The Effects of Counter-Terrorism
On
Human Rights and Democratic Values
In Western Europe

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INTRODUCTION

Many Western European countries have become targets to terrorist action.\(^1\) Especially France has been suffering from several terrorist attacks in particular committed by the terrorist group of The Islamic State of Iraq and Syria (ISIS)\(^2\), climaxing in the 2015 November Attacks in Paris with 130 dead people and hundreds injured.\(^3\)

The complex and serious threat continues as already 12 additional terroristic attacks with an ISIS-linked background have been reported in Western European countries this year.\(^4\)

In the context of the terrorist threat posed by ISIS Rob Wainwright, Director of Europol in The Hague, states: “This is the highest terrorist thread we have faced in Europe since the days of 9/11. […] The threat is alive and current. Another attempted attack is almost certain”.\(^5\)

Due to this current threat of terrorist acts in Western European territories, the governments and organs of the European Union are challenged to protect their population and improve their counter-terrorist strategies to ensure safety among European citizens.

This paper will give an overview on the strategies and legal practices adopted by the Western European States, as well as the European Union as a whole to counter terrorist threats. Special attention will be paid to the practices of France, the United Kingdom and Germany in comparison with each other. Preference will be given to the recent measures adopted in the aftermath of the Paris November attacks.

However, just as terrorist action violates Human Rights and has the ability to destabilize democracies, so too can methods adopted by states to counter terrorist threats. In the recent past counterterrorism strategies adopted by governments have themselves violated important Human Rights and the rule of law.

The main purpose of this Paper is to point out which aspects of the essential Human Rights and democratic values are diminished and how they are effected by the present counterterrorism strategies. We will therefore examine in what sense the Articles 2, 7, 11, 14, 15, 17, 18 and 28 of the Universal Declaration on Human Rights\(^6\) are effected or restricted by counterterrorist measures. The case-study methodology will be used to illustrate current state and effect of CTS (Counter terrorism Strategy).

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\(^1\) Europol TE-Sat 2015; latest report available at: Europol.europa.eu
\(^2\) also known as The Islamic State of Iraq and the Levant (ISIL), simply Islamic State (IS) or “Deash”
\(^3\) Mary Brophy Marcus, “Injuries from Paris Attacks will take long to heal”, CBS News, 19 November 2015, Available at: http://www.cbsnews.com/news/injuries-from-paris-attacks-will-take-long-to-heal/
\(^5\) Vivienne Walt, “Europe’s Top Cop: It’s Almost Certain Terrorists will try to strike again”, Time, 16 May 2016, Available at: http://time.com/4336919/europol-terrorist-paris-brussels-rob-wainwright/
At last we will try to give an overview on how strategies can be improved in order to reduce the risk of Human Rights restrictions and keep an equal effective counter-terrorist strategy among the Western European society.

TERRORISM AND COUNTERTERRORISM

I. Terrorism

From a political perspective there is a strong need for an explicit and therefore criminally relevant definition of the term “terrorism”. However, the various political interests of the member states of the United Nations refused so far to agree on a uniform definition.

But yet in December 2001 the European Union agreed on a general legal frame in countering terrorism. An explicit definition for terrorism could not be found either, in fact they agreed on various crimes that not only are related to a terrorist origin.

Thereafter a “terrorist act” is one that “may seriously damage a country or an international organization” when the objective is: “(1) seriously intimidating a population, or (2) unduly compelling a Government or international organization to perform or abstain from performing any act, or (3) seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or international organization.”

Terrorist crimes according to the framework include: killing and wounding people, kidnapping, hostage-taking, attacks on government and public facilities and infrastructure, hijacking aircraft, ships or other means of public or goods transport, acquiring or using explosives or weapons of mass destruction, interfering with fundamental natural resources, and threatening to commit any of these offences.

Penalty may incur also to the one who is directing a terrorist group and participating in the activities of a terrorist group “with knowledge of the fact that such participation will contribute to the criminal activities of the group”.

Although there is no consensus among a definition for terrorism, the EU member states have made an important step with the agreement to the above criminal offences.

