parliament and the Council which establishing minimum standards on the rights, support, and protection of victims of crime.<sup>39</sup> A victim of terrorism is defined in Article 2 of Directive 2012/29/EU, namely as a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, insofar as that was directly caused by a terrorist offense or a family member of a person whose death was directly caused by a terrorist

<sup>39</sup> Directive 2012/29/EU Of The European Parliament And Of The Council Of 25 October 2012 establishing minimum standards on the Rights, support and protection of victims of crime, OJL 315/57

offense and who has suffered harm as a result of that person's death. However, Directive 2012/29/EU allows the Member States to establish procedures either to limit the number of family members who may benefit from the rights set out in this Directive, taking into account the individual circumstances of each case or to determine which family members have priority in relation to the exercise of the rights set out in this Directive. In theory, there is a division into primary, secondary and tertiary victims. Primary victims are those who directly suffered harm from the terrorist attack, including those who experience property damage due to violent acts. The group of secondary victims consists of dependants or relatives of the deceased and first responders to acts of terrorism. Lastly, there are a group of tertiary or vicarious victims which refers to ordinary people everywhere who are afraid or intimidated by threats of indiscriminate and horrifying forms of violence directed against them.<sup>40</sup> The fact that terrorists use violence against direct targets to threaten, frighten and otherwise influence a wider group of indirect or vicarious victims, implies that the audience of the crime transcends the direct victims. Indeed, the effects on vicarious victims in absolute terms may outweigh those of the direct victims.<sup>41</sup>

Broadly speaking there are five categories of needs which are applicable to all victims of crime. The first and most fundamental need for the victim is recognition. It is widely agreed that victims need to be recognized as victims and need their suffering to be acknowledged. Secondly, victims have a range of protection needs. They need to be protected from further criminal acts by the offender, supporters of the offender or from new crimes. The victim also needs to be protected from secondary victimization through behaviors and attitudes of social service providers or government officials. Furthermore, support is fundamental to victims' recovery and their understanding of the entire system. Moreover, victims need to get full access to and be able to participate in the justice system, which encompasses the right to be heard and requires at a minimum that they are made aware of crucial decisions and key dates. Finally, victims of a violent crime should receive financial compensation. These five basic needs also constitute the foundation for the Directive 2012/29/EU and offer a framework for the large variety of needs and require a response for people that fall victim to a crime.<sup>42</sup>

For the most part, the needs of direct victims of terrorism are similar to those of other victims of crime, differing not in kind but rather in degree or in possibili-

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<sup>40</sup> European Commission – Directorate General Justice, Freedom and Security, *Victims of Terrorism: Towards European Standards for Assistance*, Brussels, 2008, p. 3

<sup>41</sup> *Ibid.*, p. 5

<sup>42</sup> Policy Department for Citizen's Rights and Constitutional Affairs, *How can the EU and the Member States better help victims of terrorism?*, Brussels, 2017, pp. 26-27



ties for implementation. However, their specific needs can be different not only in kind of needs but also in degree. The specific needs underwrite the importance of ensuring that every victim is supported, informed, compensated, and protected in the way they need to be.<sup>43</sup> In this context Directive 2017/541 dedicates special attention to the protection of, support to, and rights of victims of terrorism. It requires a comprehensive response to the specific needs of victims of terrorism immediately after a terrorist attack and for as long as necessary as well as the need to ensure that all victims of terrorism have access to information about victims' rights, available support services and compensation schemes in the Member State where the terrorist offence was committed. These developments are an important step in recognizing and advancing the needs and rights of victims of terrorism.<sup>44</sup> One of the new approaches of Directive 2017/541 is more profiled cooperation and coordination of services.

However, it can be noticed that Directive 2017/541 prescribes only three provisions on the protection of victims rights. It is about the following provisions: Assistance and support to victims of terrorism (Article 24), Protection of victims of terrorism (Article 25) Rights of victims of terrorism resident in another Member State (Article 26). Firstly, Directive 2017/541 deals with the provision of assistance and support to victims of terrorism prescribing that the Member States shall ensure that support services addressing the specific needs of victims of terrorism are available for them immediately after a terrorist attack and for as long as necessary. The services shall be confidential, free of charge, easily accessible to all victims of terrorism and may include the following assistance: emotional and psychological support, such as trauma support and counselling; advice and information on any relevant legal, practical or financial matters, including facilitating the exercise of the right to information of victims of terrorism; support with claims regarding compensation for victims of terrorism available under the national law of the Member State concerned; adequate medical treatment and access to legal aid. In regard to some categories of victims such as victims of terrorism, it is required to make an individual assessment to identify specific needs. Therefore, this provision complements article 22 of the Directive 2012/29/EU which obliges the EU Member States to ensure an individual assessment of victims to identify possible specific protection needs, including victims who have suffered considerable harm due to the severity of the crime.<sup>45</sup> When it comes to protection of victims of terrorism Directive 2017/541 prescribes that particular attention shall be paid to

