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Combating international terrorism while protecting Council of Europe standards and values

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Pierre-Yves LE BORGNI, France, Socialist Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Political Affairs and Democracy, Mr Tiny Kox, on his comprehensive report, and supports the proposed draft resolution, which was prepared in close consultation between the two rapporteurs.
2. As Mr Kox has taken into account a number of the proposals from Mr Le Borgni, the committee would like to propose only one amendment to further strengthen the draft resolution regarding some legal and human rights aspects.

B. Proposed amendment

Amendment A (to the draft resolution)

After paragraph 20, add the following new paragraph:

“With the view of providing law-makers, in particular, with a solid constitutional perspective, the Assembly finally asks the European Commission for Democracy through Law (Venice Commission) for an opinion on the compatibility of the proposed draft revision of the French Constitution aimed at including the constitutionalisation of the rules on the state of emergency and on the deprivation of nationality with the European Convention on Human Rights and Council of Europe standards.”

C. Explanatory memorandum by Mr Le Borgni, rapporteur for opinion

1. I can only congratulate Mr Kox on his report, which contains a comprehensive analysis of the Council of Europe's standards and values relating to combating terrorism and rightly underlines some of the main human rights concerns in the fight against international terrorism. The report also proposes a number of preventive measures to be taken by member States, including the promotion of intercultural dialogue. In view of recent terrorist attacks that have taken place in Europe and elsewhere, particularly in 2015, measures have been taken in several member States that raise some additional human rights concerns, presented in this opinion.

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



2. As Mr Kox has taken into account a number of my proposals, I should like to propose only one amendment to the draft resolution with a view to completing it mainly with regard to compliance with human rights and fundamental freedoms. I would like to put more emphasis on the need to defend relevant legal standards, in particular those of the European Convention on Human Rights (ETS No. 5, “the Convention”) as interpreted by the European Court of Human Rights (“the Court”).

1. Council of Europe standards and values

1.1. Conventions

3. The Council of Europe has adopted three major conventions addressing specifically the issue of terrorism,² supplementing earlier, more general texts such as the 1957 European Convention on Extradition (ETS No. 24) and the 1983 Convention on the Compensation of Victims of Violent Crimes (ETS No. 116).

3.1. The 1977 European Convention on the Suppression of Terrorism (ETS No. 90), which came into force on 4 August 1978; it provides for a list of serious offences that were to be ‘depoliticised’ and facilitates the extradition of perpetrators of acts of terrorism. It expressly stipulates that none of the Convention’s provisions shall be interpreted as imposing an obligation to extradite a person who risks being prosecuted or punished solely on the grounds of race, religion, nationality or political opinion. It’s amending Protocol (ETS No. 190), adopted in 2003 but yet to come into force, expands this stipulation to situations where such a person would risk the death penalty, torture or life imprisonment without parole.

3.2. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and the Financing of Terrorism (CETS No. 198), in force since 1 May 2008; it supplements previous conventions by taking into account the need to deprive terrorists and other criminal groups of their assets and funds, these measures being key to the successful prevention, repression and, ultimately, disruption of their activities.

3.3. The Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) in force since 1 June 2007; it aims to prevent terrorism by establishing as criminal offences acts, such as public provocation, recruitment and training, which may lead to the commission of acts of terrorism as well as through closer international co-operation. Its Additional Protocol (CETS No. 217), adopted on 19 May 2015, is intended to provide a framework for European States to implement their obligations under United Nations Security Council Resolution 2178 (2014) in particular as regards criminalising activities related to the phenomenon of ‘foreign terrorist fighters.’

4. The 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), as interpreted by the European Commission for the Prevention of Torture and Inhuman or Degrading Punishment (CPT), has also been instrumental in the general establishment of a legal framework for the fight against terrorism. In addition, the Guidelines adopted by the Committee of Ministers on Human Rights and the Fight against Terrorism (2002) as well as on the Protection of Victims of Terrorist Acts (2005) restate the established case law of the European Court of Human Rights and lay down key standards for counterterrorism policies in Europe.

5. The European Commission for Democracy through Law (Venice Commission) has stated that “state security and fundamental rights are not competitive values; they are each other’s precondition.”³ Indeed, departing from democratic values in the fight against those whose aim is to destroy them “would be to sink to the level of the terrorist and could only undermine the foundations of our democratic societies”.⁴

2. For an overview, see report by the Committee on Legal Affairs and human Rights on “Human rights and the fight against terrorism” (rapporteur: Lord John E. Tomlinson) 16 September 2011, [Doc. 12712](#) (“Tomlinson report”), paragraphs 16-21.

