Chapter 7

Offences Linked to Terrorist Offences

7.1. Introduction

Preparations for terrorism often involve the commission of ordinary crimes, the range of which is only limited by the creativity of the terrorists themselves. As recognised in Chapter 5, the definition of ‘terrorist offences’ itself includes several ordinary crimes that may typically take place during the preparatory phase of a terrorist plan (e.g. the illegal manufacture of weapons), and in Chapter 6 we pointed out that participation in a terrorist group can also include the commission of other crimes. In addition, Article 3 of the Framework Decision establishes a separate category of ‘offences linked to terrorist activities’.

Article 3 states (in its original version)\(^{1341}\) that:

Each Member State shall take the necessary measures to ensure that terrorist-linked offences include the following acts:

(a) aggravated theft with a view to committing one of the acts listed in Article 1(1);
(b) extortion with a view to the perpetration of one of the acts listed in Article 1(1);
(c) drawing up false administrative documents with a view to committing one of the acts listed in Article 1(1)(a) to (h) and Article 2(2)(b).

The drafting history reveals a close connection between Articles 3 and 1. In the Commission’s proposal, extortion, theft and robbery were part of the list of terrorist offences.\(^{1342}\) During the negotiations, however, it was pointed out that such acts alone could not be directly committed with a terrorist aim.\(^{1343}\) These items were therefore moved to a separate article and the falsification

\(^{1341}\) Art. 3 was amended on 28 November 2008, see OJ 2008 L 330/21. As explained supra 1.5, all references to the Framework Decision in this work are nevertheless kept to the original text. The amendments did not lead to any substantial changes in the original parts of Arts. 3 (or 4).

\(^{1342}\) See COM (2001) 521 final, Art. 3 (1) (d) and (e).

of administrative documents was added. The offences are, however, still linked to the terrorist offences through a kind of further intention (with a view to committing a terrorist offence).

As in previous Chapters, we will start by discussing the general obligation of the Framework Decision to ensure criminalisation and the national responses thereto (7.2). Thereafter, a more thorough analysis will be carried out of the underlying basic offences (7.3) and the requirement of a further terrorist intention (7.4), taking into consideration both the Framework Decision and the national rules in the states that have implemented Article 3 separately. The complementary incrimination of attempted crimes (7.5), aiding and abetting (7.6) and incitement (7.7) will also be examined, before we discuss the level of punishment (7.8) and, finally, conclude the Chapter (7.9).

7.2. The duty to ensure criminalisation

7.2.1. The Framework Decision

Article 3 does not expressly commit the Member States to criminalise the three types of offences, probably because aggravated theft, extortion and the drawing up false documents are already ordinary crimes in most national legislations. However, a duty to ensure criminalisation is presupposed by Article 4, which contains a duty to criminalise attempts to commit terrorist-linked crimes, as well as incitement, and aiding and abetting.

Compared with Article 1, the English wording of Article 3 is unclear with respect to whether the states have an obligation to label these offences as terrorist-linked when committed with a further terrorist intention. The contrast between the active formulation in Article 1 (‘shall be deemed to be terrorist offences’), and the corresponding, more passive expression in Article 3 (‘ensure that terrorist-linked offences include . . .’) could indicate that Article 3 does not oblige the Member States to establish terrorist-linked offences as a separate category of crimes. A literal interpretation of the English text could indicate that ‘terrorist-linked offences’ already formed a distinct category under national law, but this is clearly not the case.

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1344 See Council docs. 12647/1/01 REV 1 (Art. 1 (2)), 12647/2/01 REV 2 (Art. 1a) and 12647/3/01 REV 3 (Art. 1a).
1345 See supra 5.2.1.
1346 A literal interpretation of the English text could indicate that ‘terrorist-linked offences’ already formed a distinct category under national law, but this is clearly not the case.