II. Counter-terrorism

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7 “Probleme bei der Definition des Terrorismus”, Tagesschau, 30.08.2007, Available at: https://www.tagesschau.de/ausland/meldung388732.html
9 Ibid.
11 Ibid. 10
12 Ibid. 10
In September 2001, the UN took the first step and adopted Resolution 1373 with the aim for states to “work together urgently to prevent and suppress terrorist acts.”

Just like the United Nations adopted their Counter Terrorism Strategy, the EU member states adopted the EU counter terrorism Strategy even before, in 2005. Its strategy is focused on four main pillars: Prevent, Protect, Pursue and Respond. According to the Council, the counter-terrorism strategy aims to “combat terrorism globally, while respecting human rights and to make Europe safer, allowing its citizens to live in an area of freedom, security and justice.”

The latest EU resolution was adopted on 11 February 2015 in which the EU heads of states stressed the importance for the EU to actively encourage a global partnership against terrorism.

HUMAN RIGHTS AND HUMAN RIGHTS LAW

Human Rights are fundamental rights every person is entitled to have, despite all kinds of social factors such as nationality, place of residence, sex, national or ethnic origin, color, religion, language or any other status.

Human Rights should protect individuals such as groups against actions as well as omissions primarily but not only practiced by States. The full range of Human Rights is very wide and involves respect, protection and fulfilment of civil, cultural, economic, political and social rights as well as the right to development. Human Rights are universal, independent and invisible.

Human Rights are often expressed and guaranteed by law in different forms such as conventions, international law, general principles and other sources of international law. It is the duty of International Human Rights law to specify obligations for Governments to act

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in certain ways in order to protect Human Rights of everyone. That can also mean to refrain from acts that might violate basic rights of individuals or groups.\(^\text{20}\)

The Universal Declaration on Human Rights Law (UDHR) adopted in 1948 is generally seen as the foundation of international human rights law. Over the years the commitment has been translated into law in its versatile forms.\(^\text{21}\)

**But how does international law protect Human Rights?**

Member States are bound to respect duties laid down by International Human rights law. When states become parties to international treaties, their governments assume obligations under international law to respect human rights.\(^\text{22}\)

Governments commit to put into place domestic measures and legislation compatible with the obligations when they ratify human rights treaties. The domestic legal system include the principle of legal protection of human rights guaranteed under international law. Where domestic legal proceedings fail to address human rights abuses complaints are available at the regional and international levels. In this way international human rights standards should be respected, implemented and enforced at the local level.\(^\text{23}\)

The concrete Human Rights that we will refer to are those according to the List by the Universal Declaration of Human Rights proclaimed by the UN in 1984.\(^\text{24}\) Since it will go too far to examine all 30 rights on this list we have selected several rights that are effected or most likely to be effected by the counterterrorist measures of Western European states. Therefore I will address Articles 2, 7, 11, 14, 15, 17, 18 and 28 of the Declaration.\(^\text{25}\) Before that I am going to outline the (legal) framework of the counterterrorist strategies of France, Germany, U.K. and the EU.


\(^{23}\) Ibid., see also: United Nations, “International Human Rights Law”, Available at: [http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx)


\(^{25}\) The articles that I will address in the following: Article 2: The right to no discrimination, Article 7: The right to equality before the law, Article 11: Right to be considered innocent until proven guilty, Article 14: Right to Asylum, Article 15: The right to a nationality and the freedom to change it, Article 17: The right to own property, Article 18: The right to religion and to practice it, Article 28: The right to the declaration’s articles to be realized. Nancy Flowers, The Universal Declaration on Human Rights (abbreviated), For an abbreviated list see more at: [http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-5/8_udhr-abbr.htm](http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-5/8_udhr-abbr.htm)
COUNTER TERRORIST STRATEGIES AND LEGAL FRAMEWORK

The counterterrorist strategy and legal framework of the EU

Strategy

Whenever terrorist attacks have occurred among the EU members counterterrorist strategy has always been modified. This step-by-step adjustment is eye-catching when looking at the establishment of counterterrorist measures among the EU.

In order to present the more recent structures we will not look at the measures from the very beginning of the EU start period, but rather have a closer look to the measures established after the 9/11 attacks.

