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Combating international terrorism while protecting Council of Europe standards and values

Report¹

Committee on Political Affairs and Democracy

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Résumé

Europe is increasingly concerned about international terrorism. Once again all acts of terrorism should be strongly condemned and any attempt to excuse terrorist attacks rejected as they go completely against the spirit of and the standards and values enshrined in the European Convention on Human Rights.

Democracies have the inalienable right, and the inseparable obligation, to defend them when attacked. The fight against terrorism must be reinforced while ensuring respect for human rights, the rule of law and the common values upheld by the Council of Europe. It should be underlined that combating terrorism and protecting Council of Europe standards and values are not contradictory but complementary.

Parliaments and governments of member States are therefore called upon to ensure the necessity and proportionality of measures taken in their fight against terrorism.

1. Reference to committee: Bureau decision, Reference 4174 of 25 January 2016.

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A. Draft resolution²

1. The Parliamentary Assembly is increasingly concerned about international terrorism, which has in recent years claimed huge numbers of innocent victims throughout the world, and in particular in Council of Europe member States and their direct neighbourhood. In 2015, 625 people were murdered and more than 800 injured during eight terrorist attacks in France, Turkey, Egypt, Iraq, Lebanon and Tunisia. In 2016, several dozen people have already been murdered in terrorist attacks in Turkey, Burkina Faso and Indonesia.
2. Responsibility for all these terrorist attacks was claimed by terrorist groups which call themselves “Islamic”. Da’ish was responsible for the recent terrorist attacks in Europe and its direct neighbourhood, whereas Boko Haram has probably killed the highest number of innocent people. Other terrorist groups that have been active in recent years, and that claim to be based on Islam, are al-Qaeda and al-Shabaab.
3. The Assembly emphasises the dramatic consequences of these terrorist acts and threats on individuals, as well as on our societies. Besides the tragedy of innocent people losing their lives, being injured and traumatised, growing unrest, mistrust and fear destabilise our societies. Moreover, countermeasures may lead to abuse and disproportionate restrictions on individual freedoms and also mobilise large amounts of public money which cannot be used for other purposes.
4. Recalling its [Resolution 2031 \(2015\)](#) “Terrorist attacks in Paris: together for a democratic response”, the Assembly reiterates that all the above mentioned terrorist massacres were attacks against the very values of democracy and freedom in general, against the type of society that our pan-European Organisation has aimed at building since the end of the Second World War.
5. The Assembly reaffirms once again its strong condemnation of all acts of terrorism. No arguments can justify them. The Assembly rejects any attempt to excuse terrorist attacks as they go completely against the spirit of and the standards and values enshrined in the European Convention on Human Rights (ETS No. 5).
6. The Assembly applauds the many and various ways in which individuals, groups and societies have protested during the past year against acts of terrorism. It recalls that, on 11 January 2015, about two million people, including more than 40 world leaders, gathered together in Paris for a rally of unity, and that 3.7 million people joined demonstrations across Europe as well as elsewhere around the globe.
7. The Assembly emphatically rejects the abuse of the description “Islamic” by terrorist criminal organisations. Neither Da’ish nor similar terrorist groups have any right to claim they act in the name of Islam, nor that they represent the Muslim community. On the contrary, most of their victims to date are Muslims: they have been and still are terrorised, abused, exploited, tortured and massacred by these terrorist groups, whereas their religion is smeared by the abusive use of the term “Islamic” by these very groups.
8. The Assembly recognises the invidious position in which these attacks place Muslims and calls on political leaders to take particular care in condemning such attacks to avoid making stigmatising generalisations that portray whole groups of the population as responsible for the acts of individuals. At the same time, it encourages Muslim leaders and intellectuals to publicly, clearly and continuously condemn the shameful abuse of their religion by fanatic murderers, whose goal is to intimidate individuals and States using all kinds of violence against innocent people. It calls on Muslim leaders to emphasise that Muslims, as well as believers of other religions, greatly benefit from the protection of their rights and freedoms by the European Convention on Human Rights, and that, also for that reason, their communities should fiercely and publicly defend the Council of Europe standards and values against terrorists who threaten them.
9. After the recent terrorist attacks, many politicians declared a state of war with Da’ish. However, those who commit terrorist acts are not soldiers of an army, representing any State or international organisation, but ruthless criminals who commit heinous crimes against innocent people in order to destabilise our societies. Recalling its [Resolution 1840 \(2011\)](#) on human rights and the fight against terrorism, the Assembly reaffirms that the concept of “war on terror” is misleading and unhelpful and therefore might be a threat to the entire framework of international human rights.
10. The Assembly reiterates that democracies have the inalienable right, and the inseparable obligation, to defend themselves when attacked. It thus finds that the fight against terrorism must be reinforced while ensuring respect for human rights, the rule of law and the common values upheld by the Council of Europe. It underlines that combating terrorism and protecting Council of Europe standards and values are not contradictory but complementary.

