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# **COUNTER-TERRORISM AND HUMAN RIGHTS IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS**

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An aerial view of the Earth from space, showing the continents of North and South America in shades of blue and white, surrounded by the dark blue of the oceans. The perspective is from a high altitude, looking down at the planet.

**PART I: HUMAN RIGHTS  
STANDARDS & P/CVE RESPONSES  
GENERAL CONSIDERATIONS**



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- Human rights are a compulsory component of any P/CVE CT strategy (UNSC Global Strategy against Terrorism + Res 1373; 2178; 2199, etc.)
- HR abuses despite being illegal proved to be counterproductive in CT.
- Thousands of HR abuses, many related to the “national security imperative” (Abu Qatada v. UK; Abu Hamza v. UK; Al Nashiri v. Lithuania; Al Nashiri v. Poland; *A & Others v. UK...*); not surprising: correlation terrorism/political opposition: a classical pairing.
- Birth of a new CT approach: prevention; preparatory offences; concept of radicalization: not legal, but psicosocial; plural, dependent on many different factors, depending on country, region, community or individual; evolving along time, not static.
- Being ahead TERR: where is the red line? “an individual about to perpetrate an offence...”. Preparatory offences largely punished internationally and domestically.



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- Repression/suppression TERR. HR breaches: life, forced labour, torture, arbitrary detention, fair trial, principle of legality, irretroactivity, privacy and family life.
- Prevention: freedom of expression, religion, assembly.
- ECtHR: State interventions established by law, quality law, necessary in a democratic society (proportionality): respect for procedural guarantees again crucial from a different point of view. Ahmet Yildirim v. Turkey; Vissy & Szabo v. Hungary; K. & Saybatailov v. Russia.
- Too wide definition of terrorism/terrorist offences and many elements of the crime: prone to potential abuse: Turkey, Russian Federation, Georgia, Azerbaijan, Latvia, Estonia, Lithuania, etc. But also: Marocco, Tunisia, Algeria, etc.
- After terrorist attacks: reinforcement of national security: new CT domestic laws, harder punishment, etc.
- Compulsory respect of HR; however, longer detention periods; harder control in prisons; less penitentiary benefits; interception of communications (now crucial new IT).



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- Common to many countries: attending rather to the immediate, less to root causes?
- Most of radicalized individuals: Young males. Frustration; unemployment; disengagement from institutions, etc: corruption; frustration with domestic politics (ISIS parallel state); deprivation of resources for social action: not specifically envisaged in P/CVE.
- Vague/imprecise definitions is not the only legal problem related to P/CVE. Obviously: self-incrimination under torture, life imprisonment, death penalty are of the gravest importance. Other procedural problems: possibility of being judged “in absence”; extradition problems.



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## Concluding Part I:

Current efforts to defeat violent extremist groups are still dominated by hard security measures in many cases, with no guarantees that military action alone can ensure permanent solutions to the specter of terrorism. In this landscape HR are not always respected. Even if returned foreign terrorist fighters are to be most controlled, radicalism will not disappear by ignoring human rights protection, but will find ways to manifest itself. HR breaches are but new arguments/reasons for legitimating radical thinking/behavior conducive to terrorism, a new cause to flag by radicalized individuals or terrorist groups (HR in detainees camps Iraq/Syria?)

An aerial view of the Earth from space, showing the continents of North America, South America, and Africa. The image is slightly blurred and has a blue tint, suggesting a high-altitude or satellite perspective. The text is overlaid on the center of the image.

**PART II: HUMAN RIGHTS  
CHALLENGES AND P/CVE NATIONAL  
STRATEGIES/LEGISLATION**



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## **Finding I:**

Lack of translation of most CT domestic legislation into French/English (international working languages)

Dispersion at the time of regulating CT: penal codes + especial legislation + provisions on money laundry + legislation on criminal procedure + laws governing prison regime

## **Finding II:**

There scarcely exist particular domestic provisions on HR protection and CT: a unified treatment as a potential solution?





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### **Finding III:**

Different domestic systems at the time of defining a terrorist offence: definition v. “listing” system

Requirement of a special “dolus”

Vagueness of many definitions (too broad or too general)

### **Finding IV:**

In Europe: particular problems posed by freedom of speech and incitement to commit terrorist offences.



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## **Finding V:**

Challenges posed by new technologies when CT.  
Crucial role of the judge.

## **Finding VI:**

Particular importance of protection of freedom of expression in a democratic society. Limits set up by the ECHR and the ECtHR to the States' action.

## **Finding VII:**

New considerations added due to FTF



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## **Concluding Part II:**

National legal systems and provisions concerning P/CVE are immense and disperse, and they still show many differences. This constitutes an obstacle and a weakness in the action against terrorism, in particular when it comes to CT and the use of new technologies .

An aerial view of the Earth from space, showing the continents and oceans in shades of blue and white. The text is centered over the image.