After 9/11 for the first time the member states reached an agreement to make counterterrorism a primary objective of the EU cooperation. The member states therefore adopted a range of measures to fight this new kind of terrorism. Additionally the EU adopted a first comprehensive Action Plan to fight terrorism. Another important legal instrument established in the aftermath of the 9/11 attacks was the Council Framework Decision on Combating Terrorism, which was established in December 2001 and aimed at improving legal harmonization of Member States’ legislations.

It took a few years to again raise awareness to the topic of terrorism. After the Madrid attacks in March 2004 the European Council adopted an ambitious Declaration on combating terrorism. The European Council endorsed a renewed Action Plan including a much more detailed map of actions to be put in place in order to counteract terrorism, which included the following objectives:

- Deepen international consensus and enhance international efforts
- Reduce access of terrorists to financial and other economic resources
- Maximize capacity among EU members to detect, investigate and prosecute terrorist and prevent terrorist acts
- Protect security of international transport and ensure effective border control
- Enhance capability to deal with consequences of terrorist attacks
- Address the factors which contribute to terrorism
- Improve work with third countries as a concept of EU external relations

One year later after the occasion of the London bombings on 7 July 2005, perpetrated by four young Britons an extraordinary meeting of the Ministers of the Interior of the EU Member States took place. They decided on the implementation of the following, more concrete measures: a European

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26 Wissenschaftliche Dienste des Deutschen Bundestages, Maßnahmen der EU zur Terrorismusbekämpfung, 2009; see also: David Casale, „EU Institutional and Legal Counter-terrorism framework“, Spring 2008
Arrest Warrant (short EAW), the strengthening of Schengen and visa information systems, biometric data on passports, combating terrorism financing, prevention of recruitment and radicalization and greater controls on trade, storage and transport of explosives.\(^{32}\)

In the end of 2005 the member states came to the agreement of a new counterterrorist strategy in with all member states undertake to combat terrorism worldwide and thereby protect Human Rights, to make Europe safe for its inhabitants and enable all humans to live in a place of freedom, security and under the rule of law. In order to achieve these goals the strategy demands all states to act on a national, European and international level, because of the fact that terrorism is a global task. The new strategy is based on four main pillars: (1) Protect, (2) Prevent, (3) Pursue, and (3) Respond.\(^{33}\) Across these four pillars, the strategy seeks to link fields from different policy areas and emphasize close interaction of measures at the Member State, the European and the international level.\(^{34}\)

**Institutional Frame**

Since the EU has established a wide range of organs in its institutional structure, we will concentrate on the most important organs according to the fight against terrorism. On the legislative level the European Commission is primarily the main actor in proposing new legislative tools in the area of the third pillar “Pursue”. These proposals are the ground for the EU legislation on Counterterrorism (e.g. the European Council’s proposal for the Framework Decision of defining the crime of terrorist acts and the European Arrest Warrant).

Europol as the international police organization and Eurojust as a judicial organization are the most important institutions on the operational level. Europol’s aim is promoting cooperation among law enforcement authorities of the EU member states in the fight against serious organized crime such as terrorism.\(^{35}\) Not until after the Spain attacks terrorism became explicitly a Europol task. The main task in order to fight terrorism is the collection and exchange of intelligence information.\(^{36}\) Europol therefore mandates instruments such as the counterterrorism unit and the counterterrorism task force and a number of functionally specialized programs as well as the TESAT which is the periodically published “Annual Terrorism Situation and Trend Report”.\(^{37}\) The main problem according to the effectiveness of Europol is the imperfect flow of information from national intelligence services since member states are reluctant to share information.\(^{38}\)

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\(^{35}\) According to the Europol Convention (Article 2.1), the objectives of Europol are “preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organized structure is involved”. Europol Convention, 26 July 1995, Available at: [https://www.coe.int/t/dghl/cooperation/economiccrime/organisedcrime/projects/carlo/output_3_-_special_investigative_means/Europol_Convention.pdf](https://www.coe.int/t/dghl/cooperation/economiccrime/organisedcrime/projects/carlo/output_3_-_special_investigative_means/Europol_Convention.pdf)


\(^{38}\) Mirjam Dittrich, Facing the Global Terrorist Threat, op. cit., p. 32.
Eurojust, on the other hand is a permanent network of national judicial authorities of the EU member states (one legal expert of each country: Article 3) established in 2002.\(^3^9\) Its main objectives are:

- Improve cooperation between national authorities
- Stimulate and improve coordination of investigations and prosecution in member states
- Provide expertise to member states and the council

The tasks according to the Council Decision can be divided into the following parts:

1. Organization of National Correspondents at a national level and access to information,
2. Transmission of information,
3. Eurojust’s methods of processing the information and
4. Assistance and feedback from Eurojust to Member States.\(^4^0\)

Other institutions that need to be mentioned in the fight against terrorism are firstly the EU Counterterrorism Coordinator, secondly the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) and thirdly the European Joint Situation Centre (Sit-Cen).\(^4^1\) These organs are all significant in the EU fight against terrorism, but cannot be discussed in detail in this paper and are therefore just mentioned to give a more complete overview of EU’s institutional architecture.

In reaction to the new threat posed by ISIS, the EU decided on some innovations in order to combat terrorist actions including the finalizing of the EU Passenger Name Record (PNR) directive before the end of the year, the improvement of fighting against trafficking of firearms, the reinforcement of controls at EU external borders, the targeting of terrorist financing, the improvement of information sharing and judicial cooperation through Europol and Eurojust.\(^4^2\)

**Legal responses to the terrorist threat**

The first important legal step in EU Counterterrorism was the adoption of a definition to criminalize terroristic acts as I already mentioned (see Chapter B. I.).

The biggest legal adjustment developed in the past was the European Arrest Warrant (EAW), replacing lengthy extradition procedures within the EU’s territorial jurisdiction. “It improves and simplifies judicial procedures designed to surrender people for the purpose of conducting a criminal prosecution or executing a custodial sentence or spell in detention.”\(^4^3\)

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\(^4^0\) David Casale, “EU Institutional and Legal Counter-terrorist Framework”, Spring 2008

\(^4^1\) Ibid.


In concrete the EAW may be issued if: “(1) the person whose return is sought is accused of an offence of which the maximum period of the penalty is at least one year in prison (2) He or she has been sentenced in a prison term of at least four months”.44

Another important step was the controversial adoption of the collection of biometric data to the Schengen Information System (SIS).45

Recent Development
In direct response to the Charlie Hebdo and November Attacks in France, the EU has adopted several recent measures to their counter-terrorist strategy including46:

- Finalizing the EU passenger name record (PNR) directive
- Fighting against the trafficking of firearms
- Reinforcing controls at EU external borders
- Targeting terrorist financing
- Improving information sharing and judicial cooperation

The counterterrorist strategy and legal framework of the French Government
Since France was recently most targeted by ISIS terror, the government around Prime Minister Francoise Hollande has been forced to the adoption of measures that eliminate the danger that ISIS poses. Before I will describe in detail the objectives adopted in the aftermath of the November attacks, I will give a general overview of the Institutional bodies in France that contribute to combat terrorism.

The institution that is overseeing and coordinating every anti-terrorist activity in France is the so-called Interministerial Liaison Committee against Terrorism (CILAT). The committee is consisting of the Prime Minister, the Ministers of the Interior, Justice, Defense, and Foreign Affairs. Its mission is to develop and direct counterterrorism policy.47

Below the committee in the rank is the Anti-Terrorism Coordination Unit, which includes agencies from the Interior and Defense ministries and which coordinates operations. Frances’ ministry of the Interior is a security and law-enforcement department. The ministry which oversees the Anti-Terrorism Coordination Unit also includes the National Police, the Central Headquarters for Surveillance of the territory, and the General Intelligence Central Service. All of these services are responsible for law enforcement and/or monitoring of suspicious activities in French territories.48

The national police is the principal civilian police force acting in large urban areas. Within the national police are specialized groups with functions such as border security and the protection of dignitaries. In addition to the national police there is the National Gendarmerie, which is in contrast

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48 Ibid.
to the national police not directed by the Ministry of the Interior, but by the Ministry of Defense. The National Gendarmerie oversees law enforcement in small towns and rural areas.

Also under the Ministry of Defense is GIGN, the counterpart to the German GSG-9, a special task-force that was formed in the aftermath of the terrorist incident at the 1972 Munich Olympic Games. GIGN, though highly effective in special circumstances, as a small force, consisting of fewer than a hundred full-time personnel, at the end of the 20th century. Its activities are therefore rather limited compared to those of larger police forces.

