



MJU-25 (2003) 3

25th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Sofia (9-10 October 2003)

- **INTERNATIONAL CO-OPERATION IN THE
FIGHT AGAINST INTERNATIONAL
TERRORISM AND IMPLEMENTATION OF
THE RELEVANT INSTRUMENTS OF THE
COUNCIL OF EUROPE**

- **THE RESPONSE OF THE JUSTICE SYSTEM
- CIVIL AND CRIMINAL - TO TERRORISM**

Report presented by the Ministry of Justice of

TURKEY

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Terrorism, in the Council of Europe member states exposes a variety of forms, aiming undermine democracy and parliamentary institutions. Terrorism represents a serious threat to democratic society. It attacks the most fundamental human right, the right to life.

There has been an upsurge in terrorism in all over the world especially in Europe. In order to combat terrorism effectively we first need a clear understanding of it.

There is no universally accepted definition of terrorism. If international co-operation in combat to terrorism is to be effective, there must be a precise definition. The term is used to describe a range of phenomena, situations and notions. International organizations have generally avoided such definitions. International conventions, including the Council of Europe's 1977 Convention on the Suppression of Terrorism have confined themselves to some partial definitions or even to listing acts that could be characterized or prosecuted as terrorist acts.

Terrorism is one of the principal enemies of society, affecting its moral, social and political fabric. It threatens peace and stability in the world. Besides bomb attacks, assassinations, kidnappings, new forms of computer-based, nuclear and other forms of terrorism are developing rapidly. In the last decade, terrorism took on a new face, striking at city centers and underground railway systems and forging ever-closer links with organized crime. Since the early 1990's terrorism has undergone significant structural and ideological changes. It is now fundamentalist, ethnic and separatist not of the extreme-left, neo-Marxist or anti-imperialist.

The definition of terrorism is very important in countries governed by the rule of law but its complexity poses a real challenge for lawyers. Without a definition it is arbitrary to talk about terrorist crimes and classify those who commit them as terrorists. Most acts of this kind are already considered as crimes by national legislation that makes it difficult to distinguish between terrorist acts and ordinary offences.

In order to fight against terrorism many countries are inclined to enact special legislation or incorporate special articles into their criminal codes and code of criminal procedure. Their acts are defined in terms of their targets, their nature and their effects. In this basis, they establish penalties equivalent to those applicable to similar criminal offences. Such kind of legislation is important from the standpoint of effectiveness and respect for human and public liberties and facilities international co-operation, in particular regarding extradition.

Even though, acts of terrorism often take place in one country, terrorism is an international phenomenon in that terrorists receive outside help, take refuge in other countries and commit their acts from places located abroad.

Terrorist acts should be regarded as serious offences, indeed as crimes. States should consider criminal acts among the offences subject to extradition under their

criminal laws, they should prosecute anyone who has helped to organize, prepare or commit terrorist acts, and they should make terrorism an offence under their national legislation.

Turkey being a country suffered from systematic campaigns of terrorism for many years is determined to continue its struggle against terrorism. We therefore fully support all efforts aiming at combat terrorism. Whatever their origins, names or forms, the goal of the terrorist movements is to overthrow and destroy democracy with its institutions, as well as to threaten the free political, economic and social development of the society.

As we experience now, terrorism is not solely the problem of a single country but that of the whole international community, it is obvious that an appropriate solution can only be found through international effective co-operation. As we all know, criminals often run away from the country where the crime is committed and find safe heavens in other countries. Therefore their extradition is an effective measure for international co-operation in combat crimes particularly terror crimes. Maintaining an effective combat to terrorism requires national legislation and efforts to be supported by international co-operation.

The greatest difficulty encountered in the implementation of international conventions is the frequent usage of the refusal to extradite perpetrators of terrorist acts. The same situation applies also to rogatory letters emanating from Courts, which remain unprocessed. It is certain that the United Nations Model Agreements on Extradition and Mutual Legal Assistance, as well as the European Convention on Extradition, provide for the exclusion of political offences from the scope of these agreements. However, a careful distinction must be made between a political offence and a terrorist crime.

According to the standards and norms set by these agreements, a terrorist crime shall not be deemed to be a political offence. The European Convention on the Suppression of Terrorism, to which Turkey is a State Party, stipulates in its Article 1, Paragraph (e) that “an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb, if this use endangers persons;” shall not be regarded “as a political offence or as an offence connected with a political offence or as an offence inspired by political motives”.

Similarly, Article 7 imposes the obligation on a Contracting State in whose territory a person suspected to have committed a terrorist offence was found and who refuses to extradite that person, to submit the case to its competent authorities for the purpose of prosecution.

Article 8 of the same Convention stipulates that the “Contracting States shall afford one another the widest measure of mutual assistance in criminal matters in connection with proceedings brought in respect of those offences as mentioned in Art. 1 or 2.” Although the Convention does not contain a definition of political offence, it does clearly define and delineate acts of terrorism.

The said Convention has, by ruling out political motives, made a big contribution to fight against terrorism. Conversely, misuse of the right to asylum and the existence of reservations entered by states at the time of ratification are a hindrance to co-operation.

Article 13 of the Convention provides that any state may declare that it reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives. The Convention has altered extradition practices and assistance arrangements between the Council of Europe's member states. However, there is a growing tendency to regard terrorist acts as political offences and this obstructs the extradition of their perpetrators. Moreover/furthermore, states seem to grant terrorists refugee status easily. This is another obstacle to extradition which should nevertheless override requests for asylum. Although the 1959 European Convention on Mutual Assistance in Criminal Matters includes a similar provision, some contracting states regard acts of terrorism as political offence and reject requests for judicial co-operation that effectively prevents terrorists from being prosecuted in their territories.

Article 3 of the 1957 European Convention on Extradition enables extradition to be refused in the case of a political offence. However international law, leaving it to each State's national legislation, does not make a definition of political offence. Referring to the right of asylum, most countries give precedence to the spirit of Article 3 of the 1951 Convention relating to the Status of Refugees; a request for asylum suspends extradition.

Bearing in mind the international conventions and resolutions and in particular the Article 33/2 of the Convention relating to the Status of Refugees, all States should be sensitive before granting refugee status.

The main catalyst for an adequate response to the challenge posed by the globalization of crime can only be a strengthened international cooperation against it. Turkey has always advocated a better-coordinated international cooperation in the prevention and prosecution of crime, including an effective system of bilateral and multilateral collaboration in the fields of law-enforcement and legal assistance in criminal matters.

