

**Statement at the HDIM 2007, on behalf of the Dutch Helsinki Committee
Working Session 9, Rule of Law II: Protection of human rights and fighting terrorism**

Madam/Mister Chairperson, Your excellencies, ladies and gentlemen,

My name is Bibi van Ginkel and I work as a researcher at the Netherlands Institute of International Relations Clingendael. I have been asked by the Dutch Helsinki Committee to commend on the Dutch legislation in relation to the combat against terrorism, especially in the light of the human rights principles, since that is one of my research fields.

As many nations, the Netherlands has after the attacks of 9/11 adopted several laws related to combating terrorism. Some in pursuance of decisions of international organisations, as the UN and the EU, others on its own account. These laws (approximately 8) and the ones that are yet in preparation (another 8) vary from criminalizing terrorism and changing procedural guarantees of criminal suspects to administrative law regulations interdicting persons affiliated with terrorist activities from getting in the vicinities of a certain place or a certain person.

Although, public opinion polls show that the general public is not at all worried about the avalanche of new regulations in relation to the combat against terrorism, and even claim that for the good of combating terrorism, they are willing to sacrifice some of their freedom rights, (mostly saying that since they have nothing to hide, it is OK that the government knows more about their personal lives) I feel however, that there is more than enough reason to be worried at the least.

As was shown by a report of a Dutch human rights NGO (Humanistisch Overleg Mensenrechten), the infringements on civil rights by counter-terrorism legislation if assessed individually might seem minor, however, the sum of all the little infringements show that we are dealing with a cumulating effect, with in addition the luring risk that the exceptional powers given in the context of fighting terrorism might be used for acting in relation to other 'ordinary' criminal activities.

The civil rights that are mostly in distress, are in particular the principles of a fair trial, privacy rights and the prohibition of discrimination. I will elaborate on each of them.

Firstly, the principles of a fair trial, or the procedural guarantees of suspects, are mostly put under stress through the regulation dealing with the protected witness' statement in a criminal procedure on behalf of the secret security services, and through the administrative regulations with regard to national security as for example the aforementioned prohibition to be in the vicinity of a certain person or a certain place. [With regard to the former, the fair trial principles are infringed upon through the fact that the defence of the suspect will not be allowed to be witness to the statements made by the agent of the secret service. This will jeopardize the equality of arms principle in criminal procedures.]

Secondly, the privacy rights are put under pressure through the regulation that makes it possible for the police and the prosecutor to demand records with personal details such as information as to the identity of a person, but also information in regard to a person's religious beliefs or political orientation. For such information to be claimed, a reasonable suspicion is no longer needed, a mere indication of preparation of a terrorist attack will suffice. The same lower threshold of the extent of evidence needed is installed in case

authorities want to order telephone taps etcetera. The prosecution also is authorized to cross-link different databases of both private and public institutions. Another infringement on the privacy rights, is the authorization to body-search everyone in certain areas of higher security risks.

More in general, the number of camera surveillances installed in public places is increasing, making it virtually impossible to move around freely and unwatched.

Thirdly, the risk of violating the prohibition of discrimination is almost omni-present in all new regulations. The use of vague terms in regulations such as 'people belonging to a certain group', without further specifying the scope of that category, is a recipe for enhancing the risk of discrimination.

More in general, one could say that the use of vague terms in new regulations, as well as the failure of the legislator to argue the necessity and the proportionality of the new regulations is a violation of the principles of good governance. Especially the use of vague terms also brings along the risk of a decline in trust in the judiciary, since transparency of the meaning of certain terms and thus the way they will be interpreted is lacking.

Problematic is also that members of parliament are very hesitant in restricting the invasiveness of the measures, out of fear that they are blamed in case a terrorist attack occurs. An easy remedy, however, would be to include sunset clauses in new measures, and link them to mid-term evaluations to check the effectiveness of the measures.

All in all, I fear that also in the Netherlands there is a trend that is moving away from the originally strong belief in the importance of civil rights. This worries me tremendously, since especially in the fight against terrorism, we need to show the strength of our democratic values and the rule of law