The central headquarters for Surveillance of the territory, an arm of the National Police, gathers intelligence regarding potential threats from external organizations. Overseeing potential threats by international organizations is the General Intelligence Central Service. Outside of France, intelligence gathering is the job of the General Headquarters for Security Overseas, which is under the Ministry of Defense. The central Headquarters Military Intelligence, also under the Ministry of Defense, gathers and interprets military intelligence

In the following I will describe the steps Hollande took in the direct response to the November Paris attacks. His political response was primarily focused on four important steps49, including the following:

1. State of emergency
2. Increase security forces
3. Intensification of military attacks in Syria
4. Claim deprivation of French citizenship

The first and noticeable measure, the French Prime Minister took into action was to call out the state of emergency. The state of emergency involves a shifting of the judicial powers to the executive level. Executive powers are then allowed to make restrictions and changes in the regulations and laws that protect the freedoms and rights of the civilian population, without needing judicial approval. Concrete measures adopted through the state of emergency can be the use of forced house arrest, house searches without the need of a warrant, longer interrogation or custody periods, the closing of suspected public places or increasing surveillance measures.50

The second measure adopted by Hollande was the increase of the security forces. This measure is a direct outcome of the state of emergency. It means added tasks for security forces in the police, borders and intelligence forces and giving more power and moreover independence to the armed forces inside France.51

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49 Fiore Poidevin, “The threat of Terrorism: Putting Human Rights to the test”, 2016
The third action Hollande took into place was the intensification of military attacks in Syria accompanying a commitment to increase the military budget of France. This measure will not be discussed in detail, since it is irrelevant for this paper, due to the fact that we look at Human Rights restrictions within Western European countries, and the attacks take place in Syria. Nevertheless it is a relevant counterterrorist action.

The fourth measure Hollande demanded was the adoption of a law, which can withdraw French binational citizens from their French citizenship, if they are suspected to be involved in any terrorist activity. This would implicate the French government being allowed to take rights away from citizens who possess another nationality than the French one. However this measure has not been adopted yet and requires the two parliaments of France (the Senate and the National Assembly) to come to a specific agreement on the law and vote for it.

The counterterrorist strategy and legal framework of the German Government

German counter terrorist structure is in many aspects similar to the French counterterrorism.

However, some differences do exist, e.g. the French permit a regional political appointee to assume control in the event of a local incident. The appointee oversees police and emergency activities on the scene. In contrast, in Germany the federal police take control in terrorist situations, when they are directed to do so by the federal prosecutor or state authorities. The federal police force is usually assisted by state police, which are likely to be the first responders in the event of a local incident.

The coordinator for Intelligence, coordinates state efforts under a general national policy. Actual day-to-day implementation of counter-terrorist activities is the work of the federal ministry of the interior, under whose auspices are police, intelligence agencies and border police. The federal criminal police (Bundeskriminalamt), an office of the Ministry of the Interior, provides protection for dignitaries, and investigate acts of terrorism. Intelligence is gathered by a number of agencies, including the German Intelligence Service (BND). Within the states, the State Criminal Police (Landeskriminalamt) conduct criminal investigations.

In reaction to the Paris attacks on the satirical magazine Charlie Hebdo Germanys Chancellor Merkel as well felt challenged to take counterterrorist action. In order to do so she developed her so called “9-points-plan” including the following measures:

1. Early warning system at asylum procedures
2. Increase police presence
3. Section for decoding network communication
4. Military help and support

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53 Fiore Poidevin, “The threat of Terrorism: Putting Human Rights to the test”, 2016
5. Research and prevention
6. More data flow in Europe
7. Prevent online arms purchases
8. Greater collaboration between secret services
9. Advanced deportation

German Justice Minister Heiko Maas made his position clear as he stated: “We will adopt one of the harshest anti-terror laws throughout Europe.” The German government approved to a new law, that will make it a criminal offence to travel abroad to receive military training, if the trip is aimed at committing serious seditious acts of violence. In addition the Merkel government strives for an independent crime of “terrorism financing”.

The Counterterrorist Strategy and Legal Frame of the U.K. Government
In the aftermath of 9/11 the U.K. government adopted the Anti-terrorism, Crime and Security Act, which was at the time considered the most restrictive anti-terrorism law among Europe.

