

## **Conference on the "Role of the Prosecutor's Office in Protection of Individual Rights and Public Interest in light of Requirements of the European Convention on Human Rights"**

**(Saint-Petersburg, 6–9 July 2021)**

**Session:** “Combating illegal migration in the context of protection of rights of migrants and combating terrorist threats” (8 July 2021)

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### **Introduction**

- Dear excellencies, dear colleagues, thank you for the invitation to speak with you here today.
- It is an honour to be able to speak to you on this challenging topic, and I thank you for the opportunity to introduce some of our work.
- At the Council of Europe, the Committee on Counter-Terrorism, the CDCT, is charged with taking a comprehensive approach to helping our member states to fight and prevent terrorism, as well as elaborating items such as the Council of Europe Counter-Terrorism Strategy.
- I have had the honour of Chairing this committee since 2020 and have also had the privilege of participating in its activities for several years now.
- Our work at the CDCT is based on the 2005 Warsaw Convention on the Prevention of Terrorism, which supports the adoption of clear and comprehensive counter-terrorism legislation that upholds fundamental rule of law and human rights principles.
- We do this by supporting efforts to strengthen both national legislation and practices, as well as by facilitating international cooperation.
- Indeed, I am happy to address this audience today as the CDCT also often places a special focus on prosecutors - many of our members are current or former prosecutors, and we benefit greatly from their input.
- During my time in the Committee, we have worked hard to engage multilateral legal initiatives to prevent acts of terrorism, support the prosecution of suspected terrorists, and encourage action to protect society and individuals from the dangers posed by terrorist actors.
- Our work can also help support the dedicated professionals working day and night to maintain security and peace at our borders.
- In that respect, the CDCT seeks to develop and advance tools and good practices specifically designed to facilitate the vital and challenging work of prosecutors with regards to terrorism and terrorism-related cases.
- Today, I would first like to discuss the link between migration and terrorism and then I will present some of the CDCT tools and instruments that are helpful for prosecutors.

### **Link between migration and terrorism**

- To start, let me emphasise that the relationship between migration and terrorism is a complicated one and naturally we cannot go into all dimensions here today.
- I would like to make a few key observations.

- As a first observation, while the risk of terrorists hiding among migrants unlawfully crossing borders is real, it thankfully appears to be occasional and opportunistic rather than systematic.
- Notably, there have been tragic events such as the 2015 Paris attacks and the coordinated attacks in Brussels in 2016 which involved terrorists who managed to slip past the attention of law enforcement and border controls.
- However, it is still very hard to identify any meaningful patterns.
- Additionally, I would like to note that the experience of many member states indicates that individuals seeking asylum through irregular means are far more likely to be fleeing terrorism and violence rather than traveling for the purposes of terrorism.
- Consequently, when it comes to the risk of terrorist actors attempting to abuse irregular migration routes in order to commit crimes internationally, our approach needs to be targeted, proportional and specific.

### **Migration, terrorism and human rights**

- As many national immigration systems have been under considerable stress, I would like to highlight the need to support lawful and effective approaches to counter-terrorism in this context.
- Respect for human rights and the rule of law is an essential part of any successful counter-terrorism effort.
- It goes without saying that States are entitled to impose certain restrictions on immigration on grounds of national security, or to conduct operations to prevent terrorist activity and stop organized crime from profiting from human trafficking, people smuggling or illegal arms dealing.
- While it is necessary to conduct counter-terrorism investigations and operations into persons suspected of being connected to terrorism or terrorist groups, this should occur with a proper legal basis that balances the rights of the individual with legitimate state objectives.
- For instance, while certain administrative responses should be in place to enable swift action against suspected threats, procedural safeguards also need to be established to ensure that affected persons can get fair trials and have access to effective remedies.
- A criminal justice response should complement existing counter-terrorist strategies, to ensure resources are effectively deployed against a complex set of threats and actors, while ensuring that all State actions follow the rule of law and uphold the human rights and fundamental freedoms of individuals.

### **CDCT tools and developments**

- As today's conference is focused on prosecutors, let me present some of the work of the CDCT that could be useful in that respect.
- First, I would like to present the **2005 Warsaw Convention on the Prevention of Terrorism** and the **Additional Protocol to the 2005 Council of Europe Convention on Terrorism**.
  - o The 2005 Warsaw Convention is the cornerstone of our activity at the CDCT, covering transnational terrorism offences in line with relevant global instruments.

