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This factsheet does not bind the Court and is not exhaustive

# Terrorism

## Article 15 (derogation in time of an emergency)

Enables a State to unilaterally derogate from some of its obligations to the European Convention on Human Rights in certain exceptional circumstances<sup>1</sup> and has been used by certain member States in the context of terrorism

### Cases in which the ECHR addressed derogations

[Lawless v. Ireland](#) 01.07.1961

Derogation entered by Ireland in 1957 following terrorist violence connected to Northern Ireland

[Ireland v. the United Kingdom](#) 18.01.1978

Derogation entered by the UK in respect of its rule in Northern Ireland in the early 1970s and renewed on a number of occasions

[Brannigan and Mc Bride v. the UK](#) 25.05.1993

Further derogation submitted by the UK in 1989 in respect of Northern Ireland

[Aksoy v. Turkey](#) 18.12.1996

Derogations made by the Turkish Government in respect of south-east Turkey due to disturbances between the security forces and members of the PKK (Workers' Party of Kurdistan), a terrorist organisation

[A. and Others v. the United Kingdom](#) 19.02.2009

Derogation submitted by the UK in 2001 after the September 11 terrorist attacks in the USA

## 1. (Suspected) terrorists in detention

### [Lawless v. Ireland](#) (the Court's first ever judgment)

01.07.1961

Applicant, suspected of being a member of the IRA ("Irish Republican Army"), alleged that he was detained without trial between July and December 1957 in a military detention camp situated in the territory of the Republic of Ireland.

[No violation of Article 7 \(no punishment without law\)](#)

### Ill-treatment

Article 15 makes it clear that some measures are not permissible whatever the emergency. For example, Article 3 (prohibition of inhuman and degrading treatment or torture) is an absolute non-derogable right

### [Ireland v. the United Kingdom](#)

18.01.1978

From August 1971 until December 1975 the UK authorities exercised a series of "extrajudicial" powers of arrest, detention and internment in Northern Ireland. The case concerned the Irish Government's complaint about the scope and implementation of those measures and in particular the practice of psychological interrogation techniques

<sup>1</sup> "In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under international law."

(wall standing, hooding, subjection to noise and deprivation of sleep, food and drink) during the preventive detention of those detained in connection with acts of terrorism. The Court found the methods to have caused intense physical and mental suffering.

Violation of Article 3 (prohibition of inhuman and degrading treatment)

No violation of Articles 5 (right to liberty and security) or 14 (prohibition of discrimination)

### **Aksoy v. Turkey**

18.12.1996

Applicant complained in particular that his detention in 1992 on suspicion of aiding and abetting PKK terrorists was unlawful and that he had been tortured ("Palestinian hanging" ie stripped naked, with arms tied together behind back, and suspended by arms).

Violations of Articles 3 (prohibition of torture), 5 (right to liberty and security) and 13 (right to an effective remedy)

### **Martinez Sala v. Spain**

2.11.2004

Court found that the Spanish authorities had failed to carry out an effective official investigation into the applicants' allegations that they were ill-treated in police custody when arrested in the summer of 1992, shortly before the Olympic Games in Barcelona, in connection with an investigation into terrorist offences.

No violation of Article 3 (prohibition of inhuman and degrading treatment)

Violation of Article 3 (investigation)

### **Öcalan v. Turkey**

12.05.2005

The case concerned the conditions of the transfer to Turkey and subsequent detention of Abdullah Öcalan, former leader of the PKK, who was sentenced to death for activities aimed at bringing about the secession of part of Turkish territory.

Violation of Article 3 (prohibition of inhuman or degrading treatment), as the death penalty had been imposed following an unfair trial

Violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) and Article 5 § 3 (right to be brought promptly before a judge)

Violation of Article 6 § 1 (right to a fair hearing) and Article 6 § 1 in conjunction with Article 6 § 3 (b) (right to adequate time and facilities for preparation of defence) and (c) (right to legal assistance of one's own choosing)

### **Ramirez Sanchez v. France**

4.7.2006

Better known as "Carlos the Jackal" and viewed during the 1970s as the most dangerous terrorist in the world, the applicant complained about his solitary confinement for eight years following his conviction for terrorist-related offences.