On February 12th in 2015 the Government of the United Kingdom adopted the Counter-Terrorism and Security Act, which since it has been adopted, was criticized from many parties. The Bill was introduced to the House of Commons by Theresa May. This act targets terror subjects by measures such as confiscating passports, denying use of the internet and telephones, restricting domestic travel, and forcible relocations.

However, in the aftermath of the November Paris attacks, the question again rose, how to make the actual counterterrorist activities more effective to prevent Britain from such attacks that had happened in France.

In direct response to the occasions David Cameron, at that time Prime Minister, increased the amount of security and intelligence personnel about 15%.

Some voices became loud to put the Investigatory Powers Bill as soon in action as possible. It is at the moment undergoing legislative scrutiny.

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59 Wolfgang S. Heinz, Jan-Michael Arendt, “Internationale Terrorismusbekämpfung und Menschenrechte”, Deutsches Institut für Menschenrechte, August 2005
61 Since 13th July 2016 Prime Minister of the United Kingdom
62 Soeren Kern, “Britain Unveils World’s Toughest Counter-Terrorism Law”, Gatestone Institute, 7th December 2014; Available at: https://www.gatestoneinstitute.org/4928/britain-counter-terrorism-law
64 The Investigatory Powers Bill, Available at: http://services.parliament.uk/bills/2015-16/investigatorypowers.html
65 James Vincent, “After Paris Attacks, UK politicians suggest fast-tracking new surveillance laws” The Verge, 16 November 2015; Available at: http://www.theverge.com/2015/11/16/9742182/uk-surveillance-paris-attacks
EFFECTS OF COUNTERTERRORISM ON HUMAN RIGHTS

After we have examined the counterterrorist strategies, we will now have a look at the effect that the results of the measures have on Human Rights. We will therefore have a closer look at a selection of Human Rights from the List of the Universal Declaration on Human Rights. At the end we will as well mention the effects on democratic values in general and on the right to seek asylum.

Especially the adoption of the state of emergency and the increase of security forces in France led to restrictions of basic Human Rights.

**The right to religion and to practice it**

One concrete example where Rights were violated was the case of closing a Mosque in France. Under the state of emergency, the government could temporarily close religious establishments, which are suspected to promote and spread ideas that might harm the country. Hence, two Mosques close to Paris were closed. The police could search the establishments now without the need of a warrant or other kind of judicial permission, which was what happened in one of the establishments. After the search, where the police could not find any evidence related to terrorism or radicalization, the police still required the establishment to stay closed for the whole duration of the emergency period.

Article 18 of the Universal Human Rights Declaration implies: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Here the establishment has been closed without any evidence of a terrorist or radical threat posed by that certain Mosque. The measure of closing it for the duration of the state of emergency led to the removal of the religious site for all church members. They could not enter their community’s place of worship and thus were not able to practice their Religion at the Mosque anymore for several months. Thus their right to religion and to practice it was undermined by the French authorities.

**The right to own property**

Another case where general rights have been violated by the French government are general house searches. During the duration of emergency the police is allowed to enter private property, e.g. someone’s flat or house, without their consent, even without their presence being required, at any time of the day or night and moreover without judicial approval. According to official statistics published by Amnesty International a number of 3234 searches without warrant have taken place.

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67 Fiore Poidevin, “The threat of Terrorism: Putting Human Rights to the test”, 2016
68 Ibid.
69 Ibid.
72 Fiore Poidevin, “The threat of Terrorism: Putting Human Rights to the test”, 2016
73 Ibid.
between 14 November and the End of January in 2015. All these searches have led to only 344 police custodies, and 65 convictions, whereby not all are related to the November attacks. The several thousand house searches violate in this case the right to own property. The police forces were allowed to unhamper enter and search the suspect’s private property during any time of night and day, without permission of the owner, even without the presence of the owner. At the same time there was no option for the victims to counteract these interventions. The police forces could decide which property they wanted to enter and search without any approval. For the victims these house searches therefore occurred for no apparent reason and it was not evident on what basis these measures were taken.