3. [Venice Commission Opinion on ‘the protection of human rights in emergency situations’](#), 4 April 2006 CDL-AD(2006)015, paragraph 31.

4. Council of Europe, CPT, Statement to the Minister’s Deputies of 4 October 2001, document [CPT/Inf \(2001\) 24](#).

1.2. European Convention on Human Rights

1.2.1. Derogation

6. Article 15 allows contracting States to derogate from certain rights guaranteed by the European Convention on Human Rights in time of “war or other public emergency threatening the life of the nation.” States have an obligation “to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life”.⁵ A balance must therefore be struck between public safety and fundamental rights.⁶ Specific context and timing are key to assessing the fairness of any measures during a state of emergency, and thus criticism that holds in one situation, may not be appropriate in other, even apparently similar situations. Emergency legislation should help preserve the rule of law, not flout it.⁷

7. In light of the necessary flexibility of restrictions on rights in emergency situations, all elements should be as clearly defined as possible. States of emergency cannot be invoked to prevent merely local or relatively isolated threats to law and order, nor as a pretext for imposing vague or arbitrary limitations.⁸ Permissible derogations under Article 15 must meet three substantive conditions: i) there must be a public emergency threatening the life of the nation – that is to say it must be actual or imminent, its effects must involve the whole nation, the continuance of the organised life of the community must be threatened, and the crisis or danger must be so exceptional as to make normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, plainly inadequate;⁹ ii) any measures taken in response must be strictly required by the exigencies of the situation and particularly severe measures are acceptable only if adequate safeguards (such as procedural protections like *habeas corpus* or equivalent) exist; and iii) the measures taken in response to it, must be in compliance with a State’s other obligations under international law.¹⁰ In addition to the substantive requirements, the derogation must be procedurally sound.¹¹

1.2.2. Particular human rights concerns in the fight against terrorism

8. In their efforts to fight terrorism, law enforcement bodies must not abuse or circumvent normal legal requirements.¹² In particular, in relation to:

8.1. Article 2 (right to life) in the case of counter-terrorist operations including so-called sweep operations (as in the North Caucasus) or hostage rescue operations,¹³ or targeted killings using drones;¹⁴

8.2. Article 3 (prohibition of torture and inhuman and degrading treatment) in cases of ill-treatment of suspected terrorists, inhuman detention conditions¹⁵, ill-treatment sustained while held incommunicado in police custody,¹⁶ the risk of ill-treatment in case of deportation/extradition,¹⁷ and in rendition and secret detention cases;¹⁸

5. Report by the Committee on Legal Affairs and Human Rights on ‘The protection of human rights in emergency situations’, rapporteur: Mr Holger Haibach, 9 April 2009, [Doc. 11858](#) (‘Haibach report’) paragraph 5; citing Article I of the [Guidelines on human rights and the Fight against Terrorism](#), adopted by the Committee of Ministers on 11 July 2002, H (2002) 4.

6. As noted in the Haibach Report paragraph 6 – citing *Tyrer v. the United Kingdom*, judgement of 25 April 1978 (Application No. 5856/72), paragraph 31 – this is not a measurement conducive to concrete calculations.

7. Haibach Report, paragraph 6. Hence the non-derogable nature of certain rights, such as the right to life, not to be tortured or be held in slavery or servitude.

8. Haibach Report, paragraph 7, citing UN Doc E/CN.4/1984/4 Annex, *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights* (1984).

9. Haibach Report, paragraph 9, citing *Denmark et al. v. Greece* (“The Greek case”), Commission Opinion, Applications Nos. 3321/67, 3322/67, 3323/67 and 3344/67 (5 November 1969), paragraph 53.

10. *Lawless v. Ireland*, Application No. 332/57, judgement of 1 July 1961, paragraph 22.

11. See Article 15 paragraph 3 European Convention on Human Rights; and Haibach Report paragraph 15. More generally, see the Venice Commission Report on ‘[Counter Terrorism Measures and Human Rights](#)’, 5 July 2010, CDL-AD(2010)022, (‘Venice Commission Report’), paragraphs 14-18.

12. See ‘[International and National Courts confront large-scale violations of human rights – Terrorism](#)’, Background paper for the seminar: Opening of the Judicial Year January 2016, ECtHR Research and Library Division.

13. *Jordan v. the United Kingdom*, 4 May 2001, paragraphs 106-108; and *Finogenov v. Russia* 2011 (violation of Article 2 due to inadequate planning and implementation of the rescue operation as well as concerning the ineffectiveness of the investigation into the allegations of the authorities’ planning and carrying out the rescue operation as well as the lack of medical assistance to hostages); *McCann and Others v. the United Kingdom*, 27 September 1995.