No violation of Article 3 (prohibition of inhuman or degrading treatment) on account of the length of time spent in solitary confinement

Violation of Article 13 (right to an effective remedy) on account of the lack of a remedy in French law that would have allowed the applicant to contest the decision to prolong his detention in solitary confinement

### **Frérot v. France**

12.6.2007

A former member of the extreme left armed movement "Action directe", the applicant, convicted in 1995 to 30 years' imprisonment for – among other offences – terrorism, complained about strip searches in prison.

Violation of Articles 3 (prohibition of inhuman and degrading treatment), 8 (right to respect for private and family life), 13 (right to an effective remedy) and 6 § 1 (right to a fair trial)

**El-Masri v. the former Yugoslav Republic of Macedonia - PENDING CASE**

Communicated on 28 September 2010

Concerns “extraordinary rendition”: the applicant is a German national of Lebanese origin and complains that the Macedonian police arrested him in December 2003, kept him locked for 23 days in a motel in Skopje questioning him about alleged ties with terrorist organisations, and then handed him over to CIA agents who transferred him, with a special flight, to Afghanistan, where he remained in detention until May 2004. His case has been discussed at large within the Parliamentary Assembly of the Council of Europe and the European Parliament.

Articles 3 (prohibition of inhuman and degrading treatment), 5 (right to liberty and security), 8 (right to respect for private and family life), 10 (freedom of expression) and 13 (right to an effective remedy)

**Extradition / deportation of (suspected) terrorists**

Where there is a real risk of ill-treatment in another state, the obligation not to send an individual to that state is an absolute one; it cannot be claimed that public interest reasons for deporting or extraditing an individual outweigh the risk of ill-treatment on the individual’s return, regardless of the offence or conduct

**Chahal v. the United Kingdom**

15.11.1996

The Court held that the applicant, an advocate of the Sikh separatist cause who was served with a deportation order on grounds of national security, faced a real risk of ill-treatment if he were to be deported to India (the Court was not satisfied by the assurances given by the Indian Government).

Violation of Article 3 (prohibition of inhuman and degrading treatment) if the deportation order to India were to be enforced

**Shamayev and Others v. Georgia and Russia**

12.04.2005

Violation of Article 3 (prohibition of inhuman and degrading treatment) if the decision to extradite Mr Gelogayev to Russia – on the ground that he was a terrorist rebel who had taken part in the conflict in Chechnya – were to be enforced.

**Saadi v. Italy**

28.02.2008

Violation of Article 3 (prohibition of inhuman and degrading treatment) if the applicant were to be deported to Tunisia (where he claimed to have been sentenced in his absence in 2005 to 20 years’ imprisonment for membership of a terrorist organisation).

**Daoudi v. France**

03.12.2009

The applicant, an Algerian national, was arrested and convicted in France in the context of an operation to dismantle a radical Islamist group affiliated to al-Qaeda and suspected of having prepared a suicide attack on the United States Embassy in Paris.

Violation of Article 3 (prohibition of inhuman and degrading treatment) if the applicant were to be deported to Algeria

**Two cases in which the State concerned extradited/deported suspected terrorists despite the Court's indication under Rule 39 (interim measures) not to do so until further notice**

**Mamatkulov and Askarov v. Turkey**

04.02.2005

Extradition to Uzbekistan in 1999 of two members of the ERK opposition party suspected of the explosion of a bomb in Uzbekistan as well as an attempted terrorist attack on the President of the Republic.

No violation of Article 3 (prohibition of inhuman and degrading treatment)  
Violation of Article 34 (right of individual petition)

**Ben Khemais v. Italy**

24.02.2009

Deportation of applicant, sentenced in Tunisia in his absence to ten years' imprisonment for membership of a terrorist organisation, to Tunisia on account of his role in the activities of Islamic extremists.