2. Draft resolution unanimously adopted by the committee on 26 January 2016

11. While acknowledging the need for member States to have access to sufficient legal instruments to combat terrorism efficiently, the Assembly warns against the risk that counterterrorism measures may introduce disproportionate restrictions or sap democratic control and thus violate fundamental freedoms and the rule of law, in the name of safeguarding State security.

12. In this respect, the Assembly echoes the concerns expressed by the Council of Europe Commissioner for Human Rights on France's decision, in November 2015, to declare a state of emergency and to prolong it. It also echoes the concerns of the United Nations Committee on the Elimination of Racial Discrimination that in Turkey "in the context of the fight against terrorism, the enforcement of anti-terrorism legislation and security-oriented policies have reportedly resulted in racial profiling of members of the Kurdish community". The Assembly is concerned that the security crackdown might spread to other Council of Europe member States.

13. The Assembly is also concerned that, in spite of the worldwide adoption, in 1999, of the United Nations Convention on the Suppression of the Financing of Terrorism and the entry into force, in 2008, of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and the Financing of Terrorism (CETS No. 198), until now it has been impossible to cut off the financial lifelines of Da'ish, which therefore remains the richest terrorist organisation ever, able to sell oil, gas and stolen archaeological objects to others in return for tens of millions of dollars each month.

14. Referring also to its Resolution ... (2016) on foreign fighters in Syria and Iraq, the Assembly welcomes the adoption by the Committee of Ministers of the Council of Europe of an Additional Protocol on foreign terrorist fighters to the Convention on the Prevention of Terrorism (CETS No. 217), as it had called for in its [Resolution 2031 \(2015\)](#).

15. It also welcomes the proposal for a "Directive of the European Parliament and of the Council on combatting terrorism".

16. The Assembly therefore calls on the parliaments and governments of member States to ensure that, in their fight against terrorism:

16.1. when adopting and implementing legislation or other administrative measures, a fair balance is struck between defending freedom and security, on the one hand, and avoiding the violation of those very rights, on the other;

16.2. a state of emergency is limited to the shortest possible period of time and space, and this regardless of whether such a state is declared under Article 15 of the European Convention on Human Rights or results from a *de facto* situation either in the whole or part of their territory;

16.3. law-enforcement bodies do not abuse or circumvent basic legal requirements and do not disproportionately restrict individual freedoms, in line with the European Convention on Human Rights and the case law of the European Court of Human Rights; any administrative decisions taken in this context should always be subject to judicial review;

16.4. there is no ethnic or racial profiling of suspects subjected to search and seizure operations, arrests or other coercive measures;

16.5. there is effective democratic oversight exercised by both the parliament and other independent actors, such as national human rights institutions and civil society;

16.6. appropriate means and training are granted to law-enforcement bodies and security and intelligence services to cope with the rising threat of terrorism, including the new challenges posed by the so-called "jihadist" threat;

16.7. intelligence services refrain from indiscriminate mass surveillance, which has proven to be inefficient, and instead increase collaboration among themselves; co-operation with other democracies as well as with countries in the Middle East and the Arab world is also important;

16.8. pertinent national records related to terrorist offences as well as information on airline passengers posing security threats are shared, subject to appropriate data protection guarantees;

16.9. the financial lifelines of international terrorism and arms trafficking are cut off, including through the effective implementation of United Nations and Council of Europe conventions against the financing of terrorism.

17. The Assembly calls on the Secretary General of the Council of Europe to follow counterterrorist measures taken by the member States, evaluate their necessity and proportionality, as appropriate, in the context of an inquiry under Article 52 of the European Convention on Human Rights, and keep the Assembly regularly informed.

18. With a view to strengthening legal action against terrorism, the Assembly calls on Council of Europe member States, and neighbouring countries, which have not yet done so, to sign and ratify, as a matter of priority, the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) and its new Additional Protocol.

19. The Assembly furthermore urges member States to do their utmost to eradicate the breeding grounds for terrorism and religious fanaticism, especially by means of education, social policies and an inclusive society. Concrete measures should be taken to prevent and fight radicalisation, in particular in schools, disadvantaged neighbourhoods, prisons and on the Internet and social media, in line also with Assembly [Resolution 2031 \(2015\)](#).

20. The Assembly welcomes the implementation to date of the Action Plan on “the fight against violent extremism and radicalisation leading to terrorism”, adopted in May 2015 by the Committee of Ministers, which provides for a number of targeted activities capable of supporting and reinforcing the efforts of member States at national and international levels. Noting that the full implementation of the Action Plan depends on extra-budgetary resources, the Assembly calls on member States to consider allocating voluntary contributions for this purpose.

