



Doc. 13966

27 January 2016

Combating international terrorism while protecting Council of Europe standards and values

Committee Opinion¹

Committee on Equality and Non-Discrimination

Rapporteur: Ms Gülsün BİLGEHAN, Turkey, Socialist Group

A. Conclusions of the committee

1. The Committee on Equality and Non-Discrimination congratulates the rapporteur of the Committee on Political Affairs and Democracy on his report and generally speaking supports the proposed draft resolution.
2. The committee nevertheless presents an amendment in order to strengthen the draft resolution with regard to equality and non-discrimination.

B. Proposed amendment to the draft resolution

Amendment A (to the draft resolution)

In paragraph 19, replace the words “The Assembly furthermore” with the words “The Assembly underlines that concerns about repressive answers to terrorism must not obscure the need for our societies also to work constantly to ensure that all their members are included. It”

Explanatory note: This amendment is about balance. The Assembly must take up the pressing concerns about the lack of adequate checks and balances and the risks posed to human rights by excessive criminal law responses to terrorism. But we must not allow our current concerns about these matters to obscure the need to build inclusive societies, as one of the most effective means of preventing terrorism.

C. Explanatory memorandum by Ms Bilgehan, rapporteur for opinion

1. General comments

1. I would first like to congratulate Mr Tiny Kox on his detailed report on behalf of the Committee on Political Affairs and Democracy, which sets out a number of key issues as regards combating international terrorism while protecting Council of Europe standards and values and highlights the continuous concerns expressed in this field by the Parliamentary Assembly in recent years.

1. Reference to committee: Bureau decision, Reference 4174 of 25 January 2016 (debate under urgent procedure). Reporting committee: Committee on Political Affairs and Democracy. See [Doc. 13958](#). Opinion approved by the committee on 26 January 2016



2. The report correctly highlights that acts of terrorism are not acts of war but heinous criminal offences, which must be combated as such, and emphasises that the whole of Europe must continue to work together to find a democratic response to the rise of terrorism. It draws attention to the need to ensure that criminal law responses comply with human rights standards. It also touches on measures that could be taken with a view to ensuring that breeding grounds for terrorism and religious fanaticism do not flourish.

3. The Committee on Legal Affairs and Human Rights has been invited to provide its opinion on aspects of this report that fall within its terms of reference. I would also like to congratulate Mr Pierre-Yves Le Borgn' for his opinion highlighting important concerns as regards the legal and human rights aspects of the fight against terrorism. For my part, on behalf of the Committee on Equality and Non-Discrimination, I will address in this opinion those matters most closely related to the promotion of equality and of respect for the principle of non-discrimination, including issues related to racism and related intolerance.

4. I believe it is essential to distinguish between the necessary responses to events that have already occurred – which must focus on determining the facts and their causes – and measures that need to be taken to prevent repetitions of such events in future. For this reason, I have divided my comments below into two sections: Responses to events that have already occurred, and prevention of future terrorist acts.

5. I also wish to stress that some forms of terrorism particularly affect or even specifically target women. In Nigeria, for example, women are not the only victims of conflict,² and the kidnapping in April 2014 by terrorist group Boko Haram of more than 200 schoolgirls in Chibok may have pursued several tactical aims: the use of the girls as human shields and/or as a bargaining chip to obtain the liberation of Boko Haram militants, access to a forest where it would be easy to hide, terrorising the population to prevent them from co-operating with the Nigerian army. But other reasons for targeting these schoolgirls may have included offering Boko Haram members access to women without having to pay the traditional dowry, and presenting their kidnapping as a means of fighting the girls' indoctrination with Western values.³ Nearly two years later, the girls have not been released.⁴ The rehabilitation and reintegration of women who have escaped or been freed from Boko Haram captivity will require significant efforts.⁵ The Assembly should pay more attention to the situation of women affected by terrorism.

2. Responses to events that have already occurred

6. In the wake of terrorist acts such as the mass assassinations and wide-scale infliction of injuries referred to in the draft resolution now before the Assembly, there is an obvious imperative to investigate the offences committed in order to identify, prosecute and punish their authors. Equally, there is a need, in the interests of all of society, to ensure that criminal law and other legal responses remain proportionate and fully compliant with human rights.