Violation of Article 3 (prohibition of inhuman and degrading treatment)  
Violation of Article 34 (right of individual petition)

**Babar Ahmad and Others v. the United Kingdom – PENDING CASE**

06.07.2010: admissibility decision

Applications – declared partly admissible – by alleged international terrorists detained in the UK pending their extradition to the United States. The Court found that there was no reason to doubt the diplomatic assurances given by the US Government but declared admissible the complaints concerning:

- post-trial detention of three of the applicants who were at real risk of being held at a prison in the United States having the highest possible security level (the ADX Florence, a US "supermax" prison).
- the length of possible sentence, three of the applicants facing life sentences without parole.

In particular, Article 3 (prohibition of inhuman and degrading treatment)

**Omar Othman v. the United Kingdom - PENDING CASE**

Hearing on 14.12.2010

The applicant, Omar Othman (also known as Abu Qatada), challenges his removal to Jordan where he has been convicted in his absence on various terrorism charges.

Articles 3 (prohibition of inhuman and degrading treatment), 5 (right to liberty and security) and 6 § 1 (right to a fair trial)

**Beghal v. France – PENDING CASE**

communicated on 02.09.2009

**H.R. v. France – PENDING CASE**

communicated on 30.04.2010

These two cases concern the allegation that the applicants, convicted in France for terrorist activities, would be at risk of ill-treatment if returned to Algeria.

In particular, Article 3 (prohibition of inhuman and degrading treatment)

## Article 5 (right to liberty and security) issues

### Reasonable suspicion

Article 5 does not permit the detention of an individual for questioning merely as part of an intelligence gathering exercise (there must be an intention, in principle at least, to bring charges)

### [Fox, Campbell and Hartley v. the UK](#)

30.8.1990

Applicants were arrested in Northern Ireland by a constable exercising a statutory power (since abolished) allowing him to arrest for up to 72 hours anyone he suspected of being a terrorist. Court concluded that the evidence provided was insufficient to establish that there had been an objectively determined 'reasonable suspicion' for the arrests.

Violation of Article 5 § 1

### [Murray v. the UK](#)

28.10.1994

Applicant arrested on suspicion of collecting money for the Provisional IRA.

### [O'Hara v. the UK](#)

16.10.2001

Prominent member of Sinn Fein arrested on account of suspected involvement in a murder committed by the IRA.

No violation of Article 5 § 1 in either case – the Court held that the applicants' arrests on suspicion of terrorism had been part of pre-planned operations based on evidence or intelligence information of terrorist activity and had met the standard of 'honest suspicion on reasonable grounds'

## Right to be brought promptly before a judge or 'other officer' after arrest

An arrested person is to be brought 'promptly' before a judge or other office, the 'clock' beginning to tick at the point of arrest

### [Brogan and others v. the UK](#)

29.11.1988

Four applicants suspected of terrorism were arrested by the police in Northern Ireland and, after being questioned for periods ranging from four days and six hours to over six days, were released without being charged or brought before a magistrate. The Court held that the requirement of 'promptness' could not be stretched to a delay of four days and six hours or more.

Violation of Article 5 § 3

### [Brannigan and McBride v. the UK](#)

25.5.1993

Detention of IRA suspects for periods longer than in the Brogan case did not breach the Convention as the UK had made a valid emergency derogation under Article 15 (see p. 1 above).

No violation of Article 5 § 3

## Indefinite detention

### [A. and Others v. the United Kingdom](#)

19.2.2009

Complaints about detention in high security conditions under a statutory scheme which permitted the indefinite detention of non-nationals certified by the Secretary of State as suspected of involvement in terrorism. The Court found that the applicants' detention had not reached the high threshold of inhuman and degrading treatment for which a violation of Article 3 could be found but held that there had been a:

Violation of Article 5 § 1 - since the applicants (except for the Moroccan and French applicants who had elected to leave the UK) had not been detained with a view to deportation and since, as the House of Lords had found, the derogating measures which permitted their indefinite detention on suspicion of terrorism had discriminated unjustifiably between nationals and non-nationals

Violations also found of Article 5 §§ 4 and 5

## Article 6 (right to a fair trial) issues

### Heaney and McGuinness v. Ireland

21.12.2000

Concerned applicants' right to remain silent and their right not to incriminate themselves following their arrest on suspicion of serious terrorist offences.

