

# Summary

## **The Act on the Extension of the Scope for Investigation and Prosecution of Terrorist Crimes**

### **An empirical research**

Since the attacks of September 2001 in the United States, the Netherlands has introduced a series of new laws and measures, designed to prevent terrorist offences from taking place. These new laws have also brought about an expansion in the remit of the Police and the Public Prosecution Service. This expansion has partly resulted in the introduction of new offences, such as recruitment for the armed struggle and conspiracy to commit a terrorist offence, whilst other legislation has been enacted in relation to the detection and prosecution of terrorist offences. An example of this is the The Act on the Extension of the Scope for Investigation and Prosecution of Terrorist Crimes, which entered into force on 1 February 2007. The purpose of this Act is to enable the Police and the Public Prosecution Service to initiate criminal proceedings as early as possible in order to prevent terrorist attacks from taking place.

This report forms part of a monitor, which charts the application of the Act and experiences in applying it in practice. Monitoring of this Act is being undertaken on behalf of the National Coordinator for Counterterrorism (NCTb) and the results of this will be reproduced in the form of an annual report. This initial report covers a period of one year, commencing in February 2007 and ending in February 2008. The report focuses primarily upon the way in which the Police and the Public Prosecution Service make use of the new Act in practice, as well as upon the experiences that have been gained in that regard during the first year in which the new Act has been in force. In addition, the report contains a description of the contents of the Act and of the manner in which the Act was introduced.

As stated above, the The Act on the Extension of the Scope for Investigation and Prosecution of Terrorist Crimes is part of a range of laws and measures that influence the tasks undertaken by the Police and the Public Prosecution Service in the field of counterterrorism. What this means, however, is that it will not always be possible to say whether developments that took place during the period under review were (exclusively) attributable to the new provisions.

What is more, the practical experience that has been gained in the use of the Act during the first year of its operation is, as yet, not very extensive. The first year after a new law comes into effect should be regarded as a familiarisation stage in which those involved familiarise themselves with the new law and consider the opportunities it provides, as well as its limitations. The persons interviewed also stated that during the period under review, few specific terrorist threats actually occurred. The results of this monitor should therefore be viewed with the above factors in mind.

### *The legislation*

The purpose of the Act is to enable investigations into terrorist offences to take place at an early (or earlier) stage. In order to facilitate this, the criterion, contained within the Act, for the application of special investigative powers, that is, the requirement of a suspicion that a terrorist act is being prepared, has been made less severe: investigative powers can be applied in case of 'indications' of a terrorist offence. The idea in this regard is that the Police and the Public Prosecution Service will be able to conduct investigations at an earlier stage, either on the basis of information they themselves have obtained, or by making use of information provided by the General Intelligence and Security Service (AIVD) at an earlier point in time.

In order to increase the effectiveness of the so-called 'exploratory investigation', two stipulations have been incorporated into the Act which, in short, enable the authorities to requisition computerised data files and identifying details such as names, addresses and administrative features.

In areas – whether or not permanently – designated for that purpose, the powers of the authorities to search individuals without specific suspicion of a criminal offence having been committed have been extended. Individuals and vehicles can now be examined, if there are indications that a terrorist offence may be at stake.

Given the fact that investigations into terrorist acts are frequently of a complex nature, the new Act has made it possible that an individual suspected of being involved in a terrorist act may be remanded in custody, even in cases where on top of the requirement of a formal suspicion, the additional requirement of a grave presumption of guilt has not yet been met.

It was also to address the fact that investigations into terrorist offences often take a considerable time that an amendment to legislation has been introduced that further postpones the time at which an individual suspected of a terrorist offence is informed of the complete evidence that exists against him; this information can be withheld in part, until the beginning of the trial.

### *Introduction of the legislation*

The implementation of the Act proceeded smoothly and the new powers it provides were amply outlined in the form of information meetings and training courses. A greater degree of local coordination was demanded concerning the use of search powers in permanent security areas.

### *Initial experiences in using the legislation*

Experience in the use of the new investigative powers provided by the Act so far is limited. Officials have gained experience in the use of the special investigative powers based upon indications that a terrorist act is being prepared. And on a few occasions, a suspect was remanded in custody in the absence of grave presumptions. During the first year, no use was made of either the so-called 'exploratory investigation', the investigative powers in security risk areas, or the facility to postpone the date upon which evidence against the suspect is disclosed. The overriding view of the new legislation is a positive one and most of those interviewed thought it was a good thing that the new powers are available and that they can be used in certain circumstances. Those interviewed were in agreement that the new powers should be used sparingly, whilst also acknowledging the importance of these powers within the context of counterterrorism, if only

used to exclude the fact that a terrorist offence is actually taking place. The ability to deploy special investigative powers on the basis of indications that a terrorist crime is being committed is regarded as useful, albeit in a very limited number of situations. Public Prosecutors in particular indicated that they welcomed the fact that commencing an investigation at such an early stage has now been put on a statutory footing. It is thought that the early application of special investigative powers can help to prevent situations in which the investigation takes place only after the suspects have been arrested. This relates to the situation in which an official notification from the General Intelligence and Security Service (AIVD) regarding impending danger forces the authorities to proceed quickly and arrest the suspects, without having had the opportunity to carry out (the necessary) investigations in advance. In such cases, the investigations are carried out afterwards, which would reduce the likelihood of a successful prosecution.

It appears in practice that the new legislation has not (yet) given rise to a situation in which the General Intelligence and Security Service (AIVD) has provided official notification at an earlier stage or that the content of such notifications has changed in any way. The AIVD, for its part, has pointed out the dilemma that by transferring information to the Public Prosecution Service and the Police, individuals who acted as sources of the information supplied may well come into the frame during an investigation, and that this could in turn require (certain) individuals that had provided information to be withdrawn, thereby undermining the intelligence position. The past few years have, however, seen a change with regard to the point at which the AIVD provides information that has enabled the Public Prosecution Service to gather evidence of its own. At the same time, the coordination and exchange of information between the Police, the Public Prosecution Service and the General Intelligence and Security Service (AIVD) have taken place more extensively during the past few years. These changes cannot, however, be attributed specifically to this new legislation. Another consequence of the new Act, and one that was both predicted and intended, was that the Public Prosecution Service and the Police now enjoy greater powers to initiate independent investigations into terrorist offences themselves. This has, however, not yet given rise to an increase in the number of investigations of this type.

Of the number of cases in which investigations actually took place during the period under review, the new legislation was only invoked in a total of eight cases, which involved the use of the special investigative powers on the basis of indications and remand in custody of suspects of terrorist offences without a grave presumption of guilt. With the exception of one individual case, the special investigative powers were used only for a short period of time. The new investigative powers have primarily been used in order to evaluate information received from private individuals or security personnel and to eliminate any acute or serious threat. In the case of the former, these amounted to 'mini-investigations' that were carried out in order to assess information at an early stage and exclude any risk of an imminent terrorist threat as rapidly as possible.

The experiences that have been gained during the first year of the new legislation will contribute to an increased awareness of the opportunities it provides,

as well as of its limitations. In the future, this knowledge will assist the relevant authorities to make decisions as to how the Act should be used.