7. Political responses are equally important. The Committee on Political Affairs and Democracy has rightly reaffirmed the Assembly's strong and consistent message that there can be no justification for terrorism, and there must be no "but".

8. Bearing this in mind, political leaders are undoubtedly under great pressure in the hours and days following terrorist attacks, not only to express the outrage of society and condemn the heinous crimes committed, but also to show that they are already acting to prevent similar events from recurring. In condemning terrorist acts in their immediate aftermath – as they must – politicians must however measure their words cautiously. They must take particular care to avoid making stigmatising generalisations that, deliberately or otherwise, portray whole groups of the population as responsible for the acts of individuals: they must remember that it is an individual choice to act. Ten individuals are known to have participated directly in the killings in Paris on 13 November 2015.⁶ They certainly did not act alone, and the criminal investigations under way have already begun identifying other key actors. But these elements always need to

2. Violence and attacks against civilian populations in northeastern Nigeria and neighbouring countries have for example interrupted the education of huge numbers of children for long periods, with a risk that many may drop out of education altogether. "Nigeria conflict forces more than 1 million children from school", Press release, UNICEF, 22 December 2015.

3. I wish to thank Professor Marc-Antoine Pérouse de Monclos for the key elements of this analysis, presented to the Committee on Equality on Non-Discrimination at a hearing held in Paris on 2 June 2014.

4. "Nigerian President offers talks with Boko Haram over Chibok girls", BBC News, 31 December 2015.

5. "Nigeria: reintegrating women and children liberated from Boko Haram 'essential' to peace, say UN experts", UN News Centre, 22 January 2016.

6. Four at the Stade de France (three suicide bombers, one driver); three in outdoor shootings; three at the Bataclan. All except one, the suspected driver of the Stade de France commando, are now dead.

be set against the fact that this represents an infinitesimal part of the overall Muslim population, which in France currently stands at approximately 4 to 5 million people.⁷ Politicians must make clear, insistently, that they understand the difference between the very small number of persons engaged in terrorist activities and the vast and peaceful mass of people who (in the present case) believe in the same god but do not share the violent criminal tendencies of the tiny few – and who, indeed, are as traumatised by terrorism as the rest of society.

9. Following both series of attacks in Paris in 2015, there was an increase in the number of anti-Muslim hate-motivated offences.⁸ Although they are in a different league from terrorist offences, hate crimes are no more justifiable than terrorism. Political leaders must also condemn these acts as both senseless and wrong. This is not just a question of principle: it is a question of sending the message to Muslims living in France that attacks against them, like attacks against any minority group, are attacks against all of society, and are indefensible.

10. It should furthermore be borne in mind that criminal law measures and political messages are intimately linked. In the French context, for example, the impact of wide-scale police searches of people's homes and house arrests practised under the state of emergency instated following the attacks of 13 November 2015 will in due course need to be carefully analysed from at least two perspectives: on the one hand, the extent to which these measures effectively contributed to advancing the necessary criminal law investigations, and on the other, from the longer term viewpoint of the impact of such measures on trust in the police forces, and more generally in the authorities, amongst those groups particularly affected.

3. Prevention of future terrorist acts

11. One common response of political leaders and parliaments to terrorist acts is a knee-jerk reaction of "toughening up" the criminal law arsenal that may be used to prevent and fight terrorism in the future. Yet there is not necessarily a problem with the law or with the powers already granted to the police, security forces and surveillance authorities: failure to prevent a terrorist act may result from a lack of sufficiently targeted information-gathering, a lack of resources, weaknesses in the way the existing law is applied, and so on. I respectfully defer to the opinion of Committee on Legal Affairs and Human Rights as regards the aspects of the draft resolution related to criminal law measures. I wish nonetheless to emphasise that governments that "toughen up" the criminal law by increasing police and surveillance powers, removing safeguards and reducing judicial oversight may trust their own executive branch to respect human rights fully in the exercise of such extended powers. But governments and executives change. Governments should never give themselves or the executive branch powers that they would not equally trust others to exercise. For in so doing, they make the population as a whole vulnerable to abuses of authority – and minority groups in particular, when there is a perceived threat coming from within such groups.