14. [Resolution 2051 \(2015\)](#); more generally report of the Committee of Legal Affairs and Human Rights on ‘Drones and targeted killing’, rapporteur: Mr Arcadio Díaz Tejera, 16 March 2015, [Doc. 13731](#).

15. *Ireland v. the United Kingdom* (1978); *Öcalan v. Turkey* (No. 2), 18 March 2014.

8.3. Article 5 (right to liberty and security) in relation to arrests,¹⁹ interrogations and the length of detention²⁰, abusive administrative detention,²¹ the right to be brought promptly before a judge or other officer,²² the right to be tried within a reasonable time (tied to Article 6) and to challenge the lawfulness of the detention in court;²³

8.4. Article 6 (fair trial) issues when military and other special tribunals are used in terrorism cases, when so-called blacklists are created without proper procedures,²⁴ and when ordinary judicial procedures are modified in terrorism cases;²⁵

8.5. Article 7 (no crime without a law) requiring a minimum of legal certainty in relation to the definition of newly criminalised activities when crimes are created to prevent and fight terrorism more efficiently;²⁶

8.6. Article 8 (right to privacy) particularly in relation to surveillance powers;²⁷

8.7. Article 10 (freedom of speech and information) relating to orders for disclosure of information,²⁸ mass surveillance, and other restrictions on freedom of speech,²⁹ such as the prohibition of terrorist propaganda etc;

8.8. Article 11 (freedom of assembly and association) as concerns the dissolution of political parties alleged to be fronts of terrorist groups.³⁰

9. Measures relating to asylum, return ("*refoulement*"), expulsion and extradition can also be problematic.³¹

16. *Etxebarria Caballero v. Spain* and *Ataun Rojo v. Spain*, 7 October 2014.

17. *Chahal v. the United Kingdom*, 15 November 1996.

18. *El-Masry v. "The former Yugoslav Republic of Macedonia"*, 13 December 2012; *Al Nashiri v. Poland* and *Husayn (Abu Zubaydah) v. Poland* (24 July 2014). See more generally : Venice Commission report, paragraphs 44-58; Tomlinson report paragraphs 44-51; Introductory Memorandum by the Committee on Legal Affairs and Human Rights in 'The respect for human rights in the fight against terrorism', rapporteur: Mr Valery Grebennikov, 12 December 2006, document AS/Jur (2006) 29, ('Grebennikov memorandum'), paragraphs 53-59; (Report by the Committee on Legal Affairs and Human Rights on 'Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states', Rapporteur: Mr Dick Marty, 12 June 2006, [Doc. 10957](#); and the Report by the Committee of Legal Affairs and Human Rights on 'Secret detentions and illegal transfers of detainees involving Council of Europe member States: second report', Rapporteur: Mr Dick Marty, 11 June 2007, [Doc 11302 rev.](#)

19. *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990; *O'Hara v. the United Kingdom*, 16 October 2001

20. *A. and Others v. the United Kingdom*, (n°3455/05), 19 February 2009 [GC].

21. See Report being prepared for the Committee on Legal Affairs and Human Rights on 'Administrative detention', rapporteur: Mr Richard Balfe.

22. *Brogan and Others v. the United Kingdom*, 29 November 1988.

23. *Sher and Others v. the United Kingdom*, 20 October 2015. See also Venice Commission, paragraphs 44-53 and 58 ; Tomlinson report, paragraphs 52-63 ; Grebennikov memorandum, paragraphs 64-83; see also issues under Article 5, [ECtHR Factsheet – Terrorism and the ECHR](#), p. 11.

24. See the Report by the Committee on Legal Affairs and Human Rights on 'United Nations Security Council and European Union Blacklists', Rapporteur: Mr Dick Marty, 16 November 2007, [Doc.11454](#); Venice Commission, paragraphs 31 and 71-74.

25. Such as the use of intelligence material as evidence in proceedings. See [Resolution 2045 \(2015\)](#). See also Tomlinson Report, paragraphs 64-66; *Saldaz v. Turkey*, 27 November 2008.

26. Tomlinson Report, paragraphs 38-40, citing the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Martin Scheinin, 22 December 2010, UN Doc. A/HRC/16/51, paragraph 27; Venice Commission, paragraphs 29-35, 71-74.

