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Working Session 8 "Rule of Law"

Protection of human rights and fighting terrorism

Contribution of the Council of Europe

As concerns the human rights aspect of its response to terrorism, the Council of Europe reaction is manifold.

Establishing standards

Anti-Terrorism Conventions

Council of Europe anti-terrorism specific Conventions are

- 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. Thus, the Amending Protocol to the European Convention on the Suppression of Terrorism reinforced the possibilities of refusing extradition and mutual assistance on human rights grounds.

The Council of Europe Convention on the Prevention of Terrorism adopted in May 2005 at the III Council of Europe Summit, is ground breaking in establishing new criminal offences at international level for the first time, namely indirect incitement or *apologie*. It was drafted taking full account of the ECHR case-law. It was followed few months after its adoption by UN Sec Cou Resolution 1624.

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 decided that *Guidelines on human rights and the fight*

against terrorism should be drawn up quickly in order to remind states of their legal obligations. These Guidelines were adopted on 11 July 2002.

The Guidelines proceed on the basis 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 Guidelines are designed to serve as a realistic, practical guide for anti-terrorist policies, legislation and operations to be both effective and respectful of human rights.

The Guidelines moreover point out the limits that states shall respect in their fight against terrorism, such as: (i) the prohibition of arbitrariness, as well as of any discriminatory or racist treatment; (ii) the absolute prohibition of torture; (iii) legal guarantees for arrest and police custody as well as for pre-trial detention, such as the right to be brought promptly before a judge; (iv) the prohibition of the retroactivity of laws; (v) the right to a fair trial; (vi) the prohibition to extradite a person to a country where he or she risks being sentenced to the death penalty.

The main reference text of the Guidelines is 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.

Finally, the Guidelines are designed for the member states of the Council of Europe. But they also have a wider audience. The principles and rules they contain are of universal application.

Protection of victims of terrorist acts

The Council of Europe considered that it should also take into account the very specific nature of the situation of victims of terrorist acts. It therefore decided to draft 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, these Guidelines deal 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.

The 27th Conference of European Ministers of Justice will be held in Yerevan (Armenia) on 12-13 October 2006 on the theme of "Victims: place, rights and assistance".

Monitoring and awareness

Anti-Terrorist Conventions Monitoring

The above-mentioned Conventions provide for their own specific follow-up mechanisms, namely, the *COSTER* for the European Convention on the Suppression of Terrorism as amended by the 2003 Protocol, and the *Conferences of State Parties* for the Council of Europe Convention on the Prevention of Terrorism. These follow-up mechanisms will begin their operation upon entry into force of these instruments. Pending that, the Council of Europe Committee of Experts on Terrorism (**CODEXTER**) which has overall responsibility for coordinating Council of Europe's action against terrorism, particularly in the legal field, monitors closely the implementation of the Conventions.

Protection against torture

The European Court of Human Rights has underlined on many occasions the absolute nature of this prohibition, even in the most difficult circumstances, such as the fight against terrorism. This was recalled in the 2002 Guidelines.

For its part, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) adds that, "such an abandonment of universally recognised basic values could only undermine the foundations of democratic societies committed to the rule of law. To refrain from resorting to such acts – and to take active steps to stamp them out when they emerge – is one of the hallmarks of a democratic state". In addition, the CPT has deplored the fact that, in times of terrorist threats, "there is a growing body of evidence that the methods of detention and interrogation employed in various locations, in the context of the fight against terrorism and of military operations it has spawned, have on occasion violated (the prohibition of torture and inhuman or degrading treatment)".

In addition, after a careful study of the issue, the Council of Europe decided to reject the drafting of a legal instrument on minimum requirements/standards for the use of diplomatic assurances in the context of expulsion procedures, in cases where there is a risk of torture or inhuman or degrading treatment or punishment.

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. ECRI underlines the responsibility of states to react promptly and effectively, including through legal measures, to acts of racism and racial discrimination resulting from tensions generated by the fight against terrorism.

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.

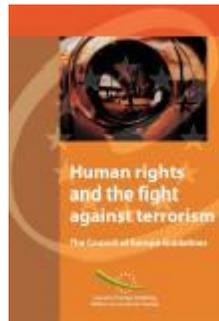
Inquiry by the Secretary General

In application of Article 52 of the European Convention on Human Rights, the Secretary General of the Council of Europe decided to open a formal inquiry into recent reports suggesting that terrorist suspects may have been secretly detained in or transported through a number of Council of Europe member states with the possible involvement of foreign agencies. State Parties to the Convention sent back some explanations in the spring 2006. The Secretary General presented proposals for follow-up to its inquiry early in September 2006 and discussion thereon are ongoing.

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Council of Europe terrorism related publications

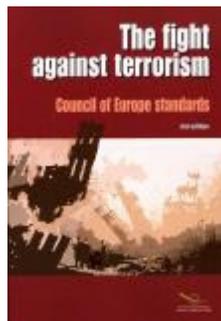
Terrorism and Law Series



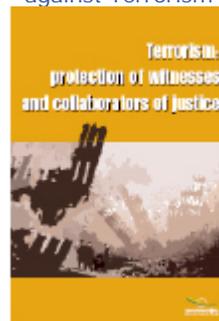
Human Rights and the Fight against Terrorism



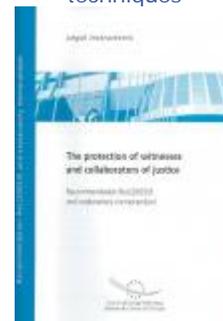
Terrorism: Special investigation techniques



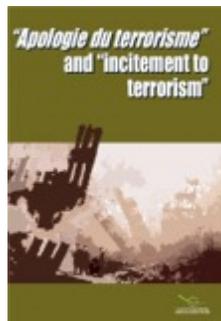
The fight against terrorism - Council of Europe standards



Terrorism: protection of witnesses and collaborators of justice



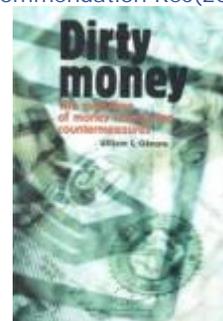
The protection of witnesses and collaborators of justice - Recommendation Rec(2005)9



"Apologie du terrorisme" and "incitement to terrorism"



Special investigation techniques in relation to serious crimes including acts of terrorism - Recommendation Rec(2005)10



Dirty money - The evolution of international measures to counter money laundering and the financing of terrorism



Identity and travel documents and the fight against terrorism Recommendation Rec(2005)7



Victims – Support and assistance (publication in October 2006)

