
CCBE Statement on the balance between security and justice in anti-terrorist legislation

The Council of the Bars and Law Societies of Europe (CCBE), which through the national Bars and Law Societies of the Member States of the European Union and the European Economic Area represents more than 700,000 European lawyers, condemns terrorism in any form. Terrorism must be prevented and fought at national, European and international level with the firmest determination and through the rule of law.

The CCBE would like to emphasize at the same time that it is the duty of all governments to preserve and promote fundamental rights, freedoms and liberties as well as the rule of law, which are the foundations of democratic societies. Undermining these fundamental values would go in the direction wished by those whose aim is to destroy democracy through the use of violence in its most inhuman form.

The CCBE recognises that it can be difficult to find a balance between ensuring public security on the one hand, and preserving human rights and civil liberties on the other. However, the CCBE firmly believes that both security and human rights can fully coexist and are absolutely necessary to prevent and fight terrorism.

The CCBE welcomes the initiatives and declarations adopted in various international fora on this topic – in particular, by the European Parliament, the Council of Europe, the UN Security Council and General Assembly, and the Office of the UN High Commissioner for Human Rights – which all stress the necessity to strike a fair balance between legitimate national security concerns and the protection of fundamental freedoms.¹

The CCBE believes that the European Convention of Human Rights has proved to be an efficient and fair tool in keeping a proper balance within the European context. Both the Treaty and the jurisprudence have helped to maintain and develop the rule of law and the European system of protection of human rights. The CCBE would fully support efforts to improve the working of the current European system, including strengthening political support for its continued application.

However, the CCBE is deeply concerned about the increasing tendency in Europe to fight terrorism through the proposal and adoption of case-by-case legislation after each terrorist attack. This legislation is often of doubtful quality and has consequences for the pillars of European civilisation and values. It is worth remembering that it is necessary to be tough not only on crime/terrorism but also on the causes of it.

Regarding legislation at the EU level, the CCBE has already expressed serious concerns as regards several initiatives. For example, the 2001 money laundering Directive (Directive 2001/97/EC), consolidated into the recent third money laundering Directive, has severely impacted on the relationship which exists between a lawyer and client by imposing reporting obligations on the lawyer which not only undermine the right of a client to consult a lawyer in confidence, but also breach the independence of European lawyers without either grounds or proof that this will lead to significant inroads in the fight against money-laundering and terrorism. The recent European Arrest Warrant (framework decision 2002/584/JHA) also illustrates how legislation was introduced before necessary safeguards for suspects and defendants were agreed. More recently still, the current draft framework decision of the Council (latest version: 11510/05) on data retention does not establish sufficient safeguards for the right to protection of personal data and the respect for privacy and confidentiality. Instead, it emphasises the need for prevention and prosecution of criminal offences including terrorism. The CCBE is pleased to note that, in its resolution of 27 September 2005, the European

¹ Please see references on page 2.

Parliament has rejected this initiative for the reason that it runs counter to the right to, among other things, privacy and family life as laid down in Article 8 of the European Convention of Human Rights.² From the perspective of the legal profession, the draft framework decision is very problematic concerning the confidentiality of the lawyer-client relationship and the protection of professional secrecy.

The CCBE believes that merely adopting new and more restrictive legislation will not in itself deal with the underlying causes of terrorism nor necessarily lead to more security. On the contrary, more laws passed in order to persuade public opinion that the government is active will have the effect of increasing insecurity by undermining citizens' rights.

Accordingly the CCBE **urges Member States and the European institutions to comply fully with their European and international legal obligations to uphold human rights in all their actions against terrorism, so as to ensure security through the crucial protection of human rights and the rule of law.**

References to declarations and initiatives adopted by international institutions and bodies

European Parliament:

Recommendation to the European Council and the Council on terrorist attacks: prevention, preparation and response (2005/2043(INI)):

Para. C: "[...] the fight against terrorism, whether in response to terrorist attacks or not, must at all times include the protection of human rights and respect for fundamental freedoms, an essential element and symbol of identity of our institutions, and [...] any emergency legislation must be in accordance with respect for human rights, fundamental freedoms and data protection requirements,".

Recommendation of 7 June 2005 to the European Council and the Council on the EU anti-terrorism Action Plan (2004/2214 (INI)):

Para. A: "whereas human rights are non-negotiable, indivisible and non-transferable, and the most important task of democracy is to protect the freedom and the fundamental rights of the citizens, and whereas in the interests of the fight against terrorism, no legislation should be drawn up which may have consequences running counter to that objective,"

Para. O: "[...] only democracy and absolute respect for human rights and fundamental freedoms can guarantee an effective European response in the fight against terrorism;".

Guidelines of 11 July 2002 of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism:

"(...) it is not only possible, but also absolutely necessary, to fight terrorism while respecting human rights, the rule of law and, where applicable, international humanitarian law;".

UN Security Council Resolution 1456 (2003):

Para. 6: "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law."

UN General Assembly Resolution 58/187 (2003):

² European Parliament legislative resolution of 27 September 2005 on the initiative by the French Republic, Ireland, the Kingdom of Sweden and the United Kingdom for a Draft Framework Decision on the retention of data processed and stored in connection with the provision of publicly available electronic communications services or data on public communications networks for the purpose of prevention, investigation, detection and prosecution of crime and criminal offences including terrorism (8958/2004 – C6-0198/2004 – 2004/0813(CNS)).

Para. 1: "Reaffirms that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;"

Para. 8: "Encourages States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of United Nations human rights treaty bodies;"

Office of the UN High Commissioner on Human Rights (OHCHR):

Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism. (Updated and published periodically)

Protecting human rights and fundamental freedoms while countering terrorism - Report of the Secretary-General (22/09/2005)

Report of Mr. Martin Scheinin, Special Rapporteur of the Commission on Human Rights on the promotion and protection of human rights and fundamental freedoms while countering terrorism (21/09/2005)

Human rights and terrorism, Report of the Secretary-General" (01/09/2005)

Protecting human rights and fundamental freedoms while countering terrorism, Report of the Secretary-General. (22/09/2005)

Specific human rights issues: new priorities, in particular terrorism and counter-terrorism, Final Report of the Special Rapporteur, Kalliopi K. Koufa (25/06/2004).