B. Explanatory memorandum by Mr Kox, rapporteur

1. Introduction

1. On 13 November 2015, 137 people were massacred in Paris and 350 wounded as they were listening to music or sitting in a restaurant or a cafe; a friendly international football match was also targeted by suicide bombers.
2. Two weeks after the Paris massacre, on 27 November, the Standing Committee met in Sofia and held a current affairs debate on the theme of this report. I had the honour of introducing that debate and I have used my introduction as a starting point for this report.
3. On 14 December, in London, the Bureau of the Assembly took note of the proposal submitted by all the political groups to hold a debate under urgent procedure on the same topic during the first part-session of 2016.
4. On 25 January 2016, the Assembly decided to hold an urgent procedure debate on the same issue and the Committee on Political Affairs and Democracy appointed me rapporteur.
5. The present report, and the associated draft resolution, must be read as the follow-up to the report prepared by the Committee on Political Affairs and Democracy one year ago on "Terrorist attacks in Paris: together for a democratic response". The subject is also intimately related with that of the report on "Foreign fighters in Syria and Iraq", and both reports will be discussed jointly by the Assembly.
6. As the Committee on Legal Affairs and Human Rights and the Committee on Equality and Non-Discrimination are seized for opinion, I have worked in consultation with my colleagues Pierre-Yves Le Borgn' (France, SOC) and Gülsün Bilgehan (Turkey, SOC), rapporteurs for opinion for these two committees respectively, and I have included in the draft resolution most of their proposals.
7. Last but not least, I should also like to draw attention to the report prepared by the Committee on Political Affairs and Democracy on "Threats against humanity posed by the terrorist group known as 'IS': violence against Christians and other religious or ethnic communities" and to [Resolution 2016 \(2014\)](#) adopted by the Assembly in October 2014.

2. The facts

8. The recent Paris attacks, which prompted the urgent debate on this theme, were one of the many terrorist attacks which took place last year. To mention some: on 7 January 2015, 11 people were murdered and 11 injured during a terrorist attack on the offices of the French satirical weekly *Charlie Hebdo*; 27 young people were killed in Suruç (Turkey) on 7 July; 76 people were murdered in Bagdad on 13 August; two bomb attacks killed 95 and injured 246 mostly young men and women marching in a peaceful demonstration in Ankara, on 10 October; a Russian airliner flying from Sharm-el-Sheik to St Petersburg exploded over the Sinai, killing all 224 passengers and crew, on 31 October; a double suicide bombing killed 43 people and wounded more than 180 in a southern suburb of Beirut, on 12 November; 137 persons were massacred in Paris and 350 wounded, on 13 November; a bomb attack on a bus murdered 12 people and wounded 16 in Tunis, on 24 November. In 2016, terrorist attacks continue: 11 people were murdered in Istanbul, on 12 January, 14 in Jakarta on 14 January and 27 in Ouagadougou (Burkina Faso) on 15 January.
9. All these terrorist attacks were claimed by terrorist groups which call themselves "Islamic". Best known today is Da'ish,³ responsible for the recent terrorist attacks in Europe and its direct surroundings, whereas Boko Haram has probably caused the highest number of deaths of innocent people until now, especially in Africa. Other important terrorist groups, which claim to be based on Islam, are al-Qaeda and al-Shabaab. Al-Qaeda was amongst others behind the terrorist attacks in New York in 2001, Madrid in 2004 and London in 2005. Al-Shabaab claimed responsibility for many terrorist attacks in Somalia and Kenya.
10. Da'ish originated as Jamaát al-Tawhid wal-Jihad ('the organisation of monotheism and jihad') in 1999, which then pledged allegiance to al-Qaeda and participated in the Iraqi insurgency following the March 2003 invasion of Iraq by Western forces. In 2006, it proclaimed the formation of the "Islamic State of Iraq" and after

3. Variations in translation have caused the same group to be termed "Islamic State in Iraq and Levant" (ISIL) and Islamic State in Iraq and Syria" (ISIS) among others. Recently, the group renamed itself simply "Islamic State" ("IS"). For the purposes of this document, for uniformity, but also in no way conferring recognition of any State status, the group is referred to as "Da'ish".

an attempted merger in 2013 with the al-Nusra Front in Syria, it took the name “Islamic State of Iraq and the Levant”. In 2014, the al-Nusra Front cut its ties with Da’ish. Its main basis now is in parts of Iraq and Syria, which it controls and exploits.

11. Boko Haram (usually translated as “Western education is forbidden”, also calls itself “Islamic State West Africa Province”) was founded in 2002 in Nigeria and after some years of existence, it radicalised and became a terrorist organisation, active in Nigeria as well as in several other west African states, killing many thousands of African citizens. In 2015, it swore allegiance to Da’ish, therewith giving Da’ish a presence in Nigeria, Niger, Chad and Cameroon.

12. Al-Shabaab (“Mujahideen Youth Movement”) is a terrorist group based in east Africa, founded probably in 2004 in Somalia as a split of the Islamic Courts Union. It is responsible for many terrorist attacks in Somalia, Kenya and also Yemen. In 2012, it stated that it would join al-Qaeda.

