



OSCE Human Dimension Implementation Meeting

Warsaw, 28 September – 9 October 2009

Working Session 4 : 'Rule of Law'

Contribution of the Council of Europe

THE COUNCIL OF EUROPE AND PROTECTION OF HUMAN RIGHTS AND FIGHTING TERRORISM

For more than 60 years the Council of Europe has been promoting and reinforcing the Rule of Law principle at regional level. In particular, the Council of Europe activities in the framework of the fight against terrorism aim at assisting its 47 member States to meet the *Security Imperative* while fully complying with the requirements of the *Rule of Law principle*.

In this area, developing trustful inter-States relations depends on a common understanding of the issues in question. Through its multilateral instruments, the Council of Europe assists its member States in the adoption of a common approach and in the establishment of specific terrorism related offences as a criminal offence under domestic law.

A number of relevant legal instruments have been adopted in this respect, in particular:

- The Revised Convention of the Suppression of Terrorism (ETS No 090)
- The Convention on the Prevention of Terrorism (CETS No 196)
- The Convention on Laundering, Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism (CETS No 198).

The Committee of Experts on Terrorism (CODEXTER) coordinates the implementation of the Organisation's action against terrorism; it monitors the signatures and ratifications of the terrorism-specific conventions and promotes their effective implementation.

The Council of Europe also seeks to comply with the Human Rights dimension of the Rule of Law principle. This is borne out by the safeguards contained in the above-mentioned instruments, but also by other instruments such as the two sets of CM Guidelines based on the ECHR case-law (on human rights and the fight against terrorism, and on the protection of victims of terrorist acts).

Reference should also be made to the work of the Parliamentary Assembly, which has adopted several Recommendations in this field. In various reports by the Parliamentary Assembly, the Secretary General (acting under Article 52, ECHR) and the Venice Commission, a strong focus was placed on the need to ensure full respect for the rule of law in interstate co-operation regarding the detention and transfer of persons suspected of involvement in acts of terrorism, and as regards oversight and accountability of security services.

In addition, the Council of Europe has set up a number of specific legal co-operation programmes designed to help the beneficiary countries to proceed with their institutional, legislative and administrative reforms strengthening at the same time the rule of law in the fight against terrorism.

Co-operation projects include workshops and seminars on specific themes related to the fight against terrorism, such as mutual legal assistance, extradition of terrorist suspects or financing of terrorism. They are adapted to the country's specific needs and features and pay particular attention to the Human Rights European standards and principles.

Specific workshops/seminars have also been organised by the Office of the Commissioner for Human Rights on the themes of anti-terrorism measures and data protection and on complaints mechanisms against police misconduct.

Report on non-criminal remedies for crime victims

The Group of Specialists on remedies for crime victims (CJ-S-VICT) prepared, under the authority of the European Committee on Legal Co-operation (CDCJ) a Report on non-criminal remedies for crime victims. The CDCJ has endorsed the report and submitted it to the Committee of Ministers for adoption in autumn 2008. Following the conclusions enclosed in the report, it is foreseen to ensure its wide dissemination, including through the organisation of awareness-raising events on the needs of victims and examples of best practices.

Throughout the report, references are made to vulnerable groups of victims, including victims of harassment linked to discrimination on the basis of race, colour, religion, ethnicity, national origin, disability, gender, age, sexual orientation, or homelessness. The issue of legal assistance is also addressed. The specific question of the compensation of victims of terrorism is addressed under chapter 4 of the report.

Sources

The CJ-S-VICT took note of the existing Council of Europe instruments concerning victims of terrorism, and more particularly: the Council of Europe Convention on the Prevention of Terrorism (CETS 196), the Guidelines on human rights and the fight against terrorism (adopted by the Committee of Ministers on 11 July 2002), the Guidelines on the protection of the victims of terrorist acts (adopted by the Committee of Ministers on 2 March 2005), as well as the relevant provisions of Recommendation

(2006)⁸ on assistance to crime victims¹. The reports prepared by Mr Bernhard A. Koch, “Report on indemnifying victims of terrorism”² and the subsequent “Report on indemnifying victims of terrorism: Preliminary considerations with a particular focus on the role of insurance”, which appears in Appendix IV of the report, also constituted a crucial source of information for the Group.

