

## Statement by Dick Marty, addressing the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament in Brussels, 7 April 2008

7 April 2007

**Dick Marty, Chairman of the PACE Sub-Committee on Crime Problems and Fight against Terrorism cautions European Union against endangering cohesion and effectiveness of anti-terrorist action**<sup>[1]</sup>

The Parliamentary Assembly has constantly stated that the fight against terrorism can be effective only if there is respect for human rights and fundamental freedoms. The Assembly's reports on secret detentions and illegal transfers of detainees and on the UN Security Council and EU blacklists as well as on Lawfulness of detentions by the United States in Guantanamo Bay provided evidence that, in the name of fighting terrorism, countries and international bodies had deliberately renounced the fundamental values which are the Council of Europe's *raison d'être*: human rights, the rule of law and democracy.

Mr Marty therefore views with concern the European Commission's move to amend the framework decision on the fight against terrorism. The Commission's proposal incorporates – and this is welcome – the provisions of Articles 5 to 7 of the 2005 Council of Europe Convention on the Prevention of Terrorism (CETS No.196), which establish the criminal offences of public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism. However, it **omits** to include the convention's Article 12 safeguard clause in the operative text of the framework decision. Mentioning fundamental human rights only in the preamble or in a recital is not enough. The message, outside as well as inside Europe, must be clear: anti-terrorist measures must be conditional on respect for fundamental human rights.

Articles 5 to 7 **links** to make the fight against terrorism more effective. That cannot be achieved in practice without appropriate guarantees (as provided for in Article 12) to protect human rights and fundamental freedoms. The two things **go together** and are **inseparable**.

Article 12 of the Council of Europe Convention is essential because it has to be taken into account in domestic law and by domestic courts. One should not be left with the impression that fundamental rights are an optional accessory or a piece of decoration solely to embellish law-enforcement instruments.

Mr Marty expresses his surprise that the Commission's proposals borrow selectively from the Council of Europe convention when the convention itself provides for EU accession to it. As the EU (and all its member states) actively took part in the negotiations when the Council of Europe convention was being drawn up, there has to be a **question mark about the duplication** which the proposals would create and about their **compatibility with the spirit and letter of the Memorandum of Understanding** which the Council of Europe and the EU signed in May 2007.

If, in addition, this initiative had the effect of slowing down, or even compromising, ratification of the Council of Europe convention, **it would actually damage the two organisations' common objective of making the fight against terrorism more effective and guaranteeing protection of human rights and fundamental freedoms**.

Mr Marty **calls on** the European Union to heed his concerns and **urges** both the European Council and the European Commission to take a clear stance without delay **in favour of ratification** of the Council of Europe Convention on the Prevention of

Terrorism by the European Union member countries. He likewise asks the European Parliament and the European Council to take into account his concerns when considering the draft amendment to the framework decision.

---

[1] Contribution to European Parliament Round Table on “Public provocation to commit terrorist offences” (Exchange of views on the revision of Framework Decision 2002/475/JHA on combatting terrorism), Brussels, 7 April 2008.

[FR](#) | [EN](#) |

[Address](#) / [Contact us](#) [webmaster.assembly@coe.int ...](mailto:webmaster.assembly@coe.int)