However, not only allows this measure restrictions in the private sphere, moreover it is based on no judicial legitimation. Additionally there is a risk that the house searches were arbitrary, when there is no warrant necessary. Associated therewith is a risk to act discriminate. Even without the intention to discriminate, the house searches probably took primarily place in houses with a Muslim religious background and therefore it is questionable that the police forces have also violated the right to no discrimination. We will refer to these outcomes of the state of emergency later.

The right to no discrimination

As mentioned before the state of emergency allowed police forces to make house searches without the need of a warrant. Statistics developed by Amnesty International show that many people that became victims to these house searches did not know why the police forces decided to search their property. Since the police did not need a judicial order they could decide on their own measures, which people seemed suspicious. It is very likely that even without the intention to act discriminately, the police made these decisions based on the surface appearance. It is likely that they made decisions based on a person’s name, race, sex and religious beliefs, rather than on objective evidence. This thought can be partially proven by the Statistics of Amnesty International that says that from a number of 3234 have only led to 344 police custodies, and 65 convictions. And these were not all related to the November Paris attacks.

Article 2 of the Declaration includes: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

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76 Fiore Poidevin, “The threat of Terrorism: Putting Human Rights to the test”, 2016

The measures taken in place are likely to violate Article 2 of the Declaration of Human Rights because the laws adopted by states lead to discriminative action on the executive level, even when it is practiced unintentionally, there exists a risk to it.

**The right to equality before the law**

Especially the government of the United Kingdom violates the Right for Equality before the law. Their Counterterrorist strategy which is based on the ATCSA allows the government to arrest foreigners suspected of terrorist action without prosecution or trial for an unknown period of time. This legal position does not respect the right to equality before the law. In these cases the final authority lies by the Minister of the Interior of the U.K. government. A person suspected of terrorist action has furthermore no right to immediately get access to a lawyer.78

According to Article 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."79

The government of the United Kingdom violates with its counter terrorism law the Human Right to equality before the law. Moreover as it is mentioned in Article 10 that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."80

The anti-terrorism laws restrict therefore even two rights adopted to the Universal Declaration, the right to equality before the law and the right to a fair trial. As the only government among Europe the U.K. government legitimated these measures by the derogations of emergency of the UN Civil Pact and EMRK.81 Amnesty International has questioned several times that the emergency measures are incompatible with international Human Rights standards.82

**The right to a nationality and the freedom to change it**

As mentioned earlier in the paper Hollande called for a new law that can deprive by birth bi-national citizens from their French citizenship if they are suspected of any terrorist activity. As stated in Article 15: "1. Everyone has the right to a nationality. 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."83 When allowing the government to withdraw the nationality of a person, the general right to nationality could be restricted. However, this law Hollande and other European politicians ask for has not been adopted yet, but is being well received among politicians under current circumstances.

**The right to the declarations articles to be realized**

78 Wolfgang S. Heinz, Jan-Michael Arendt, “Internationale Terrorismusbekämpfung und Menschenrechte”, Deutsches Institut für Menschenrechte, August 2005
80 Ibid.
81 Wolfgang S. Heinz, Jan-Michael Arendt, “Internationale Terrorismusbekämpfung und Menschenrechte”, Deutsches Institut für Menschenrechte, August 2005
By violating any of the named rights, also Article 28 is being violated as it entitles “everyone to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.” That way any violation leads to a violation of the Human Rights Declaration in total and need to be prevented.

**Effect on general democratic values:**

Many measures adopted by states in order to ensure safety restrict on the other hand freedoms of the population and thus can have a negative effect on democratic fundamental structure. In order to demonstrate this we will use the measure of the state of emergency adopted by the French government.

As demonstrated, the shifting from judicial powers to the executive ones leads under the circumstances of a state of emergency to the allowance of executive powers to take many actions without a judicial permission, as usually required.

More precisely, for the purpose of making the fight against terrorism effective, the government has agreed that the judicial proceedings should be shortened. This means that the exterior judicial oversight of a judge that is the only possible operator to give an agreement on the application of counterterrorist measures in practice, has now been deprived from its position and these powers have now been given directly to prosecutors of the police investigation.

This shifting of tasks might be helpful in some cases where lengthy legal proceedings prevent fast action, but generally this measure contradicts the idea of separation of powers to ensure democratic legitimacy and transparency.