27. See Assembly [Resolution 2045 \(2015\)](#); Report by the Committee on Legal Affairs and Human Rights on 'Mass surveillance', rapporteur: Mr Pieter Omtzigt, 18 March 2015, [Doc 13734](#), paragraphs 79-94; Tomlinson report, paragraphs 67-76 ; Venice Commission report, paragraphs 36-39; *Klass and Others v. Germany*, 6 September 1978. See also the recent ECtHR judgement which found Hungarian anti-terror surveillance laws to be so broad as to be used against 'virtually anyone', trampling Hungarian's right to privacy (*Szabo and Vissy v. Hungary* 2016 (App No. 37138/14))

28. Venice Commission report, paragraphs 40-43.

29. See generally Assembly [Resolution 2031 \(2015\)](#); (Report by the Committee for Political Affairs and Democracy on the 'Terrorist attacks in Paris: together for a democratic response', Rapporteur: Mr Jacques Legendre, 27 January 2015, [Doc. 13684](#) ('Legendre report'); Tomlinson report, paragraphs 77-83; *Leroy v. France* (2 October 2008).

30. See, for example the cases concerned with Turkey (*United Communist Party of Turkey and Others v. Turkey*, 20 January 1998; or *Yazar and Others v. Turkey*, judgement of 9 April 2002).

31. See Venice Commission, paragraphs 77-80.

2. Factual Assessments

2.1. Ukraine

10. Ukraine derogated from some of its obligations under the United Nations International Covenant on Civil and Political Rights and the European Convention on Human Rights³² on 5 June 2015 and 10 June 2015 respectively concerning the situation in Crimea and eastern Ukraine. The derogations concern 'anti-terrorist' operations being conducted by Ukrainian forces in certain areas of eastern Ukraine as well as other measures being taken by the government in response to the situation.³³ Ukraine has also renounced its responsibilities for ensuring the respect for human rights and implementing the relevant treaties in Crimea and eastern Ukraine in favour of the Russian Federation, who it says is in occupational control of these regions.³⁴

11. Ukraine has also lodged four Inter-State proceedings against Russia concerning the events in Crimea and eastern Ukraine.³⁵ In addition to the inter-State applications, more than 1 400 individual applications related to the events in Crimea or the hostilities in eastern Ukraine are currently pending before the Strasbourg Court. They have been lodged against both Ukraine and Russia or against one of those States.³⁶

2.2. France

12. Following the terrorist attacks of 13 November 2015, the French President stated that "La France est en guerre" and declared a subsequent state of emergency.³⁷ The French Parliament prolonged this state of emergency for 3 months until 26 February 2016.³⁸ On 24 November 2015, France filed a formal notice of derogation under Article 15 of the Convention in respect of 'some' of the measures taken which appeared necessary to prevent the commission of further terrorist attacks.³⁹

13. It should be noted that the French Parliament has amended the initial legislation, of 1955, on the State of emergency in order to allow for parliamentary control of administrative decisions to be made in such circumstances. Since 20 November 2015, measures taken in the framework of the state of emergency have been under constant parliamentary supervision with the aim of justifying their 'value added' compared to the efficacy of general law regarding terrorism.⁴⁰

14. During the period 14 to 26 November 2015, over 1600 search and seizure operations without judicial warrant (*perquisitions administratives*) were carried out. From 14 November 2015 to 7 January 2016, that number has risen to over 3 000,⁴¹ with more than 380 people being placed under house arrest (*'assignées à résidence'*), leading to only around 60 guilty verdicts.⁴²

15. The use of these emergency powers has been criticised on civil liberties grounds.⁴³ For example, in relation to climate change protests in Paris on the eve of COP21, the police issued '*interdictions de manifester, interdictions de séjour et 27 assignations à résidence*'⁴⁴ (prohibition to demonstrate, to stay in certain places, and house arrests). In addition, questions have been asked as to whether the powers are being used solely to combat terrorism or whether they are being seen by the police as an opportunity to

32. [Note Verbale on derogation from the Permanent representation of Ukraine to the Council of Europe](#), 10 June 2015.

33. ECtHR Press release, [ECtHR communicates to Russia new inter-State case concerning events in Crimea and Eastern Ukraine](#), 1 October 2015.

34. Ibid.

35. *Ukraine v Russia* (no. 20958/14), (II) (no. 43800/14), (III) (No. 49537/14), (IV) (No. 42410/15).

36. ECtHR Press release, [ECtHR communicates to Russia new inter-State case concerning events in Crimea and Eastern Ukraine](#), 1 October 2015.

37. Decree No. 2015-1475 of 14 November, applying Law No. 55-385 of 3 April 1955 on the State of Emergency.

38. Loi n° 2015-1501 du 20 Novembre 2015 prorogeant l'application de la loi n°55-385 du 3 avril 1955 relative à l'état d'urgence et renforçant l'efficacité de ses dispositions.

39. Declaration contained in a 'Note Verbale' from the Permanent Representation of France, dated 24 November 2015, registered at the Secretariat General on 24 November 2015.