Violation of Article 6 (right to a fair trial)

### Salduz v. Turkey

27.11.2008

Applicant, a minor at the time, was arrested on suspicion of participating in an illegal demonstration in support of the imprisoned leader of the PKK and accused of hanging an illegal banner from a bridge. He was subsequently convicted of aiding and abetting the PKK. Case concerned restriction on applicant's right of access to a lawyer while in police custody for an offence falling under the jurisdiction of the state security courts, regardless of age.

Violation of Article 6 § 3 (c) (right to legal assistance of one's own choosing) in conjunction with Article 6 § 1 (right to a fair hearing)

## 2. Victims of terrorism

States are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts<sup>2</sup>

### Içyer v. Turkey

12.01.2006

The applicant complained in particular under Article 8 (right to respect for private life, family and home) and Article 1 of Protocol No. 1 (protection of property) that the Turkish authorities had refused to allow him to return to his home and land after he was evicted from his village in late 1994 on account of terrorist activities in the region. Case concerned question of the effectiveness of the remedy before the commission set up under the Law on Compensation for Losses resulting from Terrorism.

**Inadmissible** (the Court found that the Law provided adequate redress, and the applicant was now unquestionably free to return to his village. Some 1,500 cases concerning the possibility of returning to villages were thus declared inadmissible by the Court in the light of this decision).

### Finogenov and Others v. Russia and Chernetsova and Others v. Russia - **PENDING CASES**

Declared admissible in March 2010

Cases brought by relatives of the victims of the "Dubrovka" theatre hostage-taking incident carried out in October 2002 in Moscow by a group of terrorists belonging to the Chechen separatist movement. Concerns the measures taken by the authorities to prevent the terrorist attack and the subsequent use of a narcotic gas by the Russian security services during the rescue operation.

Articles 2 (right to life), 3 (prohibition of inhuman and degrading treatment), 6 § 1 (right to a fair trial) and 13 (right to an effective remedy)

<sup>2</sup> See "Human Rights and the fight against terrorism", The Council of Europe Guidelines.

### 3. Prevention of terrorism

All measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision<sup>2</sup>

#### Use of force by the State in self-defence or defence of another (Article 2)

Article 2 § 2 justifies the use of force in self-defence only if it is 'absolutely necessary'

#### [McCann and Others v. the UK](#)

27.09.1995

Three members of the Provisional IRA, suspected of having on them a remote control device to be used to explode a bomb, were shot dead on the street by SAS soldiers in Gibraltar. Violation because the operation could have been planned and controlled without the need to kill the suspects.

[Violation of Article 2 \(right to life\)](#)

Communicated 28.09.2010

#### [Armani da Silva v. the UK](#) - **PENDING CASE**

Communicated on 28.09.2010

Concerns the shooting of a Brazilian national, misidentified as a suicide bomber, by the police in the London underground

[In particular Article 2 \(right to life\)](#)

#### Dissolution of political parties (Article 11)

#### [United Communist Party of Turkey and Others v. Turkey](#)

30.01.1998

Concerned dissolution of the United Communist Party of Turkey ("the TBKP") and banning of its leaders from holding similar office in any other political party. Court held that the dissolution had not been "necessary in a democratic society", finding in particular that there was no evidence that the TBKP had been responsible for terrorism problems in Turkey.

[Violation of Article 11 \(freedom of assembly and association\)](#)

#### Similar cases

#### [Socialist Party and Others v. Turkey](#)

25.5.1998

#### [Case of Freedom and Democracy Party \(ÖZDEP\) v. Turkey](#)

8.12.1999

#### [Yazar, Karatas, Aksoy and the People's Labour Party \(HEP\) v. Turkey](#)

9.4.2002

#### [Herri Batasuna and Batasuna v. Spain](#)

#### [Etxeberría and Others v. Spain](#)

#### [Herritarren Zerrenda v. Spain](#)

30.06.2009

The first case concerned the dissolution of the political parties Herri Batasuna and Batasuna, allegedly linked to the terrorist organisation ETA.

The Court held that the applicants' projects had been in contradiction with the concept of "a democratic society" and had entailed a considerable threat to Spanish democracy.