13. Other groups, which proclaim to be based on other religious or political grounds and use violence to achieve their goals, are also active in various parts of the world and terrorise innocent people, but they play a far less important role now than they did in the past in Council of Europe member States and their neighbouring States. This report therefore concentrates on the absolute need to combat the so-called “Islamic” terrorist groups.

14. Let me start by reiterating that the above-mentioned attacks are directed against the very values of democracy and freedom in general, against the type of society that our pan-European Organisation has aimed at building since the end of the Second World War, as the Assembly stated last year in its [Resolution 2031 \(2015\)](#) “Terrorist attacks in Paris: together for a democratic response”.

15. Most of the terrorists involved in the attacks in Paris were European citizens, born in Europe, mainly of north African descent. Some of them had recently travelled to Syria, hence the relation with the report on “Foreign fighters in Syria and Iraq” of my colleague Dirk Van der Maelen.

16. As a consequence of the attacks in Paris, in December 2015, Brussels turned into a city of fear where normal life almost came to a standstill, a state of emergency was declared in France and in Tunisia, and France derogated from certain provisions of the European Convention on Human Rights (ETS No. 5). All over Europe and the rest of the world people are preparing for new atrocities by Da’ish terrorists who have attacked the values which are considered by the Council of Europe to be fundamental.

17. As it had already done in January 2015, the whole of Europe condemned again the attacks and mourned the innocent victims, and the whole of Europe expressed its rejection of terrorism and its stand for the values of democracy, freedom and human rights, the values on which Europe is founded. The whole of Europe must continue to work together in order to find a democratic response to the rise of terrorism and radical Islamism. Democracy, freedom and human rights are worth fighting for.

3. Combating terrorism...

18. This fanatic terrorism poses a threat to us all and therefore we need to act together to end this evil. We have to combat international terrorism, as the first part of the title of this report states. The question is not whether we should do our utmost to overcome this major threat to civilization, but *how* we can do this in an effective way. Here the second part of the title becomes relevant: we should combat international terrorism while protecting Council of Europe standards and values; recent history, however, shows that this is easier said than done.

19. In the last 45 years the Parliamentary Assembly adopted 22 recommendations and 11 resolutions on terrorism, two thirds of these since the year 2000.

20. After the terrorist attacks in January 2015 in Paris, the Committee of Ministers of the Council of Europe adopted an additional protocol on foreign terrorist fighters to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), as the Assembly had called for in its [Resolution 2031 \(2015\)](#). It also adopted a Declaration and an Action Plan on the “Fight against violent extremism and radicalisation leading to terrorism” at its ministerial meeting in May 2015 in Brussels.⁴

4. See [CM\(2015\)74 final](#) and [CM\(2015\)74 add final](#).

21. The Convention on the Prevention of Terrorism itself was already concluded 10 years earlier in Warsaw, in the aftermath of the 9/11 terrorist attacks on the United States (and entered into force in June 2007). Already in 1999, the United Nations adopted its International Convention for the Suppression of the Financing of Terrorism.

22. More than 20 years before this United Nations Convention, the European Convention on the Suppression of Terrorism (ETS No. 90) was drawn up under the auspices of the Council of Europe – following a 1973 recommendation by the then Consultative Assembly – and entered into force in 1978. The Council of Europe legal framework on the fight against terrorism was further supplemented, in 2003, by an amending protocol to the latter convention and, in 2008, by the entry into force of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the proceeds of Crime and the Financing of Terrorism (CETS No. 198).

23. The European Commission proposed a Directive of the European Parliament and of the Council on combating terrorism. A draft directive on the Passenger Name Record (PNR) system was debated in the European Parliament's Civil Liberties Committee in December 2015 and will be put on the European Parliament's plenary agenda in the near future.

24. Many of these international treaties oblige member States to implement their essence in national legislation. This is indeed an important achievement – to have legal instruments to combat international terrorism. We do not seem to lack legal instruments as such, but we too often lack effective instruments.

25. In spite of the worldwide adoption of the 1999 Convention on the Suppression of the Financing of Terrorism, until now it has been seemingly impossible to cut off the financial lifelines of the Da'ish terrorists. According to the German Government, Da'ish is by far the richest terrorist organisation ever, with access to billions to finance its terrorist activities, both in Syria and Iraq as well as in Paris, Beirut, Ankara, Tunis and elsewhere. In spite of the convention, which orders United Nations member States to close all financial channels to and from Da'ish terrorists, at least 40 member States – according to Russian President Putin at the recent G20 summit in Antalya – provide financial means to Da'ish and there with the oxygen needed to keep the terrorist fire burning. In spite of this convention, Da'ish is still able to sell oil and stolen archaeological objects to others and in return tens of millions of dollars are flowing each month to Da'ish.

