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Implementation of the European Convention on Human Rights and compliance  
with European Court judgments in the Chechen Republic

Round Table

Moscow, 3-4 July 2007

**Experiences of implementing the Convention requirements  
in the context of counter-terrorist operations**

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Terrorism is a serious threat and counter terrorism operations are necessary and justified. Actions must be taken to prevent, pre-empt, prosecute, judge and punish terrorist acts. But all means of action are not justified, not justifiable. Because there is a compelling duty for the State to protect the general interest of security and rule of law without trespassing the fundamental rights of the individuals which it has agreed to protect in all circumstances. How can this conciliation be achieved?

Replies are given by the binding legal text, the ECHR, itself and by those tasked to interpret and apply it, that is the European Court of Human Rights. Why would the Convention cater for the exceptional situation of threat by terror? Because it was drafted in the aftermath of the Second World War, an exceptional situation indeed, which was the precise reason for the Convention to be drafted. The difficult equation of group and individual rights is the core of the Convention. The undermining rationale is the prevention of arbitrariness. The solution is the notion of *democratic society*. Every restriction or limitation of those rights that are not intangible must be in keeping with the spirit of a democratic society. This has become the yardstick, the guiding principle for the Court's interpretation of the Treaty.

Since 9/11 we are again facing the temptations of arbitrariness and of excessiveness when it comes to weighing the perceived general interest against individual rights. Back in 1978, the Court defined the danger in a legendary *obiter dictum* which gives us the required guidance today: "*The Court, being aware of the danger [...] of undermining or even destroying democracy on the ground of defending it, affirms that the Contracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate*" (Klass v. Germany, 6 September 1978, para 50).

The subject the organisers assigned to me today goes to the heart of this question. Following the guiding principle, the Court has shaped over time the requirements that stem from it. Some elements are not related to anti-terrorist operations, but they all concern actions by the security forces. The requirements allow member States to take appropriate measures to prevent violations of the right to security. I will stress some of these requirement as well as the experiences of their implementation without trying to be comprehensive, as specific interventions will be dedicated to them.

The first requirement is *lawfulness*. When the right to life is at stake, there is no place for vague laws: "*[the] legal and administrative framework [must] define the limited circumstances in which law enforcement officials may use force and firearms. [...] Police officers [are not] to be left in a vacuum when performing their duties, whether in the context of a prepared operation or a spontaneous chase against a person perceived to be dangerous*". (Makaratzis v. Greece of 20 December 2004, para 59). New legislation was enacted in Greece containing specific, strict conditions for carrying and the use of firearms by members of police forces. Officers now undergo special tests before being given a firearm.

The second core notion in the Court's case law, is the requirement of *proportionality*. The Convention permits the use of force only in case of *absolute necessity*. "Anti-terrorist operations [should be] planned and controlled by the authorities so as to minimise from their inception to the greatest extent possible, recourse to lethal force" (McCann v. UK, 27 September 1995, para 194). The authorities are bound by their obligation to respect the right to life of suspects. They have to exercise the greatest of care when evaluating the information at their disposal before transmitting it to soldiers (*ibid*, para 210).

There are guidelines for policemen's conduct to ensure that their behaviour in action complies with international human rights principles. The Court has referred there to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990. It is precisely in situation of threat from terror that major efforts have to be made to increase the awareness of the importance of respect for human rights when training the security forces. A common feature of the reforms in all countries is the issuing of guidelines for policemen's conduct to ensure that it complies with international human rights principles. Another is major efforts to increase the awareness of the importance of respect for human rights in police work.

Safeguards against disappearances and protection against torture must be also established. *"What is at stake is both the protection of the physical liberty of individuals as well as their personal security in a context which, in the absence of safeguards, could result in a subversion of the rule of law and place detainees beyond the reach of the most rudimentary forms of legal protection"* (Kurt v. Turkey, 25 May 1998, para 123). In Cyprus, we note increased responsibilities for police ill-treatment: When ill-treatment occurs in a police station it is now not only the actual perpetrator of the ill-treatment who is subject to criminal liability but also the officer of officers in charge. This is of particular importance if the actual perpetrators cannot be identified.

The third requirement deals with *reparation* of victims. This requirement is not *"satisfied merely by awarding damages"* (McKerr v. UK, 4 May 2001, para 121). Investigations that are adequate to lead to the identification and the trials of those responsible are necessary. They must be independent and public, and thorough, impartial examination of the circumstances surrounding any killing is part of them. The applicant should have an effective access to this procedure.

One lesson we have learned relates to the importance of procedural safeguards for persons in police custody.

In Turkey, a series of measures were taken to protect the rights of those arrested: the right of access to a lawyer upon one's apprehension and detention; provision of free legal assistance; the accused person's right of access to the investigation file and the prohibition of use of statements obtained under torture or ill-treatment as evidence. These measures appear to have led to a significant decrease in the number of cases of torture or ill-treatment in police custody in Turkey.

A major problem is to ensure independent investigations into allegations of abuse by police officers. In Northern Ireland, a special Police Ombudsman has been established; this has been an important step towards guaranteeing independent investigations into allegations of abuse by police officers in this part of the United Kingdom. The Ombudsman, an independent body, has the power to investigate all complaints against the police and other matters of her own motion. The law prescribes that the head of the police force must refer to the Ombudsman any case in which it appears that the conduct of a police officer may have resulted in a death.

Another approach is now an established practice in the UK that the head of the police force will call in officers from an outside police force to investigate an incident when there are objective reasons to believe that internal investigations would not appear independent and no other independent investigation routes are available.

These are important examples. The Round Table will give us the possibility to explore them in depth. The need and the advantages of such exchanges of experiences are, I believe, among the main messages of the Round Table which has brought us together here today.

Thank you.