Findings

In the opinion of the Group as endorsed by the CDCJ, the essential needs of victims of terrorism do not significantly differ from the needs of other victims of crimes: whether they are personally injured or whether their property is damaged, the result is the same irrespective of the motivation of the criminal for his harmful conduct. This is in line with the information provided in the explanatory memorandum of Recommendation (2006)⁸ which mentions that “the Committee was of the opinion that the needs of victims of terrorism were essentially the same of those of victims of other crimes”.

There are nevertheless some aspects which deserve special attention :

- Terrorist attacks may harm more individuals in a single incident and cause massive losses, which leads to specific problems of handling and resolving claims for compensation.
- The specific intention behind a terrorist attack may leave victims in a peculiar situation that could be addressed by certain non-pecuniary measures such as memorials or other rehabilitation tools which may help to deal with the event and its causes.

General recommendations

The Group and the CDCJ do not recommend at this stage the drafting of a specific legal instrument addressing non-criminal remedies be prepared. Among core recommendations entailed in the report stands the necessity of promoting and disseminating the existing Council of Europe standards.

The importance of appropriate training and awareness raising activities is also emphasised in order to give full effect to existing Council of Europe standards, as well as of sharing and disseminating examples of good practices, a number of which are enclosed in the report.

Another strong recommendation is that a procedure aiming at enabling the rapid payment of the state compensation to the victim be put in place, the state scheme being subsequently subrogated in the victims’ rights.

Specific recommendations for victims of terrorism

Concerning victims of terrorism, core standards to be promoted and disseminated are:

- the Council of Europe Convention on the Prevention of Terrorism (CETS 196)

¹ In particular Paragraph 9.3 of the Recommendation : “States are encouraged to promote the principle that insurance policies do not exclude damages caused by acts of terrorism unless other applicable provisions exist.”

² Document CDCJ-BU (2006)19.

- the Recommendation (2006)³ on assistance to crime victims
- the Guidelines on the protection of the victims of terrorist acts (adopted by the Committee of Ministers on 2 March 2005).

In respect of victims of terrorism and concerning compensation mechanisms, the CJ-S-VICT and the CDCJ support the need to encourage dialogue and interaction between states and insurance companies.

The European Day for Victims of Terrorism (11 March) and the European Victim's Day (22 February) could be a focus point to publicise the latest research and national policies and could be used as a launch-pad for new initiatives in the field of victims.

Foreseen future activities in the field of victims' rights

The rights of victims being a transversal issue, Mr Jan Kleijssen, Director of Standard-Setting at the Directorate General of Human Rights and Legal Affairs, has been appointed coordinator on victims. This is meant to ensure a coherent approach in tackling issues related to victims within the Council of Europe.

In particular, a dedicated web page on the Council of Europe website reflecting the cross-cutting and multi-disciplinary nature of the victims' needs will be designed, enabling easy access to the relevant standards of the Council of Europe (including the explanatory memoranda where appropriate) and including contact addresses and website links to national contact points, NGOs and other stakeholders, etc.

Protection of Human Rights and Fighting Terrorism

The Council of Europe seeks to ensure that rule of law principles are fully respected in countering terrorism. This is borne out by the safeguards contained in instruments such as the two sets of Committee Ministers Guidelines on human rights and the fight against terrorism (2002), and on the protection of victims of terrorist acts (2005) prepared by the Steering Committee for Human Rights (CDDH) and based on the case-law of the European Court of Human Rights.

³ The provisions of the Recommendation related to non-criminal remedies should be implemented, in particular Section 7 on the "right to effective access to other remedies", Section 8 on "state compensation" and Section 9 on "insurance".