
EU COUNTER-TERRORISM LEGISLATION AND INVESTIGATION PRACTICES: ISSUES OF SECURITY, COUNTER-CRIME POLICY AND HUMAN RIGHTS

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“Terrorism is a continuous and global threat...which calls for a constant, concerted response from all European countries, institutions and peoples. The EU’s counterterrorism policies...will be implemented with full vigor”

Franco Frattini

EU- Terrorism threat

- Not a new phenomenon in European history (Spain, UK, Greece, Italy, Germany)
- Threat mainly emanates from islamist networks, though non Islamist groups still pose a threat
- Europe both a target and a base for terrorism
- Logistical bases of Al Qaida cells have been uncovered in Italy, UK, Germany, Spain, Belgium logistical support for 9/11 attack
- Place of recruitment for Jihad in Afghanistan, Iraq, Chechnya
- EU entity not under threat, but specific Member States due to their involvement in Iraq, Afghanistan or special factors (France, Germany, Italy, Poland, Spain, UK)

EU-Counterterrorism strategy

- Articles 2 (area of freedom, security & justice) & 29 (terrorism as a serious crime to combat) of EU Treaty basis for counterterrorism action
- Commitment to respect of human rights
- 4 pillars: Prevention (addressing factors of radicalisation & recruitment; reduce money flow enabling terrorists to travel, hide & carry out attacks), Protection (safeguarding citizens; border, transport & critical infrastructure security), Prosecution (bringing to justice across EU & globally), Response (manage & minimize terror attack effects)

EU measures combating terrorism

- EU action against terrorism predicated on the preservation of fundamental rights and liberties as ensured by the European Convention on Human Rights (ECHR)
- Some of recent member state legislative measures oppose these principles
- Current international public discourse on human rights vs. effective counterterrorism (even torture)
- Variations of the “ticking bomb” scenario

EU member states measures against terrorism- examples

- - Special powers of search and arrest
- Pre charge detention for interrogation
- Reverse burden of proof
- Trials without juries
- Offences based on reasonable suspicion rather than proof of facts
- Widely drawn offences embracing conduct far removed from the commission or assistance of terrorist acts
- Control orders prior to a criminal conviction and based on evidence sufficient to raise a 'reasonable suspicion' of terrorist risk
- Evidence not disclosed to the persons to be detained

Example- incommunicado

- “Incommunicado”: In terrorist cases if there are grounds that knowledge of the suspect’s detention situation could make more difficult the investigation of the case and gathering intelligence
- Limitation of detainees’ rights: relatives may not be informed about the detention and legal assistance provided by a duty solicitor instead of a lawyer of choice.
- Possible for a person against whom criminal proceedings have begun to be held incommunicado for up to 13 days!
- The accused person may only have access to a lawyer of his own choosing once the “incommunicado” period has ended
- The right settings to allow (or even encourage) severe human rights violation and even torture
- Against basic human right protected by ECHR-article 6parC(“fair trial”- defence through legal assistance of own choice)

EU Human Rights Protection

- ECHR- article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment"- "Under no circumstances may a State derogate from its obligations under this article".
- Council Framework decision on combating terrorism (13/6/2002): "The European Union is founded on the universal values of human dignity, liberty, equality and solidarity, respect for human rights and fundamental freedoms. It is based on the principle of the rule of law, principles which are common to the member States" (preamble)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg 1987
- Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg 1993
- Protocol No.2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg 1993

Democracy, freedom values and fighting terrorism effectively

- Lynch: if the response to terrorism involves suspension of democratic freedoms, it results to the advantages of terrorists
- Poland: one of the goals of terrorism is to provoke government overreaction, especially indiscriminate action
- Impression that human rights and democratic values have failed in a critical period
- Utility of the measures, the quality of information obtained questioned

"The aim justifies the means"

- Boywer Bells: "temptation for the state to mimic practices of terrorist groups"
- "One man's terrorist is another man's freedom fighter"
- "One man's torturer is another man's security guardian"
- Legitimizing evil practices- loosing moral ground against the terrorists and their actions

Conclusions

- Rules will be changed to meet new security challenges
- Secret arrests, secret detentions, denial of legal process or judicial review, dismissal of international conventions as they apply to treatment during interrogation- often excused as necessary to collect intelligence cannot be unacceptable
- Good intelligence does not require suspension of civil liberties or of human dignity
- A forceful response to terrorism is not undermined by the rule of law, that is the appropriate framework for the response

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