26. After the recent terrorist attacks, many of our leading politicians, including French President Hollande and Dutch Prime Minister Rutte and many more, stated that we now are at war with Da'ish. It is not difficult to understand the mood of our politicians when using this language, many of our citizens might feel the same. We should nevertheless be very, very careful when using this vocabulary. None of the international conventions we drafted to combat terrorism define those who commit terrorist acts as soldiers of an army with which we are at war but, rightly in my opinion, as criminals who commit awful crimes against innocent people in order to destabilise our societies and create an atmosphere of fear.

27. In this respect, the Assembly was very clear in its [Resolution 1840 \(2011\)](#) on human rights and the fight against terrorism, stating that the concept of “war on terror” was misleading and unhelpful and was a threat to the entire framework of international human rights. Terrorists are criminals not soldiers, and terrorist crimes are not akin to acts of war.

28. The Assembly should continue to reject any suggestion that the war in Syria, the Arab-Israeli conflict, or other events in the Middle East or elsewhere, could possibly justify terrorist acts within our European democratic societies or anywhere else. At the same time, I have serious doubts whether several governments' military interventions in Iraq and Syria are in line with international standards. Until now, a combined strategy behind these military interventions seems to be completely lacking and they still have to prove their efficiency.

29. It would be far better not to increase external military intervention but rather reach, as soon as possible, a negotiated ceasefire in Syria between government and opposition groups, on the basis of the Vienna talks, and to have a far more inclusive government in Iraq, which could unite the divided country and increase its internal strength. Then the international community could provide both countries with the means necessary to combat and defeat Da'ish terrorism themselves. Foreign military interventions in this region have a bad track record.

30. In any event, we need to emphasise that no arguments can justify terrorist attacks based on hatred and any attempt to find excuses for the actions of the murderers must be firmly rejected. There must be no “but”. As the Assembly put it in its [Resolution 1258 \(2001\)](#) on democracies facing terrorism, “[t]here can be no justification for terrorism”.

4. ...while protecting Council of Europe standards and values

31. In these times when we witness so many terrorist attacks, we have to reiterate that democracies have the inalienable right, and the inseparable obligation, as laid down in their Constitutions as well as in international law, to defend themselves when attacked. It is time to reinforce the fight against terrorism, but under the precondition that respect for human rights, the rule of law and the common values upheld by the Council of Europe is always guaranteed. I underline that combating terrorism and protecting Council of Europe standards and values are not contradictory but complementary.

32. Instead of using the existing conventions and laws and ensuring a more effective implementation, we too often create ever more rules, hoping that they will show the effectiveness the earlier conventions and rules did not bring. Here we have to listen carefully to what the Council of Europe Commissioner for Human Rights said in June 2015:

“The US-led ‘war on terror’ and many European States’ counterterrorism efforts violated core principles of human rights and international law, including the following: protection against torture, the right to personal liberty and security, the right to a fair trial including the presumption of innocence, the right to respect for private and family life, the freedoms of expression and of movement, the right to an effective remedy and victims’ rights to reparation following States’ unlawful acts.”

33. The Commissioner for Human Rights concluded that during this period thousands of individuals, including many European citizens and many innocent people, had been victimised. I thank our Commissioner for having the courage to look in the mirror when evaluating recent counterterrorism efforts in our member States.

34. As the Commissioner put it: “Terrorist activity has been a real and present threat, as well as a fundamental violation of human rights.” There is no single argument “in favour” of international terrorism – it is what it is: a crime against our citizens, against our way of living, against our standards and values. The Commissioner also said: “State attempts to combat international terrorism must be human rights compliant and remain within the rule of law.” And he rightly addresses us, politicians, when he continues that “forfeiting human rights in the fight against terrorism is a grave mistake and an ineffective measure that may help the cause of terrorists”.

35. It is therefore of utmost importance that, while looking for the best ways to combat terrorism, we, parliamentarians, always have to make sure that all we propose and adopt is indeed human rights proof and compliant and remains within the rule of law.

36. For instance, one of the proposed measures suggested to combat international terrorism is depriving terrorists of their (European) citizenship. Although such laws exist in some Council of Europe member States, the debate around this issue is particularly topical in France as a proposal in this direction was made just after the terrorist attacks in Paris in November 2015 by the French Prime Minister. The rapporteur for opinion for the Committee on Legal Affairs and Human Rights, Mr Pierre-Yves Le Borgn’, will deal in detail with this question. For my part, I would argue against laws stripping dual nationals of their European citizenship as this could create discrimination among the citizens of a European country, between those who hold dual nationality and those who do not. If applied to all nationals, it would create stateless persons, thus violating the New York Convention on the Reduction of Statelessness, of 30 August 1961. In addition, it is not likely that such a measure would dissuade any would-be suicide bomber.