[No violation of Article 11 \(freedom of assembly and association\)](#)

The second and third cases concerned the disqualification from standing for election imposed on the applicants on account of their activities within the political parties (in particular, Herri Batasuna and Batasuna) that had been declared illegal and dissolved.

[In particular, no violations of Article 3 of Protocol No. 1 \(right to free elections\), Article 10 \(right to freedom of expression\) or Article 13 \(right to an effective remedy\)](#)

## Freedom of expression issues (Article 10)

Two inadmissibility decisions (by the European Commission of Human Rights)

### [Purcell and others v. Ireland](#)

Declared inadmissible 16.4.1991

### [Brind v. the UK](#)

Declared inadmissible 9.5.1994

Cases concerned applicants' complaints under Article 10 about orders/notices restraining the broadcasting of interviews/reports of interviews and any words spoken by a person representing or supporting terrorist organisations such as the IRA. In the first case, the Commission found that the order was consistent with the objective of protecting national security and preventing disorder and crime; in the second case, the Commission found that the requirement that an actor's voice be used to broadcast interviews was a limited interference.

### [Association Ekin v. France](#)

17.7.2001

Concerned the ban on the circulation of a book on the Basque culture. Court found that there was nothing in the book's content suggesting incitement to violence or separatism and held that the interference with applicant's freedom of expression had not been 'necessary in a democratic society'.

[Violation of Article 10 \(right to freedom of expression\)](#)

### [Falakaoglu and Saygili v. Turkey](#)

19.12.2006

Concerned the applicants' complaint about their criminal conviction under the Prevention of Terrorism Act for publishing press articles designating State agents as targets for terrorist organisations.

[Violation of Article 10 \(right to freedom of expression\)](#)

### [Leroy v. France](#)

2.10.2008

The applicant, a cartoonist, complained about his conviction for complicity in condoning terrorism, following the publication of a drawing which concerned the attacks of 11 September 2001.

[No violation of Article 10 \(right to freedom of expression\)](#)

### [Ürper and Others v. Turkey](#)

20.10.2009

Concerned the applicants' complaints about the suspension of the publication and dissemination of their newspapers, considered propaganda in favour of a terrorist organisation.

[Violation of Article 10 \(right to freedom of expression\)](#)

#### Similar cases

### [Gözel and Özer v. Turkey](#)

06.07.2010

### [Turgay and Others v. Turkey](#)

15.06.2010

## Measures which interfere with privacy (Article 8)

### [Klass and Others v. Germany](#)

6.09.1978

Concerned complaints brought by the applicants, five German lawyers, about legislation in Germany empowering the authorities to monitor their correspondence and telephone communications without obliging the authorities to inform them subsequently of the measures taken against them. The Court found that, due to the threat of sophisticated forms of espionage and terrorism, some legislation granting powers of secret



surveillance was, under exceptional conditions, 'necessary in a democratic society' in the interests of national security and/or the prevention of disorder or crime.

[No violation of Article 8 \(right to respect for private and family life\)](#)

### **Gillan and Quinton v. the UK**

12.01.2010

Concerned the police power in the United Kingdom under sections 44-47 of the Terrorism Act 2000 to stop and search individuals without reasonable suspicion of wrongdoing.

[Violation of Article 8 \(right to respect for private and family life\)](#)

### **NADA v. Switzerland - PENDING CASE**

Relinquished to Grand Chamber on 30.09.2010 and hearing to be held on 23.03.2011

Concerns series of restrictions imposed on a person registered on a "black list" and taken by the authorities on the basis of resolutions adopted by the Security Council of the United Nations as part of the fight against al-Qaeda and the Taliban.

[Articles 5 \(right to liberty and security\), 8 \(right to respect for private and family life\) and 13 \(right to an effective remedy\)](#)

## 4. MISCELLANEOUS

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### **Sabanchiyeva and Others v. Russia - PENDING CASE**

Declared admissible in November 2008

The case concerns the authorities' refusal to return the bodies of presumed terrorists to their relatives.

[In particular Article 3 \(prohibition of inhuman and degrading treatment\)](#)

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