

AGENDA

JUSTICE PROJECT

Roundtable discussions on implementing the EU Directive 2017/541 on combating terrorism

The impact of counter-terrorism law on specific groups, including children, ethnic and religious groups

Friday 29 November 2019, 9:00 – 17:30

Brussels

Through roundtable discussions, participants will be invited to share their practices and experiences in the application of national legislation implementing the EU Directive 2017/541 on combating terrorism, within the different legal systems of the European Union (EU). Especially the impact on specific groups, including children, victims of trafficking, and ethnic and religious groups will be discussed in light of international human rights law principles in order to select best practices that could be promoted throughout the EU. This agenda provides some leading questions that will guide the exchanges.

*Please note that this event will be held under the **Chatham House Rule**.*

9:00 – 9:30 Welcome and registration of the participants

OPENING REMARKS

9:30 – 10:15 **Presentation of the JUSTICE project, the EU Directive 2017/541 on combating terrorism and non-discrimination in counter-terrorism**
Róisín Pillay, Europe and Central Asia Programme Director, International Commission of Jurists European Institutions
Kartik Raj, Director of Human Rights in Practice and Professor of International Law at the University of Leiden

SESSION I. THE IMPACT OF CT LAWS ON PARTICULAR ETHNIC AND RELIGIOUS GROUPS – SAFEGUARDING THE NON-DISCRIMINATION PRINCIPLE

10:15 – 11:45 The EU Directive 2017/541 on combating terrorism in its recital 35 states:

*“This Directive respects the principles recognised by Article 2 TEU, respects **fundamental rights and freedoms** and observes the principles recognised, in particular, by the Charter, including those set out in Titles II, III, V and VI thereof which encompass, inter alia, the right to liberty and security, freedom of*



*expression and information, freedom of association and **freedom of thought, conscience and religion, the general prohibition of discrimination**, in particular on grounds of race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, the right to respect for private and family life (...).*" Further, based on Recital 39, "The implementation of criminal law measures adopted under this Directive should be proportional to the nature and circumstances of the offence, with respect to the legitimate aims pursued and to their necessity in a democratic society, and **should exclude any form of arbitrariness, racism or discrimination.**"

However, discrimination of specific groups, especially ethnic and religious groups seems to be often the case in practice.

- How to ensure in practice that the principle of non-discrimination is complied with? What are the main challenges in practice?
- Do aspects of religious or cultural practice or membership play an evidential role in counter-terrorism cases?
- What safeguards exist in legislation/judicial practice to ensure that people are not discriminated against in CT cases at the investigation and prosecution stage, based on their religion or ethnicity?
- Given the increasing use of administrative measures – applied outside the criminal justice system – what safeguards are in place to ensure that people subject such measures are not targeted based on religion or ethnicity?

Discussion introduced by Ojeaku Nwabuzo, Senior Researcher, ENAR and Adélaïde Jacquin, Lawyer, France

Moderator: Karolína Babická, Legal Adviser, ICJ-EI

11:45 – 12:15 *Coffee Break*

12:15 – 13:00 *SESSION I. (continued)*

- *Is there a risk of arbitrariness in the decision whether a group is considered to be a terrorist group or not?*
- *What evidence is required to show that a particular counter-terrorism law or policy discriminates or is applied in a discriminatory manner? What evidence is required to show there has been a violation of the right to non-discrimination in an individual case?*
- *Are there political aspects involved in CT legislation? Is there a risk related to that?*
- *How to ensure the necessity and proportionality principles?*
- *How best to employ both quantitative and qualitative methods to prove discrimination?*

Moderator: Mohamed Rafik, Lawyer at Jebbink Soeteman advocaten and member of NJCM.



13:00 – 14:00 Lunch

SESSION II. THE IMPACT OF CT LAWS ON CHILDREN

14:00 – 15:30

A. "Foreign fighters"

Foreign children in camps in Syria/Iraq are not a homogenous group. "Foreign fighters"/ child soldiers, children of "foreign fighters", trafficking victims, victims of ISIL, etc. In international law, child soldiers are rather seen as victims than as perpetrators. Is that any different when it comes to terrorist and terrorism related offences?

- Who are the children foreign children in camps in Syria/Iraq, and what laws should apply to them?
- What are the human rights challenges?
- How do different jurisdictions deal with the relation between counter-terrorism laws, international human rights law, and international humanitarian law as regards children? And which approach is more human rights compliant?
- Do states adhere to the "best interest of the child" standard in making determinations about the children of foreign fighters or children who are "foreign fighters", and how?
- What is the responsibility of states to bring their citizens back from abroad (including children of "foreign fighters")? How has it been tackled in your jurisdiction and what are the best practices to ensure that human rights law is adhered to?
- How should states uphold their obligation to avoid statelessness among the children of "foreign fighters"?

*Discussion introduced by Dr. Manfred Dauster, Judge, Germany
Moderator: Gaetana Morgante,*

15:30 – 15:45 Coffee Break

15:45 – 17:00

SESSION II. (continued)

B. Juvenile justice

In some countries children accused of terrorism would fall under the competence of juvenile justice, while in others not or with a lot of exceptions. Detention of children with terrorism detainees is another practice in a number of EU Member states.

- What is the criminal justice approach in case of children in different Member states?



- What are the main challenges?
- What are the best practices for compliance with international human rights standards?

Discussion introduced by Jan Fermon

Moderator: Gaetana Morgante

17:00 – 17:30 **Conclusions and best practices**

Karolína Babická, International Commission of Jurists - European Institutions

19:00 – 21:00 *Dinner at Il Pasticcio, Rue Marie de Bourgogne 3, 1050 Ixelles, Brussels*

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