40. [Première communication d'étape sur le contrôle parlementaire de l'état d'urgence](#), Réunion de la commission des Lois, 16 December 2015 (available in French only).

41. Assemblée nationale, '[Communication sur le contrôle de l'état d'urgence](#)', Réunion de la commission des Lois du 13 janvier 2016, 12/01/2016 (available in French only) ; see also, '[Mesures administratives prises en application de la loi n° 55-385 du 3 avril 1955 depuis le 14 novembre 2015 \(au 12 janvier 2016\)](#)'; and more generally '[Vu de l'intérieur, Observatoire de l'état d'urgence](#)', Blog de Laurent Borredon, Le Monde.fr (available in French only).

42. Le Monde, '[Vu de l'intérieur, Observatoire de l'état d'urgence](#)', Blog de Laurent Borredon (available in French only).

43. Le Monde, '[Vu de l'intérieur, Observatoire de l'état d'urgence](#)', Blog de Laurent Borredon (available in French only). See also first declaration, of 18 January 2016, of the French [Commission Nationale Consultative des Droits de l'Homme](#), (available in French only).

operate, in cases unrelated to terrorism, unshackled by the usual procedural requirements.⁴⁵ Furthermore, the Council of Europe Human Rights Commissioner, Nils Muižnieks, has criticised the measures stating that “there is a risk that these measures could sap the system of democratic control”. He added concerns about the ethnic profiling of suspects facing police searches and “the stigmatisation of certain communities”, adding: “We react very quickly and cast off human rights guarantees as we consider they are not useful in the fight against terrorism”.⁴⁶

16. In the aftermath of the Paris terrorist attacks of January 2015, the ‘*Loi n°2015-912 du 24 juillet 2015 relative au renseignement*’ was passed. It allows for the Prime Minister to authorise intrusive surveillance measures, without judicial oversight, for the broad goals of “major foreign policy interests”, “protecting France’s “economic, industrial and scientific interests” and the prevention of “collective violence” and “organised delinquency”. The Prime Minister need only seek the views of the ‘National Committee of Intelligence Techniques Control’ and, in any case, is not bound by their opinion.⁴⁷

17. In their decision n° 2015-713 DC of 23 July 2015,⁴⁸ the *Conseil Constitutionnel* struck down one of the most excessive sections of the law which would have allowed for the surveillance of practically all international communications, as it was worded too broadly.⁴⁹ Following the decision of the *Conseil Constitutionnel*, a new bill relating to surveillance of international electronic communications was approved, giving authorities the same powers as the sections struck down in the earlier law.

2.3. Turkey

18. In July 2015, the peace process between the Kurdistan Workers’ Party (PKK) and the Turkish Government broke down over a bombing in Suruç killing numerous young, mostly Kurdish demonstrators, and the subsequent killing of two police officers. In addition to this, the Da’ish carried out suicide attacks in Turkey, most recently on 12 January 2016.⁵⁰ The Turkish Government has accordingly undertaken a number of counterterrorism operations, including blocking websites, banning and dispersing protests, as well as imposing long-term curfews in many districts of Southeast Turkey such as Cizre, Silopi and Sur.⁵¹

19. Although reports are conflicting, the curfews have reportedly been accompanied by the cutting of mobile phone signals, the blocking of roads, measures preventing anyone from entering or leaving the areas, as well as the cutting of water and electricity. Outside observers were banned from entering and scores of people were reportedly unable to access a hospital for treatment. Amnesty International has reported that “protests and vigils taking place daily outside the curfew areas are routinely dispersed by police using tear gas and water cannons, and protesters are detained”, and has called “on the Turkish government to end the indefinite curfews in Kurdish neighbourhoods across east and south-east Turkey”.⁵² In one instance, a detained DIHA journalist is alleged to have been exposed to torture by special operations military teams.⁵³ As of 4 January 2016, “curfews” have been declared 56 times in 20 districts over seven cities. In some districts where curfews have been officially lifted, there is still a de facto siege.⁵⁴ According to the Minister of the Interior over 3 000 ‘terrorists’ have been killed since July 2015.⁵⁵ On 15 January 2016, 19 academics who had signed a petition calling for an end to the violence in south-eastern Turkey were arrested and accused of terrorist propaganda and “denigrating the Turkish nation”.⁵⁶ As reported by Amnesty International, the authorities have prevented independent observers from bar associations and human rights organisations from entering areas under curfew, making it difficult to form an accurate picture of what is going on.⁵⁷

44. See [Première communication d'étape sur le contrôle parlementaire de l'état d'urgence](#), Réunion de la commission des Lois, 16 December 2015; also [Assignations à résidence prononcées à l'occasion de la COP 21 dans le cadre de l'état d'urgence](#), Conseil D'Etat, 11/12/2015 (available in French only).