37. It is worth noting that the European Court of Human Rights concluded on 12 January 2016 that the new Hungarian legislation on secret anti-terrorist surveillance did not have sufficient safeguards against abuse and therefore it violated Article 8 of the European Convention on Human Rights.⁵ A week later, on 19 January 2016, the British Appeals Court ruled that a key clause in the Terrorism Act 2000 was incompatible with the European Convention on Human Rights. It is worth noting that when assessing the compatibility of measures taken by member States in their fight against terrorism with ECHR requirements, specific context and timing are key elements and thus the European Court of Human Rights may conclude in one situation in favour of violation and come to the contrary conclusion in another, even apparently similar, situation. The case law of the Court is extremely rich on this subject and I refer to the opinion of the Committee on Legal Affairs and Human Rights for references.⁶

5. *Szabó and Vissy v. Hungary*, Application No. 37138/14, [judgment of 12 January 2016](#).

6. I have already quoted the Hungarian case where a violation was found. To quote a recent example where the Court ruled against a violation, I refer to the case of *Sher and Others v. the United Kingdom*, Application no. 5201/11, [judgment of 20 October 2015](#).

38. As regards more specifically the aspect of surveillance powers, it is worth recalling our [Resolution 2045 \(2015\)](#) on mass surveillance, where the Assembly stated that “[m]ass surveillance does not appear to have contributed to the prevention of terrorist attacks, contrary to earlier assertions made by senior intelligence officials. Instead, resources that might prevent attacks are diverted to mass surveillance, leaving potentially dangerous persons free to act”. Therefore, mass surveillance seems to be not only dangerous to human rights but also ineffective and a waste of resources.

39. It should also be clear that the fact that a State decides to declare a state of emergency and to derogate from certain provisions of the European Convention on Human Rights and therefore deposits the relevant instrument to the Secretary General of the Council of Europe, in line with Article 15 of the Convention, does not mean that such a derogation is automatically valid and exonerates the State concerned from the obligation to comply with the Convention. It is ultimately and solely for the European Court of Human Rights to decide, as soon as it is confronted with a relevant complaint, whether or not the derogation complies with the requirements of Article 15 of the Convention.

40. Reacting to France’s decision to declare and later on to prolong a state of emergency until the end of February 2016, the Commissioner for Human Rights warned against the risk that measures taken in France “could sap the system of democratic control” if for instance police armed with executive rather than judicial orders carry out searches. The Commissioner also expressed concern over ethnic profiling of suspects facing police searches. Questioning the need for these measures, the Commissioner warned that heightened surveillance could lead to the “stigmatisation of certain communities”. The rapporteur for opinion for the Committee on Legal Affairs and Human Rights, Mr Le Borgn’, will deal in more detail with the concerns raised by the state of emergency declared in France. He has also informed me of his intention to refer to the derogations entered into by Ukraine under the United Nations International Covenant on Civil and Political Rights and the European Convention on Human Rights concerning the situation in Crimea and eastern Ukraine, and in particular “anti-terrorist operations” being conducted by Ukrainian forces in certain areas of eastern Ukraine. I refer to his opinion in this respect.

41. At the same time, there are situations where a State has not declared a state of emergency and has not derogated from any provision of the European Convention on Human Rights but *de facto* takes measures of a state of emergency nature in the name of “the fight against terrorism”. This is for instance what seems to be happening currently in south-east Turkey where, following the breakdown of the peace process between the PKK and the Turkish Government in July 2015 after a bombing in Suruç, the government has undertaken a number of anti-terrorist operations seriously infringing freedom of expression, of movement and of assembly but also having grave humanitarian consequences for the resident population. According to Amnesty International,⁷ 24-hour curfews have been declared since 11 December in the Sur district of the city of Diyarbakır, and since 14 December in the towns of Cizre and Silopi, in Şırnak province, in south-east Turkey. More than 200 000 people live in the affected areas and some are unable to access food, medical care and face severe electricity and water shortages. Hundreds of residents, including women, children and the elderly, as well as dozens of soldiers and police officers have been reported killed.⁸

42. Reacting to an attack on the police headquarters in Cinar (Diyarbakır) on 13 January that left six people dead, including children, and 39 wounded, the co-rapporteurs of the Assembly for post-monitoring dialogue with Turkey expressed their concern over the escalation of violence for the past six months in south-east Turkey and especially its impact on the population, and clearly stated that if military operations were deemed necessary to combat terrorism in the region, they should be conducted “in line with international standards – with due consideration for the humanitarian needs of the citizens, the right to security, justice for their lost ones, and compensation for damages”.⁹ I fully support them in this call.

43. Reacting to the arrests, on 15 January 2016, of several academics and intellectuals who signed a petition calling for peace and criticising Turkish military operations in south-east Turkey and were subsequently charged for “making propaganda for a terrorist organisation” and for “denigrating the Turkish nation”, the Secretary General of the Council of Europe called on all, “in this difficult time when Turkey is facing an immense challenge due to terrorist attacks to join forces against violence and terrorism and to respect human rights including freedom of expression”. He added that “no efforts must be spared to de-escalate the situation”.

