



## **Counter- terrorism and human rights challenges: legislative efforts for security in EU countries**

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There is no greater challenge for a democracy than how to deal with terrorism. The economic, social and political upset which sophisticated terrorist action can bring, threatens the very democracy which protects our liberty. But that liberty may be also exploited in the first place by those supporting, aiding, or engaging in terrorism. The challenge, therefore, is to retain long held and hard won freedoms from the arbitrary use of power or wrongful conviction, while at the same time ensuring that democracy and the rule of law itself are not used as a cover by those who seek to overthrow them.

The developments in the use of terror methods have transformed the way in which we need to respond. Those with no fear of prosecution and punishment and who are prepared to take their own lives in destroying and killing others, do not recognise normal processes of law or the consequences of detection. Today's terrorists present particular challenges. Their activities are developed in loose networks of multiple contacts in many different countries, difficult to penetrate, creating a problem to the security authorities who seek to discover and disrupt them at an early stage of their planning. The suicide terrorist is a new and very special problem, forcing governments to consider difficult legal and operational issues in order to anticipate and prevent suicide attacks. International terrorists can be foreign nationals or even local citizens.

In the aftermath of 11 September, many countries introduced legislation which would have been unprecedented in other circumstances. The United States in the USA PATRIOT Act took powers which enabled them for the first time to detain foreign nationals in certain specified circumstances. Canada, Australia and India have also taken new powers, and within the European Union, concerted action was taken in the Framework Decision agreed in December 2001. This is a description of how leading European countries- other than Italy- individually address the problems posed by the threat of international terrorism and more in particular, the anti-terrorist legislation and how foreign nationals, suspected of involvement in terrorism, are dealt with. The approaches adopted by each country need to be viewed in terms of the threat faced and their varying judicial systems.

### **UK**

In addition to the provisions of the general criminal law, the UK has some of the most developed and sophisticated anti-terrorism legislation in the world. This is principally because of a long-standing experience concerning terrorism related to the affairs of Northern Ireland. The Terrorism Act 2000 re-enacted and made permanent powers which had developed over many years to deal with these

threats and established a framework to deal with international terrorism. Extradition powers, to enable terrorist suspects (both foreign nationals and British citizens) to face trial in other countries, are to be used and they have been significantly reinforced in the Extradition Act 2003. In addition Section 4 of the Nationality, Immigration and Asylum Act 2002 introduced a power to remove British citizenship from those who were previously nationals of another country or who have dual nationality.

The ATCS Act included measures to cut off terrorist funding, ensure that Government departments and agencies can collect and share information required for countering the terrorist threat, streamline relevant immigration procedures, ensure the security of the nuclear and aviation industries, improve the security of dangerous substances that may be targeted or used by terrorists, extend police powers available to relevant forces, plus counter bribery and corruption. Moreover, special immigration powers were given to the Home Secretary to certify and detain, pending deportation, foreign nationals who are suspected of involvement in international terrorism but whom he cannot remove from the United Kingdom (like in cases where there is fear that deportation might result in those deported being subject, within their countries of origin, to torture or inhuman or degrading treatment or punishment, which is subject to an absolute prohibition under Article 3 of the European Convention of Human Rights).

### **France**

France does not have an offence of terrorism (nor a specific definition for it), but has a list of specific offences linked to terrorism. France does however have a crime of 'association with a wrongdoer' which is used to charge physical entities for terrorism. It is intended as a preventive measure and was introduced in the 80's and amended in the 90's, following a series of terrorist attacks in France.

Under the Criminal Code, a person may be prosecuted for an 'association' with a group preparing a criminal act. The definition of the offence is sufficiently wide to allow the successful prosecution of someone with only a passing interaction with a terrorist group and has been used in France for several years. Once someone has been arrested they can be detained by the police for an initial 96 hours without a specific charge. Following this they must be presented the arrested person to a judge who can extend the detention for a week. The case is passed to an examining magistrate (juge d'instruction) who assembles the case against the individual. The decision on whether to detain is taken by a specialised judge at the request of the examining magistrate. Once 'under instruction' the person can be detained 'indefinitely' with the regular agreement of the judge. As a result, terrorist suspects can spend a considerable length of time in custody prior to prosecution. In France, deportation cases decisions are taken on a case-by-case basis. They do not deport individuals to countries where they would face a death sentence and they do take into account the destination country's record in terms of democracy, human rights and international conventions.

### **Germany**

Germany has recently made changes to its criminal code in the aftermath of 11 September, and the bombings in Madrid and London. One change has been the removal of the geographical limitation in the criminal code covering certain crimes, including notably terrorism. Previously, terrorist acts overseas would need to have targeted German citizens or interests before the suspect could be charged in Germany. Now, the nationality of the victim of the attack is no longer a limiting factor. As long as the dual criminality provisions are met, a person can be effectively be charged and prosecuted in Germany for actions overseas.

In Germany there is a general offence of terrorism and it is illegal to be a member of any terrorist association, including foreign terrorist associations. Anyone accused of participating in terrorist activities can be punished according to the general criminal provisions, depending on what specific crimes have been committed (murder, manslaughter, kidnapping). It is also an offence to form a terrorist association, to be a member of a terrorist association and to support or recruit members or supporters of a terrorist association. Supporting a terrorist who is not a member of an officially proscribed group can be punished under the provisions on aiding and abetting.

The general rules of the German Code of Criminal Procedure apply and in deciding the sentence, the German courts will take the terrorist motivation of a crime into account as an aggravating factor. It is possible for court hearings to be heard in camera and the court may exclude the public from the hearing if state security interests are at risk. The courts decide when to apply these provisions.

### **Conclusive Remarks**

In the early 21st century, the threat to our freedoms and peace as European Countries does not come mainly from conventional warfare with enemy states. European governments are faced with a sophisticated set of questions that strike the balance between security and liberty. All the above mentioned legal measures opt to ensure common security, effective against international terrorists -whether they are EU or foreign nationals. In our complex world of global migration and open borders, the biggest problem is put forward by international terrorists who do not hold an EU nationality but nonetheless have rights in the European countries they reside or act under international obligations. In addition, the activity of the new terrorism involves groups of people engaged in long-term planning, using sophisticated new technology, science and communications available to them, skilled in practising deception and evading surveillance, and using multiple stolen or fraudulent identities.

The European public is entitled to expect its governments will protect its right to life and

liberty by doing everything possible to prevent terrorism attacks. This protection though, has to be ensured in accordance with the rule of law and international obligations, including the European Convention of Human Rights. Both the indefinite detention of suspects for terrorist activity, as well as the “large” and “wide” definitions of an offence leading to criminal charges – mainly used as a counter-terrorism legal measures in EU countries, as was set above - are problematic given this aspect. This is why counter-terrorism legislation at the end

of the day is proved to be inadequate, since the breaches of the detainee's human rights can lead to an appeal to the European Court of Human Rights and finally even to the judicial victory of a captured terrorist. In order to avoid this oxymoron situation and combat terrorism effectively, there has to begin a systematic effort to coordinate criminal law, human rights and law-enforcement measures in such a way that counter-terrorism policy is compatible with the high and binding obligations set by the European Court of Human Rights.