12. I welcome the Assembly's recognition in [Resolution 2045 \(2015\)](#), as highlighted by the rapporteur for the present report, that mass surveillance is ineffective. The Assembly has also previously expressed its concern about the practice of racial profiling sometimes used by the police ([Resolution 1968 \(2014\)](#) on tackling racism in the police⁹). Racial profiling is ineffective for the same reasons as mass surveillance. Moreover, I wish to stress that racial profiling is also counterproductive: as has been noted by the European Commission against Racism and Intolerance (ECRI), "[r]acial profiling generates a feeling of humiliation and injustice among certain groups of persons and results in their stigmatisation and alienation as well as in the deterioration of relations between these groups and the police, due to loss of trust in the latter".¹⁰ Powers relating to control, surveillance or investigation activities should only be exercised on the basis of a reasonable

7. French law does not provide for the collection of population data broken down by religion. The 2008 study *Trajectoire et origines* carried out by INED and Insee estimated that there were 2.1 million Muslims in France aged between 18 and 50 years (around 8% of the population). Extrapolated to the entire population, the total number would amount to approximately 4 million people. The Ministry of the Interior, extrapolating on the basis of geographical origins, estimates the number of Muslims in France at 4 to 5 million persons. See Alexandre Pouchard and Samuel Laurent, "Quel est le poids de l'Islam en France?", *Le Monde*, 21 January 2015, and sources cited therein. The Pew Research Centre recently estimated that there were 4.7 million Muslims in France (7.5% of the population). See Pew-Templeton Global Religious Futures Project.

8. According to figures provided by the Délégation interministérielle contre le racisme et l'antisémitisme (Dilcra) on 20 January 2016, there was a 223% increase in anti-Muslim acts in France from 2014 to 2015, compared with a 20% increase in anti-Catholic and a 5% decrease in antisemitic acts in the same period (the latter had however increased by 101% the previous year). www.la-croix.com/France/Justice/Bond-actes-antimusulmans-2015-2016-01-20-1200732547.

9. See in particular paragraph 2.

10. ECRI, General Policy Recommendation No. 11: Combating racism and racial discrimination in policing, Explanatory memorandum, paragraph 34.

suspicion – that is, a suspicion founded on objective criteria.¹¹ The fact is that many of the terrorists involved in the Paris events were already known to the police or security forces. Calls for directing resources away from mass surveillance and towards more targeted surveillance reflect this. The same should stand true as regards racial profiling.

13. As is the case concerning immediate responses to events that have already occurred, the political approach to preventing future terrorist acts is also crucial. Longer-term political responses must always be designed bearing in mind that sustainable cohesion, including a sense of shared nationhood, cannot be achieved in societies in which large parts of the population feel excluded or discriminated against. Much damage is already being done to the fabric of our European societies by polemical discourse stigmatising individuals or groups on the basis of their national or ethnic origins, religion, skin colour, nationality or perceived “race”. The No Hate Parliamentary Alliance set up by our Assembly one year ago is an initiative to promote more effective responses by parliamentarians to hate, and more importantly to defuse it, by building mutual understanding. The Alliance now has more than 50 members, has been saluted by the Secretary-General of the United Nations,¹² and is constantly growing. Initiatives like this should be reproduced at national and local levels, strengthened and intensified.

14. Beyond mere words, the contents of measures adopted with the aim of preventing terrorism in the longer term also send messages to the population as a whole about the way in which some parts of society are presently perceived, as well as the type of society that leaders are aiming to build.

15. Thus, introducing sanctions such as the deprivation of nationality of persons with more than one nationality are not only questionable on legal grounds and ineffective as a dissuasive tool (potential suicide bombers, for example, are unlikely to be concerned about whether or not they will retain their nationality after death). Introducing this type of sanction additionally sets persons with more than one nationality apart, sending them and the rest of society the message that they are lesser citizens than persons with only one nationality, since, to avoid statelessness, the latter must always remain a citizen of their country even if they commit abominable criminal offences. Again with reference to the situation in France, the proposal to introduce this measure is already sending harmful messages to its Muslim community, of whom a high proportion have dual citizenship (French and notably Moroccan, Algerian or Tunisian).¹³ Governments should refrain from introducing such a sanction, since its only guaranteed effect is to alienate significant proportions of the population.

