Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 255 (2005)[1]

Draft Convention on the prevention of terrorism

Parliamentary Assembly

1. The Parliamentary Assembly, having on several occasions called for further Council of Europe action against terrorism, cannot but warmly welcome and strongly encourage work towards the draft convention on the prevention of terrorism, which received its first reading in the Committee of Experts on Terrorism (Codexter) from 13 to 15 December 2004. Whilst recognising that the current draft represents "work in progress", with further meetings of the Codexter planned for February and March 2005, the Assembly is constrained to give its opinion on the text before it. Nevertheless, the Assembly can provisionally conclude that this draft suggests an important and valuable addition to national and international efforts to combat international terrorism, whilst repeating its calls for further work on a comprehensive convention on terrorism.

2. In its Resolution 1400 (2004) on the challenge of terrorism in Council of Europe member states, the Assembly stated that: "The protection of human rights plays a key role in the fight against terrorism. These rights are central to our credibility. Any violation of these rights weakens the international coalition in the fight against terrorism and drives new supporters into the hands of the terrorists." This statement is fully applicable to the draft convention on the prevention of terrorism. If the Assembly is to give its unqualified support to the final text of the convention, therefore, it is essential that the draft convention reflect fully the minimum standards contained in the Committee of Ministers' Guidelines on human rights and the fight against terrorism, as adopted on 11 July 2002, along with all other relevant obligations by which member states are bound under international law. The Assembly also invites the Committee of Ministers to make future drafts of the convention available on the Council of Europe website, in such a way as to allow civil society an effective opportunity of submitting comments.

3. The Assembly therefore makes the following recommendations to the Committee of Ministers :

in the title, before the word "convention", to add the words "Council of Europe" ;

in the preamble, sub-paragraph 5 ("Recalling the need…"), to replace the current wording with the following: "Reaffirming that it is absolutely necessary for all measures taken in the fight against terrorism to respect human rights, the rule of law and, where applicable, international humanitarian law";

in the preamble, after sub-paragraph 4, to add a new sub-paragraph as follows: "Reaffirming that acts of terrorism, whoever they are perpetrated by, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and recalling the obligation of States Parties to prevent such acts and, if not prevented, to prosecute and ensure the punishment of offenders through penalties which take into account their grave nature";

in Article 1 ("Terminology"), paragraph 1, to delete the words "within the scope of and as defined in one of the treaties" and, at the end, to add the words ", when the purpose of the act which constitutes the principal offence, by its nature or context, is to intimidate a population or to compel a government or an international organisation to do or to abstain from doing any act";

1. Assembly debate on 27 January 2005 (7th Sitting) (see Doc.10423, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bartumeu Cassany, and Doc. 10439, opinion of the Political Affairs Committee, rapporteur: Mr Mercan). Text adopted by the Assembly on 27 January 2005 (7th Sitting).

In Article 2 ("Purpose"), at the end, to add the following words: "and full respect for human rights and the rule of law";

in Article 3 ("National prevention policies"), at the end of paragraph 1, to add the following words: "and international humanitarian law";

in Article 4 ("Public provocation to commit an act of terrorism"), paragraph 1, to replace the provision on indirect incitement (from the words "including where the message" until the end) with a formulation ensuring greater legal certainty and guaranteeing full and effective respect for human rights, in particular the freedom of expression;

if amendment vii above is not adopted, in Article 4, paragraph 1, to delete the words from "including where the message" to the end of the paragraph;

in Article 4, paragraph 2, after the words "provided that the provocation", to add the words "incites violence and", and after the words "imminent danger" delete the words "or likelihood";

in the final explanatory report's comments on Articles 4 to 7, to stress that all measures taken in relation to the offences must comply with the conditions and safeguards contained in Article 9, and in particular to respect fully Article 10 or 11 of the European Convention on Human Rights, as appropriate;

to delete Article 6bis ("Non-reporting");

if amendment xi above is not adopted, in Article 6bis, to delete paragraphs 1 and 2;