45. See for example, L'Express, [Quand Etat d'urgence rime avec dérapages et descentes opportunistes](#), Catherine Gouëset, 27 November 2015; (and more generally), Le Monde, [Vu de l'intérieur, Observatoire de l'état d'urgence](#), Blog de Laurent /Borredon (available in French only).

46. [Council of Europe sees French state of emergency risks](#), Agence France-Presse, 12/01/2016.

47. Amnesty International, [France : New surveillance law a major blow to human rights](#), 24/06/2015.

48. [Décision n° 2015-713 DC du 23 juillet 2015](#).

49. Ibid.

50. Murat Yetkin, ‘Rights fall victim to fight against terror in Turkey’, [hurriyetdailynews.com](#), 15/01/2016.

51. [HDP Information Desk: Current Situation in Cizre, Solpi and Sur Districts](#), 04/012016).

52. Amnesty International, Human Rights in Turkey, [Amnesty issues Urgent Action on Curfews](#), 11/01/2016. See also, [Amnesty International briefing, on this subject, of 21 January 2016](#).

53. ANF News, [DIHA reporter tortured in custody](#), 09/01/2016.

54. [HDP Information Desk: Current Situation in Cizre, Solpi and Sur Districts](#), 04/012016).

55. Amnesty International, [Turkey: Indefinite 24-hour curfew, over 200,000 in danger](#), 11/01/2016.

56. Amnesty International, [Turkey: Detention of academics intensifies crackdown on freedom of expression](#), 15/01/2016.

20. On 31 December 2015, following the requests from a number of applicants for the indication of interim measures, the Court asked the Turkish Government to provide it with factual information about the curfew situation and its consequences for the people concerned. On 12 January 2016, the Court decided not to apply Rule 39 (interim measures) because the elements at its disposal were insufficient, but to apply Rule 40 (urgent notification of an application) and to deal with the applications as a priority under Rule 41 (order of dealing with cases).⁵⁸

2.4. North Caucasus

21. The 2010 report “Legal remedies for human rights violations in the North Caucasus region” by Mr Dick Marty for the Committee of Legal Affairs and Human Rights⁵⁹, highlights the serious and delicate nature of the human rights situation in the North Caucasus region, particularly in the Chechen Republic, Ingushetia and Dagestan.

22. On May 5, 2015, the Committee on Legal Affairs and Human Rights held a hearing in Yerevan, Armenia, with the participation of two experts, in the framework of the report under preparation “Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?”⁶⁰ During this hearing, Mr Koroteev, Legal Director at Human Rights Centre “Memorial”, noted that anti-terrorism operations were still being unlawfully conducted and that they had led to the killing of numerous civilians and he pointed out the general failure of the criminal justice system in the region and the lack of initiative from the authorities to open investigations and the overall climate of impunity. Accordingly, defendants could be taken into custody without legal grounds, without a hearing and by simple order of President Kadyrov, even after they had been acquitted by a court.

23. The situation in the Northern Caucasus region continues to be tense, particularly in relation to the increased Da'ish presence and recruitment in the region.⁶¹ Counter-terrorist operation legal regimes have been introduced in districts of Dagestan as well as in parts of Nalchik (Kabardino-Balkaria), as recently as 11 January 2016.⁶²

3. Constitutionalisation of the state of emergency and laws on the deprivation of nationality

24. In **France**, following the terrorist attacks of the 13 of November 2015, the Prime Minister presented a set of two constitutional amendments in a draft law for the protection of the Nation on 23 December 2015. These amendments would, on the one hand, set into the Constitution the conditions under which a State of Emergency can be declared and subsequently extended, and, on the other, allow for the stripping of French nationality from dual nationals found guilty of an offence constituting a grave attempt on the life of the Nation.⁶³

3.1. Constitutionalising the State of Emergency

25. The French constitutional amendment is intended to set the triggering mechanism of the State of Emergency into the ‘constitutional marble’⁶⁴; it is not meant as an attempt to widen those powers and so uses the wording of the current laws.⁶⁵

57. See above, Amnesty International press release of 21 January 2016.

58. ECtHR Press Release, [Requests for lifting of curfew measures in south-eastern Turkey: the Court refuses to indicate interim measures for lack of elements, but is pursuing its examination of applicants](#), ECHR 016 (2016), 13/01/2016.

59. [Doc. 12276](#), of 4 June 2010.