- It calls for the establishment of appropriate national terrorism prevention policies and requires State Parties to ensure that certain acts are criminal offences, including recruitment and training for terrorism.
  - The Convention also establishes the duty to investigate terrorism offences, and enhances mutual legal assistance principles and co-operation in criminal matters, ensuring that suspected offenders are extradited or prosecuted in cases with overlapping jurisdiction.
  - The 2015 Additional Protocol builds upon the Convention, and is aimed specifically at addressing foreign terrorist fighters and returnees, reinforcing the main substantive criminal law elements of United Nations Security Council Resolution 2178 (2014).
  - A transnational problem requires a transnational solution.
  - The Additional Protocol thus aims at enhancing international co-operation and mutual legal assistance to prevent and prosecute persons travelling abroad for the purposes of terrorism.
  - Accordingly, it covers both the persons travelling as well as those organizing, recruiting or facilitating such travel with the intent to support terrorist groups or attacks, and those who return from abroad.
  - I can also mention here that the CDCT aims to work on revising the 2005 Warsaw Convention with a state-of-the-art definition of transnational terrorism.
  - Prosecutors are fully aware of the need for clear, effective and harmonized definitions of crimes, and this definition can help improve domestic prosecution of terrorist offences and facilitate effective international cooperation and mutual legal assistance.
  - This revised definition aims to resolve longstanding issues with the lack of an agreed definition of terrorism at least at the regional level of the Council of Europe in line with relevant international instruments at UN level
  - The approach taken will be one that focuses on the crime of terrorism as an act or behaviour - regardless of the underlying ideology.
- Another key development I would like to present is the recently completed **Draft Recommendation on the use of information collected in conflict zones as evidence in criminal proceedings related to terrorist offences.**
- This is another instrument which is crucial for facilitating the work of prosecutors.
  - This Recommendation was drafted specifically with foreign terrorist fighters in mind, based on some of the challenges certain member states have experienced in recent years with regard to information on the activities of terrorists operating in foreign conflict zones.
  - As such, it aims to improve the practical and legal avenues by which such evidence can be used to prosecute returning terrorist fighters, providing suggestions to overcome common difficulties and to facilitate its use in court proceedings.
  - It also provides practical guidance to ensure that fair trial rights and procedural standards are maintained, while also protecting state security imperatives such as the disclosure of sensitive or classified material.

- Finally, let me briefly discuss two related items valuable to the work of prosecutors: the 2017 **Recommendation on “special investigation techniques” in relation to serious crimes including acts of terrorism** and the **Guidelines on terrorism and transnational organised crime**, which was adopted earlier this year.
  - Both instruments are intended to help member states to use special investigation techniques to disrupt criminal and terrorist activities, as well as to assist in identifying and confiscating instrumentalities and the proceeds of crime.
  - The Recommendation recognises the value of special investigation techniques as a vital tool for preventing, suppressing and prosecuting terrorist offences.
  - It aims to reinforce the effectiveness of these techniques by developing common standards governing their operation, in a manner that builds public confidence as well as confidence amongst competent authorities in their use.
  - It is particularly important in relation to the use of cyber investigations, which, in today’s world, is an essential source of evidence on terrorist communications and activities.
- Secondly, the **Guidelines on terrorism and transnational organized crime** provide effective practices to address any opportunistic collaboration between organised crime and terrorist groups.
  - The Guidelines encourage states to examine the nature of any links between organized crime and terrorism, and to take the necessary measures to identify, intercept and intervene when these linkages manifest.
  - It is composed of 47 specific guidelines relating to the criminal justice system, enhanced cooperation and coordination at national level, and international cooperation.
  - The Guidelines thus build upon existing standards in the two fields, advising on the application of tools successfully used in one domain to the other, as well as introducing new tools specifically aimed at addressing the interplay between organized crime and terrorism.
  - For instance, the Guidelines note the importance of mechanisms for the protection of witnesses and collaborators of justice in organised crime cases, which are potentially rich sources of information on terrorist activity and related threats.

### **Closing remarks**

- I would like to conclude my remarks here today by emphasizing that maintaining public safety in the face of a diverse and diffuse terrorist threat is no easy task.
- This is true whether the threat emanates from abroad or at home.
- The complexities of modern migration patterns, and the potential links between terrorist actors, arms traffickers, drug smugglers and people who traffic in human beings requires member states to exercise vigilance.
- The potential threat from terrorist actors presents a challenge to our collective efforts to uphold human rights and the rule of law.

- There remains an ever-present need for states to work together, to cooperate where possible and to share relevant information.
- Improving and strengthening this cooperation facilitates effective and proportionate action to combat, prevent and suppress these threats.
- It is vital that these efforts are well-founded on clear and actionable intelligence, and any terrorist actors that seek to abuse immigration routes, and the criminal groups who support them, are duly prevented from doing so.
- The CDCT, and the Council of Europe, have supported the development of a legal regime that facilitates and encourages targeted counter-terrorism action in this area, in accordance with our shared values and principles, and provides prosecutors with guidance and tools to that effect.
- We look forward to helping you implement these tools and to ensuring a more effective and efficient response to terrorist threats.
- Thank you for your time and I wish you a pleasant and informative conference.