7. See Amnesty International, *Human Rights in Turkey*, [Amnesty issues Urgent Action on Curfews](#). See also [Amnesty International briefing](#) on this subject, 21 January 2016.

8. See also the concluding observations on the combined fourth to sixth periodic reports of Turkey, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G16/003/50/PDF/G1600350.pdf?OpenElement>.

9. See www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5978&lang=2&cat=3.

44. Regrettably, faced with the rise of the terrorist threat, more and more people are stating that now is not the time to talk about human rights, democracy and the rule of law. In times of war, other laws are in place, they tell our citizens. In my country, the party which is now most popular in the opinion polls says that we are at war with Islam, that the Koran is a fascist book and that we should not let a single Muslim refugee pass our borders to seek shelter, whatever harm these people may have suffered from terrorists in their places of origin. Here, “les extrêmes se touchent”, the extremes meet – being both contrary to our fundamental standards and values, to which equality, freedom of expression and religion and the right to find shelter when needed surely belong.

45. At the same time, the fact that the terrorists acting in Europe were European, mostly but not all born and brought up in disadvantaged neighbourhoods, as well as the fact that many people claiming to be Muslims, especially among the young, take the side of the terrorists on social media networks, has prompted a twofold debate: on the one hand, on the urgent need for a common, international but also specifically European response to the jihadist threat; on the other, on the need to combat social exclusion, discrimination, violence and segregation, as the breeding ground for terrorism and religious fanaticism.

46. I emphatically reject the abuse of the description “Islamic” by terrorist criminal organisations. Neither Da’ish nor similar terrorist groups have any right to claim they act in the name of Islam, or that they represent the Muslim community. On the contrary, most of their victims to date are Muslims. Numerous Muslims have been and still are terrorised, abused, exploited, tortured and massacred by these terrorist groups, whereas their religion is smeared by the abuse of the description “Islamic” by these criminals.

47. We should recognise the invidious position in which these attacks place Muslims and call on political leaders to take particular care in condemning such attacks to avoid making stigmatising generalisations that portray whole groups of the population as responsible for the acts of individuals. At the same time, I encourage Muslim leaders and intellectuals to publicly, clearly and continuously condemn the shameful abuse of their religion by fanatic murderers, whose goal is to intimidate individuals and States using all kinds of violence against innocent people. I call on Muslim leaders to emphasise that Muslims, as well as believers of other religions, greatly benefit from the protection of their rights and freedoms by the European Convention on Human Rights, and that, also for that reason, their communities should fiercely and publicly defend the Council of Europe standards and values against terrorists who threaten them.

48. Respect of everyone’s right to freedom of thought, conscience and religion, as enshrined in Article 9 of the Convention, is often confused with an “obligation” to accept anything which is put forward as a component of someone’s religion.

49. More than two hundred years ago, a movement started in Europe towards the separation of church and State. As a consequence, secularism, that is the principle of the separation of state and religion, is today accepted as one of the pillars of a democratic society. The Assembly has stated that we must continue to protect this principle.

50. A similar process has not yet taken place in many Muslim countries, where Islam is seen both as a person’s religion and as a way of organising life in society. While any person’s right to his/her religious beliefs must be protected in a democratic society as far as these beliefs do not violate the rights of others, any rules which do not respect human rights must not be tolerated.

51. It is clear that parts of what is considered by some Muslims as a component of Islam, including most of the Sharia law, fall into this category and cannot therefore be accepted as civil law in societies that consider themselves democratic. It would be wrong, in the name of political correctness, to pretend that this is not so. The European Court of Human Rights determined on 31 July 2001 that “the institution of Sharia law and a theocratic regime were incompatible with the requirements of a democratic society”.¹⁰

52. That is certainly not a process that should be imposed from the outside. Europe should, however, stand ready to support, in every possible way, Muslim democratic leaders and intellectuals, whom, together with relevant representatives of civil society, would embark on this long but inevitable process.

53. To begin with, Europe should ban in its territory all practices, religious or not, which do not respect human rights: where human rights are concerned there is no room for “cultural exceptions”. Education and the media should play important roles too.

10. *Refah Partisi (The Welfare Party) and others v. Turkey*, Application Nos. 41340/98, 41342/98, 41343/98 and 41344/98.

54. I applaud the many and various ways individuals, groups and societies have protested during the past year against acts of terrorism. Let us recall that on 11 January 2015 about two million people, including more than 40 world leaders, met in Paris for a rally of national unity, and that 3.7 million people joined demonstrations across France, and in many other European cities, such as Amsterdam, Berlin, Bologna, Brussels, Barcelona, Copenhagen, Istanbul, Ljubljana, London, Luxembourg and Moscow, as well as elsewhere around the globe, for example Buenos Aires, Montreal, San Francisco and Washington. It is to be hoped that such clear signals that citizens of the world do not accept any form of terrorism and stand firm for the standards and values upheld by the Council of Europe will only become stronger and will be carried by all layers of our societies.