60. Committee on Legal Affairs and Human Rights, [declassified minutes of the Hearing on ‘Human Rights in the North Caucasus: what follow-up to Resolution 1738 \(2010\)?’](#), 30 September 2015, AS/Jur (2015) PV 04 (Human Rights in the North Caucasus only).

61. See [CrisisWatch Database, North Caucasus \(Russia\)](#); [Caucasian Knot, December 28, 2015 – January 3, 2016, fifteen persons fell victim to armed conflict in Northern Caucasus](#), 04/01/2016.

62. [Caucasian Knot, Local resident reports about night shooting in Kvanada village](#), 12/01/2016.

63. [Projet de Loi constitutionnelle de Protection de la Nation](#), n° 3381.

64. *Ibid.*

65. *Ibid.*

26. However, in so doing, it effectively removes much of the judicial oversight from the process. Firstly, constitutionalising the State of Emergency effectively removes the oversight of the *Conseil Constitutionnel*. Similarly, it also removes judicial oversight of matters relating to individual freedoms from the purview of the ordinary judge (*juge judiciaire*) and places it into the hands of the administrative judge, who does not have the same guarantees of independence from the government.⁶⁶

27. In Hungary, the government is proposing a constitutional amendment that would introduce a new category of emergency that could be declared in case of a “situation created by a terrorist threat”, the threshold for this would appear to be rather subjective, depending on the will of the government. Such a situation would allow for the government to *inter alia*, govern by decree, order curfews, forbid large gatherings, decide on the expulsion of individuals and control the use of the internet and postal service.⁶⁷

3.2. Laws on the deprivation of nationality

28. In its ‘avis sur le projet de loi constitutionnelle de protection de la Nation’⁶⁸ (opinion on the draft constitutional law on protection of the Nation), the *Conseil d’Etat* accepted that, although responding to a legitimate objective, the measure itself would have little practical impact, as it would have little dissuasive effect and would only apply to a very small number of individuals.⁶⁹ Furthermore, it noted the possibility of a challenge in the European Court of Human Rights under Articles 3 and 8 of the European Convention on Human Rights⁷⁰ – to which could be added Article 14 in conjunction with Article 8.⁷¹

29. The French Prime Minister, Mr Manuel Valls, has himself explicitly stated that such a measure, while not in itself being a weapon to fight terrorism, did send a clear symbolic message to those who no longer deserved to belong to the national community.⁷² However, it has been noted that such a measure could have another symbolic effect by creating “different categories of French citizens.”⁷³ Indeed “it gives the impression that dual citizens are not really French, and that terrorism is not a problem among the “real” children of the French Republic, only those who come from somewhere else.”⁷⁴

30. One may recall, in this connection, Assembly Resolution 2031 (2015), in which “The Assembly underlines that security responses must be accompanied by preventive measures aimed at eradicating the root causes of radicalisation and the rise of religious fanaticism, especially amongst young people”.⁷⁵ In particular to “take measures to combat marginalisation, social exclusion, discrimination and segregation especially among young people in disadvantaged neighbourhoods”.⁷⁶

31. Furthermore, what crimes constitute ‘une atteinte grave à la vie de la Nation’ (a serious attack on the life of the Nation) is determined by the legislature and could be open to further expansion and abuse.

32. In the United Kingdom, in 2002 the government passed the *Nationality, Immigration and Asylum Act* promising that the powers would be used sparingly. Successive governments, however, have not felt bound by that promise and executive powers relating to the stripping of nationality have been gradually expanded and their usage become more frequent (from 7 over the period 2002-2010, to 48 over the period 2010 to 2014⁷⁷). In addition, the powers themselves have been gradually expanded so that a deprivation order can be made if *inter alia* the Home Secretary is satisfied that deprivation is “conducive to the public good” and would

66. Pierre-Yves Le Borgn’, *Révision Constitutionnelle : en l’état, pour moi, c’est non*, 11 January 2016.

67. Hungarianspectrum.org, *Toward a police state: the government’s latest effort at limiting democratic freedoms*, 13 January 2016.

68. *Avis sur le projet de loi constitutionnelle de protection de la Nation*. 11 December 2015. (available in French only).

69. *Avis sur le projet de loi constitutionnelle de protection de la Nation*. 11 December 2015, paragraph 7. (available in French only)

70. Ibid. citing *Daoudi v. France*, 3 December 2009 (No.19576/08).

71. See, *inter alia*, *Genovese v. Malta*, 11 October 2011 (No. 53124/09) (Article 8 is engaged, discrimination based on nationality) and *A and Others v. United Kingdom*, 19 February 2009 (No. 3455/05) (and *A and Others v. Secretary of State for the Home Department* 2004 UKHL 56 – terror threat comes as much from home-grown terrorists than foreign nationals).