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<sup>43</sup> *Ibid.*, p. 27

<sup>44</sup> *Ibid.*, p. 76

<sup>45</sup> European Union Agency for Fundamental Rights, *Victims of crime in the EU: the extent and nature of support for victims*, Publications Office of the European Union, Luxembourg 2014, p. 77

the risk of intimidation and retaliation and to the need to protect the dignity and physical integrity of victims of terrorism, including during questioning and when testifying. This provision is of significant importance when determining whether and to what extent victims should benefit from protection measures in the course of criminal proceedings. Finally, provisions concerning rights of victims is applied only to those victims resident in another Member State. It is about the state other than that where the terrorist offense was committed. Those victims may lack access to information regarding their rights, the available support services and compensation schemes in the Member State where the terrorist offense was committed. In this respect, Member States concerned shall take appropriate action to facilitate cooperation between their competent authorities or entities providing specialist support to ensure the effective access of victims of terrorism to such information. Notwithstanding those victims have access to information regarding their rights in Member State where the terrorist offense was committed, they also have access to the assistance and support services on the territory of the Member State of their residence.

## 5. CONCLUDING REMARKS

Taking into account of the evolution of terrorist threats in the previous period, the EU was forced to broaden its framework on combating terrorism. Nowadays, the main terrorist risk comes from individuals so-called 'foreign terrorist fighters' travel abroad for the purpose of terrorism. Respecting Resolution 2178 adopted in 2014 by the UN Security Council as well as the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism adopted in 2015 concerning the security threat posed by foreign terrorist fighters, EU has decided to strengthen its framework by adopting Directive 2017/541 which introduces three separated categories of criminal offences relating to terrorism. Namely, it is for the following criminal offenses: 1) the mere offense of terrorism; 2) offenses related to a terrorist group; and 3) offenses related to terrorist activities. Therefore, it must be noted that by adopting of the Directive 2017/541, EU has developed a comprehensive criminal law response on preventing and combating terrorism.

When it comes to Criminal Code of the Republic of Serbia it can be noticed that our legislation is almost completely in compliance with the new EU framework on combating terrorism. However, the core criminal offenses which have lead to the adoption of new EU Directive - traveling abroad as well as organizing or otherwise facilitating traveling abroad for the purpose of terrorism - are not criminalized in Criminal Code of the Republic of Serbia. It is expected that in the process of the accession Republic of Serbia will harmonize its framework with the EU. The of-

fenses related to terrorist activities, such as abovementioned criminal offenses are of a very serious nature as they have the potential to lead to the commission of a terrorist offense. For that reason in favor of its criminalization in our legislation is not only need for harmonization with the EU framework but also heightened security threat to all European States from returning foreign terrorist fighters.

Since a terror attack can lead to a feeling of insecurity, fear, lack of self-confidence of victims, Member States are obliged to take and implement measures for their support and protection for as long as necessary. In regards to the needs of victims of terrorism, the Member States should provide immediately after a terrorist attack emotional and psychological support through access to long-term support services as well as legal and health aid. Moreover, Member State should provide special protection measures in criminal proceedings especially during questioning and be testifying. Article dealing with protection of victims of terrorism in criminal proceedings is of the significant importance in order to avoid their secondary victimization. Finally, Directive 2017/541 prescribes the provision which refers to the rights of victims of terrorism resident in another Member State. Such victims exercise all rights laid down in Directive 2017/541 on the territory of the Member State of their residence, even if the terrorist offense was committed in another Member State. Although Directive contains only three article on protection of victims of terrorism it provides specific measures for victims of terrorism. On the other side, comprehensively set of binding rights for all victims of crime, including the rights of the victim of terrorism, is prescribed in Directive 2012/29/EU.

To conclude, Directive 2017/541 represents step forward strengthening EU framework on combating terrorism, introducing new criminal law approach to terrorist offenses as well as specific measures for victims of terrorism. The only thing that remains is the need for its proper implementation. There are a few significant recommendations for acceleration of the implementation of adopted measures on combating terrorism. One of them is a promotion of effective practical cooperation in intelligence services between the Member States and national police including Europol and Eurojust. The second one should be realized by a comprehensive screening of travel movements by citizens crossing EU borders and thus ensuring their security but also democratic values. Finally, minimalization consequences of a terrorist attack by introducing and implementing services to deal with the needs of victims is considered as a crucial measure for acceleration of the implementation of adopted Directive 2017/541.

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