Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 307 (2025)[1]

Draft protocol amending the Council of Europe Convention on the Prevention of Terrorism

Parliamentary Assembly

1. Reiterating in the strongest terms its condemnation of terrorism in all its forms, the Parliamentary Assembly welcomes the finalisation of the draft protocol amending the Council of Europe Convention on the Prevention of Terrorism (hereinafter "the draft protocol") as a way to further strengthen the fight against this scourge by taking into account its recent evolution.

2. For many years, the Council of Europe has been developing key legal standards to combat terrorism. Its main legal instrument in the field of counter-terrorism, the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196, hereinafter "the Warsaw Convention"), was adopted in 2005 with the aim of improving counter-terrorism policies and strategies at the domestic level while facilitating international co-operation. In 2015, with the adoption of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217), the Council of Europe became the first international organisation to set up a regional legal instrument to implement the obligations imposed by the United Nations Security Council Resolution 2178 (2014) regarding the fight against foreign terrorist fighters.

3. Once adopted, the draft protocol will introduce the first internationally binding and comprehensive definition of terrorism expanding the current wording of Article 1 of the Warsaw Convention to encompass all forms of terrorism currently prevalent. In particular, acts such as cyberterrorism affecting critical infrastructure or environmental terrorism were not fully anticipated in 2005 when the Warsaw Convention was adopted. The introduction of a common pan-European legal definition of a "terrorist offence", reflecting contemporary challenges, is therefore a welcome and desirable step.

4. The draft protocol modifies the definition of a terrorist offence for the purposes of the Warsaw Convention through the addition of a list of criminal acts which, when intentionally committed with a terrorist aim and given their nature or context, may seriously damage a country or an international organisation. The proposed definition closely resembles that contained in Article 3 of Directive (EU) 2017/541 of the European Parliament and of the Council on combating terrorism and departs from it only insofar as necessary to apply to the framework of the Warsaw Convention and its Additional Protocol.

5. While understanding the need to strengthen the tools to prevent and combat terrorism, the Assembly takes note of the concerns expressed by some Council of Europe member States and international institutions, relating to the scope of the proposed definition of terrorism, which in their view could potentially lead to legal uncertainty and arbitrary, overbroad and abusive application, as well as the lack of an exception clause, which would protect legitimate activities, such as those of humanitarian organisations.

6. The Assembly recalls that the guarantee enshrined in Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, hereinafter "the Convention") is an essential element of the rule of law. It embodies, among others, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that criminal law must not be extensively construed to the detriment of an accused. At the same time, according to the European Court of Human Rights, Article 7 of the Convention cannot be read as prohibiting the gradual clarification of the rules of

1. *Assembly debate* on 25 June 2025 (24th sitting) (see Doc. 16186, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Titus Corlăţean). *Text adopted by the Assembly* on 25 June 2025 (24th sitting).

criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen. These principles cannot be applied less stringently when it comes to the prosecution and punishment of terrorist offences, even in the most difficult of circumstances.

7. The Assembly welcomes the fact that the draft protocol's preamble explicitly reaffirms that all measures taken to prevent or suppress terrorist offences shall be in accordance with relevant human rights and fundamental freedoms, particularly those enshrined in the Convention, as well as other obligations under international law, including, where applicable, international humanitarian law. Nonetheless, it regrets that this notion was not reflected in substantive provisions of the draft protocol.

8. Recalling that combating terrorism and protecting Council of Europe standards and values should be complementary objectives, the Assembly reaffirms that for rights which are subject to restrictions under the Convention, any limitation must be necessary in a democratic society and be proportionate to the legitimate aim pursued, in line with the case law of the European Court of Human Rights. It further underlines that the right to freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.

9. Referring to its Resolution 2509 (2023) "Transnational repression as a growing threat to the rule of law and human rights", the Assembly is mindful of the risk that anti-terrorism legislation may be misused in some member States for political reasons. It further notes that the European Union Agency for Fundamental Rights, in its 2021 report on the human rights impact of Directive (EU) 2017/541, observed that the use of counter-terrorism legislation and measures may be expanded in some European Union member States to activities that include non-violent movements, public protests and non-governmental organisations – clearly not intended to be considered terroristic in nature. As such, the Assembly believes that the legal definition of terrorism should be as precise as possible to limit the risk of diverging implementation at the national level and prevent arbitrary application.

10. In this context, the Assembly notes the concerns expressed about the proposed wording of Article 1, paragraph 2.*c*, which includes "seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation" as one of the three possible aims defining a terrorist offence. However, it takes note of the clarification provided in the draft explanatory report (paragraph 36), that "legitimate activities that are protected by human rights laws, such as freedom of religion and conscience, freedom of expression or publication, should not be subject to criminalisation" by virtue of the new provisions. The Assembly considers that this explanation could be further strengthened by adding the following sentence in paragraph 36 of the draft explanatory report: "For example, the public expression of radical, polemic, shocking or controversial views on sensitive political questions does not fall within the scope of this amending protocol."

11. The Assembly further considers that the inclusion of threats to commit any of the acts listed in points *a* to *i* of Article 1, paragraph 1, increases the risk of overbroad criminalisation and, in consequence, criminalisation of the exercise of the right to freedom of expression. It therefore recommends that the scope of Article 1, paragraph 1.*j,* be limited only to threats that are both "serious" and "credible".

12. Finally, the Assembly supports the proposal for the Warsaw Convention to be supplemented with an explicit humanitarian exemption, in line with the United Nations Security Council Resolution 2664 (2022). Considering the limited scope of the draft protocol, it invites the Committee of Ministers to ask the Council of Europe Committee on Counter-Terrorism to take this proposal into account in its future work, in the context of a more comprehensive review of the Warsaw Convention, including its Article 12 and other provisions.

13. The Assembly therefore recommends that the Committee of Ministers make the following amendment to the draft protocol:

13.1. in Article 1, paragraph 1.*j,* replace the word "threatening" with the words "a credible and serious threat".