

OSCE Human Dimension Implementation Meeting

Warsaw, 29 September - 10 October 2008

Working session 4: Rule of law II

Contribution of the Council of Europe

Protection of Human Rights and fighting terrorism

The Council of Europe offers a broad response with regard to the protection of human rights while countering terrorism, covering manifold activities by a number of the organisation's bodies.

The Organisation's main institutions, the Committee of Ministers, the European Court of Human Rights, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Commissioner for Human Rights and its more specialised bodies, such as the European Commission against Racism and Intolerance (ECRI) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) are all dedicated to this objective. In addition valuable expertise is derived from intergovernmental bodies such as the Council of Europe Committee of Experts on Terrorism (CODEXTER), the Steering Committee for Human Rights (CDDH) and the Committee of Legal Advisers on Public International Law (CAHDI).

The Council of Europe's approach towards the fight against terrorism involves the setting of standards, monitoring and awareness-raising.

Standard setting

The Council of Europe Anti-Terrorism Conventions

One of the Council of Europe's key activities in the fight against terrorism lies in the strengthening of legal action. To this regard it developed a wide range of binding and non-binding instruments.

The following Council of Europe's conventions are specific to the fight against terrorism:

- European Convention on the Suppression of Terrorism (1977) (CETS No. 90)
- Amending Protocol to European Convention on the Suppression of Terrorism (2003) (CETS No. 190)
- Council of Europe Convention on the Prevention of Terrorism (2005) (CETS No. 196)

- Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) (CETS No. 198)

These Conventions contain specific human rights protection provisions. For example, the Amending Protocol to the European Convention on the Suppression of Terrorism reinforces the possibilities of refusing extradition and mutual assistance on human rights grounds.

Recent developments were marked by the entering into force of the Council of Europe Convention on the Prevention of Terrorism and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism on 1 June 2007 and 1 May 2008 respectively.

The Council of Europe instruments' influence on the regulations adopted by other European organisations

The Council of Europe's instruments received endorsement by a number of other international organisations such as the EU and the OSCE.

In 2006 the OSCE Ministerial Council adopted a Decision calling on participating States to signing and implementing the Convention on the Prevention of Terrorism.

Moreover in the context of the amendment of the Framework Decision on combating terrorism proposed by the Commission of the European Union on 6 November 2007, the Council of the European Union reached a common approach. The amendment updates the Framework Decision making public provocation to commit a terrorist offence, recruitment and training for terrorism punishable behaviour, also when committed through the Internet.

The wording which is proposed is as close as possible to the wording of the Council of Europe Convention on the Prevention of Terrorism adopted in 2005, especially its Articles 5 to 7. The amendment is also balanced in terms of its effects on freedom of speech and general respect for human rights. This is an ongoing process.

Implementation of Anti-Terrorist Conventions

The above-mentioned conventions provide for their own specific follow-up mechanisms.

Upon its entry into force a Conference of *States Parties against Terrorism (COSTER)* will review the effective use and operation of the European Convention on the Suppression of Terrorism as amended by the 2003 Protocol.

Both, the Council of Europe Convention on the Prevention of Terrorism and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism include a mechanism to ensure the proper implementation by a *Conference of the Parties (COP)* which the Secretary General of the Council of Europe shall convene no later than one year following the entry into force of these Convention. The first consultations of the COP should therefore take place in 2009.

For the time being the CODEXTER, which has overall responsibility for coordinating the Council of Europe's action against terrorism, particularly in the legal field, closely monitors the implementation of these Conventions.

Monitoring and Awareness raising

Guidelines on human rights and the fight against terrorism

As a first response to the terrorist attacks of 11 September 2001, the Committee of Ministers of the Council of Europe adopted Guidelines on human rights and the fight against terrorism in 2002. The Guidelines' basic principle is that respect for human rights is not an obstacle to the fight against terrorism. On the contrary, it is the best defence against terrorism.

The main references of the Guidelines are the European Convention on Human Rights itself and the case-law of the European Court of Human Rights. The Guidelines also draw on other documents, such as Council of Europe and UN Conventions.

Protection of victims of terrorist acts

In taking into account the very specific nature of the situation of victims of terrorist acts, the Council of Europe developed additional Guidelines on the protection of victims of terrorist acts which were adopted by the Committee of Ministers on 2 March 2005.

These Guidelines recognise the suffering endured by victims and consider that they must benefit from national and international solidarity and support. States are encouraged to provide to victims and, in appropriate circumstances, to their close family, emergency and continuing assistance. Moreover, this instrument deals with key issues such as the need to grant fair and appropriate compensation, to facilitate access to the law and to justice, as well as to protect their private and family life, their dignity and security.

Moreover, in June 2006, the Committee of Ministers adopted Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims.

As a logical continuation of the enhancement of these standards elaborated by the Council of Europe in 2006, a Group of Specialists on remedies for crime victims (CJ-S-VICT) analysed legislation and practices of member states concerning civil, administrative and other remedies available to victims of crime and identified good practices. It examined in particular the issue of compensation of damage inflicted on victims of terrorism offences, in particular the functioning of public and private insurance schemes. The results of this work were presented in a final report on "non-criminal remedies for crime victims" in November 2007.

Combating racism while fighting terrorism

The European Commission against Racism and Intolerance (ECRI) adopted a General Policy Recommendation on combating racism while fighting terrorism on 17 March 2004. ECRI stresses the need for member states to refrain from adopting anti-terrorist

measures which are discriminatory, notably on grounds of race, colour, language, religion, nationality or national or ethnic origin.

This instrument was supplemented by a more general Policy Recommendation on combating racism and racial discrimination in policing, adopted in 2007.

Freedom of expression and information in the context of the fight against terrorism

The Council of Europe has also examined closely the question of freedom of expression and information in the media. The starting point is that the fight against terrorism does not justify extraordinary restrictions on the media. Quite on the contrary, freedom of expression can help combat and prevent terrorism.

For their part, media professionals have the responsibility not to contribute to the aims of terrorists and to refrain from hate-speech and incitement to violence; they should also respect the dignity, safety and private life of victims, as well as the presumption of innocence of terrorist suspects. These principles are clearly reaffirmed in the Declaration on Freedom of expression and information in the media in the context of the fight against terrorism adopted by the Committee of Ministers of the Council of Europe on 2 March 2005.

This issue was further explored in a more general approach in the Council of Europe Guidelines on the Freedom of expression in times of crisis, adopted in 2008.

Practical steps

One of the Council of Europe's key-policies in the fight against terrorism lies in addressing its causes. In this context the Council of Europe, at the initiative of its Committee of Experts on Terrorism (CODEXTER) organised a conference on "Why terrorism? Addressing the conditions conducive to the spread of terrorism" which was held in Strasbourg on 25-26 April 2007. The event brought together experts from member and observer states of the Council of Europe and included the participation of NGOs and academia as well as representatives of international organizations who discussed reasons to the fact that a small minority of society accepts extremist ideologies and an even smaller minority descends from extremism into unjustifiable, atrocious acts of terrorism.

Intercultural dialogue

In 2007 the Council of Europe also launched a new initiative promoting inter-cultural and inter-religious dialogue. Having carried out a wide-scale consultation, a White Paper was issued this May as the outcome of the initiative. It can be consulted on the Council of Europe's website.

These initiatives reflect the Council of Europe's conviction that dialogue between individuals of different religions, cultures and heritage which is based on mutual understanding, respect for human rights and tolerance is the key to enhancing social cohesion and, as a result, tackling terrorism. These two initiatives will have a great impact on the way the conditions conducive to the spread of terrorism are addressed in Europe.