5. Council of Europe action

55. As mentioned above, the Committee of Ministers adopted an additional protocol on foreign terrorist fighters to the Convention on the Prevention of Terrorism and also a Declaration and an Action Plan on the fight against violent extremism and radicalisation leading to terrorism in May 2015. The report on “Foreign fighters in Syria and Iraq” gives a good overview of the objectives and priorities of the Action Plan.

56. The 2015 edition of the World Forum for Democracy, which was held in Strasbourg from 18 to 20 November 2015, focused on “Freedom vs Control: for a democratic response”. The Forum rightly identified the tension between the concern for safety and the protection of freedoms as one of the key challenges facing democracies today. Its conclusions highlighted in particular that, in the fight against terrorism, “we need less reaction and more reflections”, and that the best antidotes against fear were keeping a high level of trust in democratic institutions, notably in the justice system, and avoiding the traps of singling out entire groups or geographical areas as dangerous or deviant.¹¹

57. In its reply to [Recommendation 2061 \(2015\)](#) on “Terrorist attacks in Paris: together for a democratic response”, the Committee of Ministers informs the Assembly of its action in this area and states: “The aim of the Action Plan adopted to complement the Declaration, which will run until 2017, is to take a series of practical steps to reinforce the legal framework against terrorism and violent extremism and to prevent and fight radicalisation through concrete measures in the public sector, in particular in schools and prisons, and on the Internet.”

58. On 25 January 2016, the Secretary General of the Council of Europe shared with the Committee on Political Affairs and Democracy his views on the implementation of the Action Plan. The priorities on the legislative aspect of the plan are terrorists acting alone, the financing of terrorist groups through organised crime, terrorism and the Internet and special investigation techniques. Policies to prevent radicalisation will be focused in three areas: in schools, in prisons and in public discourse.

59. Education is fundamental in developing competences for democratic citizenship and the Ministers of Education of the Council of Europe member States will discuss a concrete project on this issue on 11 and 12 April 2016 in Brussels. As the Secretary General put it, it is “not about teaching what to think, but how to think – understanding that different cultures and faiths can co-exist and, at the same time, we can unite behind a set of core, universal values”. In this respect, the Council of Europe had also initiated a counter-narrative project on European history in collaboration with Dr Ismail Serageldin, the Founding Director of the Bibliotheca Alexandrina.

60. I am particularly pleased to note the Secretary General’s announcement that our outgoing President, Ms Anne Brasseur, will be the Ambassador of the Council of Europe No Hate Movement.

6. Conclusions

61. The Assembly stated very clearly in its [Resolution 2031 \(2015\)](#) “Terrorist attacks in Paris: together for a democratic response” that “democracies have the right, and the obligation, to defend themselves when attacked”. It thus finds that the fight against terrorism and jihadism must be reinforced while ensuring respect for human rights, the rule of law and the common values upheld by the Council of Europe.

62. On 12 December 2015, on the occasion of the 2015 Human Rights Day, President Anne Brasseur stressed that, when facing the threats posed by terrorism, “we have to be even more watchful not to sacrifice human rights and fundamental freedoms. The temptation is strong to try and reassure our citizens by resorting to greater security measures, sometimes at the cost of the rights and freedoms of each and every one of us.

11. 2015 World Forum for Democracy’s preliminary conclusions www.coe.int/t/dg4/cultureheritage/source/wfd/WFD2015-conclusions_en.pdf.

We have to be honest and clear: there is no free society without threats to security. Human rights should not be sacrificed on the altar of the fight against terrorism – this is precisely what the terrorists want! We must not give this to them”.¹²

63. Europe must continue to show that it is not afraid and must not change its way of life. Not to do so would mean that the terrorists have won. Secularism, that is the principle of the separation of State and religion, must also be protected.

64. In the draft resolution, I suggest a number of recommendations which our Assembly should call on parliaments and governments of member States to respect in their fight against terrorism, so as to ensure a fair balance between defending freedom and security, on the one hand, and avoiding the violation of those very rights, on the other. I also suggest we call on the Secretary General of the Council of Europe to follow counterterrorist measures taken by member States, evaluate their proportionality, as appropriate, in the context of an inquiry under Article 52 of the European Convention on Human Rights and keep the Assembly regularly informed.

65. Moreover, I believe we should urge member States to do their utmost to eradicate the breeding grounds for terrorism and religious fanaticism, especially by means of education, social policies and an inclusive society. Concrete measures should be taken to prevent and fight radicalisation, in particular in schools, disadvantaged neighbourhoods, prisons and on the Internet and social media, in line also with Assembly [Resolution 2031 \(2015\)](#).

66. In conclusion: let us combat international terrorism – while protecting our Council of Europe standards and values. These two elements are not contradictory but complementary.

12. www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5943&lang=2&cat=15.