in Article 7 ("Ancillary offences"), paragraph 1, to add the word "knowingly" at the beginning of sub-paragraphs a and b;

in Article 7bis ("Non-application of the Convention"), to replace the words: "This Convention shall not apply where any of the offences established in accordance with Articles 4-7" with the words "Without prejudice to the obligation to establish the offences listed in Articles 4-7 in compliance with the conditions and safeguards contained in Article 9, Articles 15 and 16 shall not apply where any of such offences";

in Article 8 ("Sanctions and measures"), at the end of paragraph 1, to add the words "which shall in no circumstances include the death penalty";

in Article 8, at the end of paragraph 2, to add the sentence: "Such convictions shall not be taken into account where it emerges that they result from a flagrant denial of justice";

to delete Article 8bis ("Confiscation");

in Article 9 ("Conditions and safeguards"), paragraph 1, to replace the words "the establishment, implementation and application of the criminalisation under Articles 4-7 of" with the words "all measures taken further to";

in Article 9, paragraph 1, after the words "freedom of expression" to add the words "notably the legitimate exercise of freedom of political speech,";

in Article 9, paragraph 1, to delete the word "and" before the words "freedom of religion", and after those words, to add the words "the right to liberty and security, the right to a fair trial and the prohibition of torture and inhuman or degrading treatment or punishment" (followed by a comma);

in Article 9, paragraph 2, to replace the words "should furthermore be subject to" with the words "shall comply with", and replace the second instance of the word "should" with the word "shall";

to delete Article 11 ("Prevention of justification");

to delete Article 11bis ("Non-abuse of refugee status");

in the final explanatory report's comments on Article 13, to stress that all measures taken further to this article must comply with the conditions and safeguards contained in Article 9, in particular the provisions of Article 5 of the European Convention on Human Rights;

to delete Article 18 ("Exclusion of the political exception clause");

to replace Article 18bis ("Discrimination clause") with the following:

"Article 18bis – Grounds for r0efusing extradition or mutual legal assistance

1. States Parties shall refuse to comply with requests for extradition or mutual legal assistance made in relation to the offences set forth in Articles 4 to 7 where there are substantial grounds for believing that the request :

a. has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons ; or

b. is the result of a flagrant denial of justice.

2. States Parties shall refuse to comply with requests for extradition made in relation to the offences set forth in Articles 4 to 7 where there are substantial grounds for believing that complying with the request would result in the person concerned facing a real risk of :

a. being exposed to the death penalty, unless that risk has been removed by sufficient assurances given by the requesting State ;

b. being sentenced to life imprisonment without any possibility of early release, unless that risk has been removed by sufficient assurances given by the requesting State ;

c. being subjected to torture or to inhuman or degrading treatment or punishment ;

d. suffering a flagrant denial of justice" ;

xxvii. in Article 19 ("Spontaneous information"), after paragraph 3, to add a new paragraph as follows: "Any information for which there are substantial grounds for believing that it has been obtained as a result of torture or inhuman or degrading treatment or punishment shall not be used as evidence in any proceedings" ;

xxviii. in Article 31 ("Follow-up"), paragraph 1, at the end of sub-paragraph a, to add the following: "and shall make a specific assessment of the impact of the convention on human rights in the States Parties" ;

xxix. revise the annex so as to include an exhaustive list of the treaty articles containing the intended "principal offences".

4. The Assembly notes with satisfaction that after its repeated calls to strengthen the legal basis of combating terrorism, practical work has been launched. It notes, however, that the draft is far from being a comprehensive anti-terrorism convention, elaboration of which has been demanded by the Assembly on several occasions. Therefore, it expects that the Committee of Ministers will return to the issue of a comprehensive convention in the near future. The Assembly would particularly like to note the lack of a legal definition of terrorism. It therefore calls upon the Committee of Ministers and upon member states to consider whether it is not desirable for such a definition to be elaborated within the Council of Europe, and to exercise all possible support to relevant activities of the United Nations.