

ECCHR Press release, embargoed until 00:01, Friday 10 December

Human rights experts call for abolition of United Nations ‘terrorist list’ and wholesale reform of EU blacklisting regime

The European Center for Constitutional and Human Rights (ECCHR) has published a detailed critique of the terrorist blacklisting regimes operated by the United Nations and the European Union and documenting the crisis currently facing blacklisting at the international level.

The Report - *Blacklisted: Targeted sanctions, preemptive security and fundamental rights* by Gavin Sullivan and Ben Hayes - provides a comprehensive review of the development and implementation of the ‘terrorism lists’ over the last decade. It analyses the impact of the blacklists on human rights and endorses the growing body of expert legal opinion that these regimes are fundamentally incompatible with the most basic standards of due process.

Listing decisions are usually based on secret intelligence material that neither blacklisted individuals nor the Courts responsible for reviewing the implementation of the lists will ever see. As numerous national and regional Courts have repeatedly affirmed, affected parties cannot contest the allegations against them (and exercise their right to judicial review) if they are prevented from knowing what the allegations actually are. Such treatment fundamentally violates the right to a fair trial, yet is an ongoing *Kafkaesque* reality for those on the blacklists.

By effectively outsourcing the definition of ‘terrorism’ to nation states, the United Nations has encouraged the criminalisation of groups on the basis of geo-political, foreign policy or diplomatic interests. The criminalisation of self-determination movements that has resulted has transformed Diaspora communities that support them into ‘suspect communities’ and obstructed peace processes aimed at resolving such conflicts.

Like control orders and administrative detention without charge, blacklisting has been seen as a key component of the pre-emptive security agenda pursued by states in the years since 9/11. Whilst it is widely accepted that the lists have been largely ineffective in blocking terrorist financing, states have nonetheless prioritised blacklisting as a means of facilitating prolonged interference with the lives of terrorist suspects on the basis of intelligence material incapable of withstanding proper judicial scrutiny.

With blacklisting now facing a crisis of legitimacy the authors argue that the time has now come for the UN Security Council Resolutions underpinning these regimes to be repealed.

Gavin Sullivan, co-author of the report, comments:

Hastily adopted in the aftermath of 9/11, international terrorist blacklisting systems have placed far too much power in the hands of the executive branch of government and security services while excluding the judiciary and undermining the rule of law. If the UN and EU are to reaffirm their commitment to human rights they need to go back to the drawing board on this issue.

Ben Hayes, co-author of the report, comments:

The EU Court of Justice, the UN Human Rights Committee and the UK Supreme Court have provided a damning indictment of the terrorist lists. Instead of simply trying to distance themselves politically from the “war on terror”, European diplomats and decision-makers must take their share of responsibility and move to close the legal blackhole they helped to create.

Martin Scheinin, the outgoing UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, who wrote the foreword to the report comments:

This report of the European Center for Constitutional and Human Rights is important because of its comprehensive coverage of the origins and development of the UN and European Union terrorist lists, their impacts, their political significance and the way in which they have been challenged in national and regional courts. Most importantly, it provides a European perspective to an international human rights problem that originates at the UN Headquarters in New York. Its conclusions concerning a reform of the European lists deserve attention by every policy maker. There is a fundamental need for a broader public debate concerning the future of terrorist listings. This report provides an important opening for this discussion.

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