**PART III: HUMAN RIGHTS  
PROTECTION AND THE EUROPEAN  
COURT OF HUMAN RIGHTS**

# **I. DETAINING TERRORIST OFFENDERS AND JUDGING TERRORIST SUSPECTS**

- 1. General remarks: global terrorism, new features, new specific ways of performing terrorist offences, new alliances (TOC)**
- 2. CEDH rights analysis v. new scenarios (ICT; extraterritoriality)**
- 3. ECtHR particular approach to ECHR provisions: doctrines of subsidiarity, margin of appreciation and ECHR lively instrument doctrine**

# **A. DETAINING TERRORIST OFFENDERS: Art. 5 ECHR: Right to liberty and security**

- **Arbitrary arrest**
- **Pre-trial detention**
- **Extraordinary renditions**
- **Suppression of Habeas Corpus**
- **Detention/right to life/torture**
- **Detention with a view to deportation or extradition**

- **General principle: prohibition of deprivation of liberty; exception: detention, always justified. Detention consistent with one of the grounds provided by Article 5 ECHR**
- **Applicability of Art. 15 to right to liberty? Exceptional derogation: from Brogan & Others v. UK to A and Others v. UK; not even under the imperative of national security (Al-Jedda v. UK)**
- **Detention on reasonable suspicion of a terrorist act with the aim to bring the suspect to justice (Öcalan v. Turkey): evidentiary requirements (Al-Husin v. Bosnia-Herzegovina); prohibition of general policy of preventive detention; and obligation to register detention (Bazorkina v. Russia) (Othman v. UK)**

- **Conditions of detention in terrorism cases: obligation to comply with minimum guarantees in the basis of the rule of law (A & Others v. UK); reasons for detention must be provided in detail and promptly (Tomasi v. France); delays in bringing suspects to court strictly construed (Aksoy v. Turkey); detention and pre-trial detention must be duly authorised.**
- **Habeas corpus: right to challenge lawfulness of the detention (Husayn “Abu Zubaydah v. Poland; Al Nasiri v. Poland; H.S. v. Cyprus); right to legal representation (Öcalan v. Turkey)**
- **Asylum, refoulement, expulsion, deportation and extradition: higher threshold (Saadi v. Italy; El Masri v. FYROM; Ismoilov & Others v. Russia; cases v. Sweden: D.N.M.; S.A.V.; M.Y.H.; W.H.; A.A.M.)**



## **B. JUDGING TERRORIST SUSPECTS: Art. 6**

### **ECHR: Right to a fair trial**

- **Right to a hearing within a reasonable time by a tribunal (Kalay v. Turkey)**
- **Right to a hearing by an independent and impartial court: not in abstracto; problem of military courts; compulsory adversarial character (Sadak & Others v. Turkey)**
- **Presumption of innocence: not only by the court but also by other involved authorities (Hulki Günes v. Turkey); right to remain silent and not to incriminate oneself (Quinn v. Ireland; Magee v. UK).**

- **Right to have adequate time and facilities to prepare one's defence (Öcalan v. Turkey; A & Others v. UK)**
- **Right to a fair and public hearing (Kennedy v. UK; Belashev v. Russia; Ibrahim & Others v. UK)**
- **Relationship between Arts. 6 & 13 ECHR: the right to an effective remedy in case of violation (substantive/procedural violations doctrine) (Khasiyev & Akayeva v. Russia)**
- **Legality principle and non retroactivity of the criminal law (Del Río Prada v. Spain)**

## II. INDIVIDUAL LIBERTIES AND THE FIGHT AGAINST RADICALISATION

- **Right to private and family life (Art. 8 ECHR): possibility of access to a detained person (Sari & Çolak v. Turkey); privacy of correspondance between detainee/lawyer (Domenichini v. Italy; Erdem v. Germany); secret surveillance (Klass & Others v. Germany; Khasymakunov & Saybatalov v. Russia; Szabo & Vissy v. Hungary)**
- **Personal integrity (Y.F. v. Turkey; Gillan & Quinton v. UK)**
- **Home searches (Imakayeva v. Russia)**

- **Freedom of expression (Art. 10 ECHR): opinions that offend, shock or disturb (Castells v. Spain; Cox v. Turkey; Dupuis & Others v. France); particular protection in the case of politicians (Refah Partisi v. Turkey)**
- **Limitations prescribed by law (quality law), pursue a legitimate aim; and is needed in a democratic society (pressing social need)**
- **Means of distribution used by suspect offenders (dissemination) (Okçuoglu v. Turkey)**
- **Hate speech (Arslan v. Turkey; Sürek v. Turkey; Leroy v. France)**

- **Freedom of assembly and association (Art. 11 ECHR) (Socialist Party & Others v. Turkey)**
- **Freedom of association: importance of political party for a democratic society and the rule of law (United Communist Party of Turkey & Others v. Turkey; Herri Batasuna & Batasuna v. Spain; Refah Partisi & Others v. Turkey)**
- **Right to stand for election (Etxeberria, Barrena Arza, Nafarroako Autodeterminazio Bilgunea et Aiarako & Others v. Spain; Eusko Abertzale Ekintza v. Spain).**

An aerial photograph of a vast, flat landscape, likely a salt flat or a coastal plain. The terrain is a mix of light blue and white, suggesting different mineral compositions or perhaps a thin layer of snow or salt. The horizon is visible in the distance under a clear sky.

**Thank you very much!**

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