16. I finally wish to turn to the need to understand the underlying causes of terrorism and to combat these through a long-term approach. While, as noted before, there are no excuses for terrorism, the fact remains that some persons cross the line. It is therefore vital to understand the triggers to which these persons respond, as disarming such triggers is one of the most effective means of preventing others from following the same path. Radicalisation in the sense of holding (somewhat) extreme views, contesting societal norms, bucking the system, is common among young people. Many young and less young persons hold fundamentalist religious views, or views that are perceived by others as such. But this does not mean that they pose a risk to society, that they will seek to express those views through violent means. The vast majority of people holding ultraorthodox or fanatical religious views are not, and never will be, terrorists. What distinguishes terrorists from others is that, one way or another, they have arrived at the conclusion that it is less grave for them to commit violent acts (including possibly taking human lives) with the aim of spreading terror than for others to transgress the principles for which the terrorists stand.

17. Secularism is one of the fundamental bases of democratic societies and must be vigorously protected. But as the above considerations highlight, it is not in itself a recipe for preventing terror, including terror based on religious fanaticism. Dialogue needs to be engaged at a far more profound level. We need to take this into account in our long-term responses to terror focusing on prevention. I consider that more attention needs to be paid in the draft resolution before us to attacking the causes of terrorism – by which I mean, not justifications (there are none), but the factors that may increase the risks of individuals choosing to take this path, the specific triggers to which they respond, and the means by which they may best be countered.

11. ECRI, General Policy Recommendation No. 11: Combating racism and racial discrimination in policing, paragraph 3. Racial profiling itself is defined in this text (paragraph 1) as “The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities”.

12. Address by Ban Ki-Moon, Secretary-General of the United Nations, 23 June 2015, AS (2015) CR 21.

13. No census data is collected on dual nationality. According to the 2008 study *Trajectoire et origines* carried out by INED and Insee, more than two thirds of immigrants from Northern African and approximately one third of their descendants had dual nationality. <https://www.ined.fr/fr/tout-savoir-population/memos-demo/focus/double-nationalite-identite-nationale/>.

18. The Assembly placed considerable emphasis on preventive measures in its [Resolution 2031 \(2015\)](#), adopted following the *Charlie Hebdo* attacks in January last year. There are pressing concerns about the lack of adequate checks and balances and the risks posed to human rights by excessive criminal law responses to terrorism – which the Assembly must take up. But we must not allow our current concerns about these matters to obscure the need for our societies also to work constantly to ensure that all their members are included and accepted. The Assembly’s detailed proposals on the efforts needed to prevent terrorism in the long term remain as pertinent as ever. These include studying and countering the ways in which prisoners are indoctrinated into terrorism, monitoring and fighting hate speech on the internet, radicalisation and cyber-jihadism, promoting education for democratic citizenship, promoting intercultural dialogue and the living together model, combating marginalisation, social exclusion, discrimination and segregation, supporting families in educating their children in a culture of democracy and tolerance, protecting the safety and the freedom of expression of journalists, writers and artists and supporting action of the Council of Europe in this field.

19. In this context, I welcome several relevant reports currently under preparation by the Assembly: the report under preparation by the Committee on Social Affairs, Health and Sustainable Development on “Preventing the radicalisation of children by fighting the root causes”, report which has also been referred to the Committee on Equality and Non-Discrimination for opinion; the current preparation by the Committee on Culture, Science, Education and Media of a report on “Towards a framework of competences for democratic citizenship”; and the report on “Ending cyberdiscrimination and online hate”, being drawn up by the Committee on Equality and Non-Discrimination.

20. Finally, I wish to emphasise that our societies are based on the fundamental principle of equality of all human beings. Respecting and applying this principle is more important now than ever. Allowing prejudice, intolerance and discrimination to creep into the ways in which States and private actors treat individuals is not only an injustice, but a recipe for disaster.