Some examples of the measures that can now be decided with no judicial oversight as already mentioned above involve regulations on house arrests and searches without warrants, and the use of surveillance measures. These are in particular the use of microphones inside of apartments and the use of IMSI-catchers. IMSI-catchers are surveillance activities which can track emails and telephone conversations.

Another serious issue can be posed as the law provides the executive powers to treat organized crime activity under the same regulations as terrorist activity. This may lead to more discriminatory conduct and arbitrary arrests even in the cases of organized crime activity. The measures are thus not only used to counter terrorist activity, but enlarge the scope of countering organized crime with the same executive advantages. In particular, there are a variety of measures concerning the police that are being revised in order to give them more autonomy under the Civil Code. In practice this means, that for example, their use of weapons has been relaxed meaning that they will not be held responsible if they fire their weapon under ‘absolute necessity’. Furthermore, the law allows the executive forces to take suspects in custody for a longer period.

Therefore the question rises to which extend the authorities of the police and other executive organs are still democratically legitimated. Problematic is the fact that the state of emergency has even

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84 Ibid.
85 Fiore Poidevin, “The threat of Terrorism: Putting Human Rights to the test”, 2016
been adopted to the French civil code. Additionally it can be problematic that the government can extend the emergency situation to a longer duration, as happened in France.

But not only measures adopted by the French government are critical.

A basic value of the state under the rule of law is the presumption of innocence until the suspected person is proven guilty beyond a reasonable doubt.

As mentioned in Article 11 of the Declaration: “1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. 2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”

In case of the U.K. government this principle of the rule of law is neglected by the counterterrorist laws that allow the government to arrest a person suspected of terrorist action without a trial or any other judicial treatment. Despite violating the general right to a fair trial terrorist suspects are not treated as any other suspect, in contrast they are treated by other laws.

**The right to seek asylum:**

The current flow of migrants to Western Europe is likely to become an issue in this problematic. Western European governments have adopted measures that make it more difficult to seek asylum in their territory, e.g. the Merkel government adopted such a measure within the 9-points-plan on combating terrorism. This reaction is partially an outcome of the risk that radicals might benefit from the migration flow and thus enter European borders undetected.

The right to seek asylum has been as well adopted in the Universal Declaration on Human Rights (Article 14: “Everyone has the right to seek and to enjoy in other countries asylum from persecution. […]”) although at that time the right to seek asylum had many restrictions, it is nowadays better protected and can be considered a general Human Right as any other. Especially Western European governments need to keep this in mind when adopting new measures on counterterrorism that restrict the right to asylum to refugees. We just want to point out here that when the German government in adopted new measures in counterterrorism after the attacks on Charlie Hebdo the first measure on Merkel’s 9-Points-Plan was to adopt an early-warning system at asylum procedures.

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88 Homeland Security Committee, European Terror Snapshot, April 2016

89 Ibid.


CONCLUSION) HOW TO PROTECT HUMAN RIGHTS AND SIMULTANEOUSLY MAINTAIN AN EQUAL EFFECTIVE PRACTICE OF COUNTER-TERRORISM

In conclusion many measures adopted by the EU and Western European governments in order to combat terrorism are necessary to ensure safety in their territory. Nevertheless it is important to ensure Human Rights protection on an equal basis.

Therefore states are questioned to always ensure such protection in their legislation and to balance both security and liberty needs.

It is necessary that even in times of catastrophic occasions such as terroristic attacks not to lose the sense for adopting measures that do not forget the value of liberty among the one of security.

Measures such as the state of emergency in France can in the hands of the wrong government develop in a far wrong direction towards a state of surveillance without ensuring democratic values such as the division of powers. It is therefore necessary that governments do not overlook what other dimensions laws may develop that they adopt in order to secure their citizens.

The U.K. government needs to cut back in their restrictive counterterrorist laws and develop a strategy that ensures primarily equality before the law and a presumption of innocence until proven guilty beyond a reasonable doubt.

Especially in times of the so called refugee crisis it is necessary that states do not adopt measures that take a risk to racial discrimination.

On a European level it is important that the member states improve their information sharing among police and information services and develop the work of the Institutions that have been established in the past. The improvement of information sharing is much more important than adopting new measures to collect and safe more information from all citizens, such as pursued with the PNR. New measures in order to safe data could even have the opposite effect and deteriorate the effectiveness of counterterrorist strategy.