72. Reported in ‘Déchéance de nationalité, “un symbole” plus qu’une “arme contre le terrorisme” pour Valls’, *bfmtv.com*, 19 December 2015.

73. Senator Samia Ghali, reported in ‘France’s fight against terror: Après Charlie’, *The Economist*, 9 January 2016.

74. Marouane Zaki, ‘SOS racisme’, reported in ‘France’s fight against terror: Après Charlie’, *The Economist*, 9 January 2016.

75. *Resolution 2031 (2015)* paragraph 17.

76. Ibid., at paragraph 17.5.

77. Melanie Gower, *Deprivation of British citizenship and withdrawal of passport facilities*, House of Commons Library, SN/HA/6820.

not make the person stateless.⁷⁸ If the person obtained their citizenship through naturalisation, the Home Secretary need only have reasonable grounds to believe that the person is able to become a national of another country or territory and has conducted himself in a manner which is seriously prejudicial to the interests of the State.⁷⁹ Some commentators have questioned whether these powers, and the way in which they are used, undermine the United Kingdom's international obligations, in particular in respect to the prohibition on making persons stateless⁸⁰ and their use of targeted drone strikes.⁸¹

33. That said, the French measures on deprivation of nationality differ from the United Kingdom's in that they remain part of the criminal law. Whilst such measures are at best unnecessary and at worst counterproductive, they are at least based on a criminal conviction, with the implied standards of due process.

34. Assembly [Resolution 1840 \(2011\)](#), paragraph 6 states: "The Parliamentary Assembly considers that terrorism should be dealt with primarily by the criminal justice system, with its inbuilt and well-tested fair trial safeguards to protect the presumption of innocence and the right to liberty of all." Indeed, "Coercive administrative measures for preventive purposes should be of limited duration, be only applied as a last resort and be subject to strict conditions, including minimum requirements regarding evidence and judicial or appropriate political oversight." In this regard, a worrying shift can be detected towards administrative law, control orders or temporary exclusion orders with difficulties in appeal, secret courts and intelligence briefings.⁸²

35. Comparable measures for stripping dual nationals of their nationality in relation to terrorist offences exist in Belgium, Switzerland (although in place since 1951, this measure has never been used) and Spain (although the relevant law does not allow for the Spanish authorities to strip the nationality from those who travel to take part in terrorism related activities).⁸³ In Azerbaijan, measures regarding the deprivation of citizenship are being used in order to systematically crack down on free expression and press freedom, leading in some cases to journalists being rendered stateless.⁸⁴ It is an example of how such powers can, over time, be abused.

36. The increase in the use of these measures may, in part, be due to the increase in the number of fighters travelling to Syria and Iraq to fight in the conflict or to engage in terrorism. To this end, the report by Mr Dirk Van der Maelen, for the Committee on Political Affairs and Democracy 'Foreign fighters in Syria and Iraq',⁸⁵ provides information on the scale of the phenomenon, its root causes and measures which may be taken at different levels in order to tackle it.

Amendment A (to the draft resolution)

Explanatory note:

The amendment aims at triggering the procedure for an adoption, by the Venice Commission, of an opinion on the compatibility, with relevant European human rights standards, of the draft law to revise the French Constitution with a view to constitutionalising the state of emergency and on withdrawal of nationality. An opinion by the Venice Commission would opportunely recall established European standards in this field, which may concern not only France, but also other countries making use of, or considering the introduction of, special emergency rules in the fight against terrorism, such as is the case with respect to Hungary, Turkey and Ukraine. Furthermore, in the run-up to the French parliamentary debate on the above mentioned constitutional revision, such an opinion would help provide lawmakers with an authoritative appraisal in the light of applicable European standards.

78. British Nationality Act 1981, s. 40(2) and s. 40(4).

79. British Nationality Act 1981 s. 40(4A); see also the [Bureau of Investigative Journalism's "Citizenship Revoked" investigation reports](#).

80. See Melanie Gower, [Deprivation of British citizenship and withdrawal of passport facilities](#), House of Commons Library, SN/HA/6820, p 1.

81. Arabella Lang, *UK drone attack in Syria : legal questions*, Briefing Paper, House of Commons Library, Number 7332, 20 October 2015.

82. See inter alia, Counter Terrorism and Security Act 2015.

83. [Eudo-citizenship.eu](#), Comparing Citizenship Laws: Loss of citizenship for Disloyalty or treason.

84. Open Society Justice Initiative, Press Release, [Azerbaijan challenged over Deprivation of citizenship](#), 13 January 2016.

85. [Doc. 13937](#), 8 January 2016.