Terrorist Designation with Regard to European and International Law: The Case of the PMOI

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Summary

The opinion deals with three questions: (i) what is the significance in law of the word "terrorist", (ii) how is it that an organization may find itself designated as "terrorist", and (iii) what can the organization concerned do about it.

1. The absence of a clear or agreed definition within the international community of "terrorism", "terrorist", "terrorist act" or "terrorist group", means that there is uncertainty in the application of any law centring on these terms, and a manifest risk of arbitrary, in particular politically motivated abuse of such law. This reflection is of key importance to the PMOI, which sees itself as the wholly legitimate opposition to a brutally repressive regime, where the use of violent methods is no more criminal than the use of the same or very similar tactics by the ANC and PAC in South Africa, the PLO in Israel/Palestine, or FRELIMO in East Timor. This makes it essential that there are strong safeguards in place to check, in all senses of the word, the way in which national and international authorities use the power to blacklist organisations.

2. By using the example of PMOI cases heard in US Courts of Appeal against its labelling as a terrorist organisation, it is concluded that the US legislation is a recipe for arbitrary, secretive and unjust executive decision-making, shielded from the scrutiny of the courts, and equally removed from most public debate precisely because of the 'chilling' effect of the use of the term 'terrorism'.

3. In the United Kingdom, the Terrorism Act 2000 is criticised for the definition it uses of terrorism. It fails to define what precisely it is about "terrorism" which adds anything to ordinary serious crimes. It is also pointed out that under the Act there are severe penalties for membership of or support for proscribed organisations, although it is notable that no-one has been prosecuted for association with or support for the PMOI. On the contrary, numbers of members of the House of Commons and the House of Lords have demonstratively associated themselves with events protesting about the treatment of the PMOI.

4. In relation to EU blacklisting, three main problems are identified: (i) there is no requirement that the group has recently committed acts of terrorism – for example, the PMOI have not carried out any military acts since July 2001 and the decision to include the PKK in May 2002 several years after it had renounced violence, (ii) there is no requirement that the terrorist act be directed against a non-military target, as is the case with the International Convention for the Suppression of the Financing of Terrorism, and (iii) there is no requirement that the acts be directed against a democratic government.

5. The blacklisting of an organisation and the "devastation" this wreaks upon it, seriously interferes with the organisation's (and its members') right to freedom of association and assembly, and its right to the peaceful enjoyment of its possessions - all of which are protected by the European Convention on Human Rights. In addition, it will make it difficult if not impossible for the organisation to effectively exercise its right to freedom of expression, which is equally protected.

6. Specifically, blacklisting an organisation and freezing its assets, without granting the organisation the right to challenge this blacklisting and freezing, in a court fully satisfying the requirements of Art. 6(1) ECHR, in proceedings in which the factual and legal basis for the blacklisting and freezing is properly, and fully, judicially examined, violates the right of access to court as guaranteed by that provision of the Convention.

7. In view of the high legal status of the Convention in the Council of Europe, the European Union, and the Member States of these organisations, it should, in theory, be easy to raise these matters in legal proceedings at national or EU level, and ultimately in the European Court of Justice and/or the European Court of Human Rights. In practice, this is not so easy, mainly because of the enormous complexity of the legal frameworks within which the blacklisting rules have been drawn up. Even so, it is strongly recommended that legal challenges are pursued with vigour, in the European *fora* (the ECJ Court of First Instance, the full ECJ, and the European Court of Human Rights), but also, first of all, at national level. It is recommend that the various avenues be examined further, and used.

Prof Bill Bowring

Prof Bowring is a practising English barrister (mainly in the European Court of Human Rights), and Professor of Human Rights and International Law at London Metropolitan University, the largest University in London. He is the director for the University's Human Rights and Social Justice Research Institute, which includes the EC-funded European Human Rights Advocacy Centre (EHRAC) working in partnership with the Russian NGO Memorial in taking cases against Russia to the Strasbourg Court.

Prof Bowring is adviser to the UK Government's Department for International Development on "Access to Justice and Rights Issues in Russia". He is an expert for the EU TACIS project "Developing Local Democracy and Self-Government in Russia", working in four Russian regions on the consequences of the new Law "On Foundations of Local Self-Government in the Russian Federation" and acts as expert for the Council of Europe and other international organisations on issues concerning human rights, minority rights, and rights to education. He has many publications in English and in Russian on problems of law reform and human rights, as well as international law.

Prof Douwe Korff

Douwe Korff is a Dutch comparative and international lawyer, specialising in human rights and data protection. A graduate of the Free University of Amsterdam (Netherlands) and alumnus of the European University Institute in Florence (Italy), he has worked at the Max Planck Institutes for comparative and international criminal law and for comparative and international public law in Freiburg im Breisgau and Heidelberg (Germany) and at the European Commission of Human Rights in Strasbourg (France). Before his appointment at London Metropolitan University, he taught international law and human rights at the University of Limburg (Netherlands) and the European Convention on Human Rights at the University of Essex (UK).

In the late-70s and early 80s, Douwe Korff was Head of Europe Research at Amnesty International's International Secretariat. He has since done work for Amnesty International, the International Commission of Jurists, the Netherlands Human Rights Institute, the International Council on Human Rights Policy and other NGOs on international standards relating to freedom of expression, freedom of religion, the criminal justice system, and racism. He is a member of expert committees of Liberty (the leading British civil liberty organisation) and Justice (the UK branch of the International Commission of Jurists). He is included in lists of experts on human rights of the Council of Europe, the European Union and the OSCE and as such regularly undertakes research and training in the field of human rights and criminal justice and other matters such as freedom of religion.

In the last few years, he has carried out research and provided such training for judges, procurators, advocates and human rights activists in Armenia, Estonia, Georgia, Montenegro, Russia, Turkmenistan and Uzbekistan.

Douwe Korff has acted as counsel for the applicant in a number of leading cases under the European Convention on Human Rights, including Castells —v- Spain (concerning freedom of expression), McCann et al. —v- the UK (the "Gibraltar Shooting Case") and Kelly et al.- and Shanaghan —v- the UK (concerning the procedural aspect of the right to life), and has

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For the last fifteen years, Douwe Korff has also been a leading data protection expert and consultant. In that capacity, he has advised Amnesty International, the United Nations High Commissioner for Refugees and the International Committee of the red Cross, as well as international trade associations, in particular in the field of direct marketing (FEDMA, DMA-US) and market research, and individual companies. His corporate clients have included American Express, Cendant Corporation, Dun & Bradstreet, Readers Digest, Cygna and others. He has written extensively on comparative, international and transnational data protection law. In the last five years, he has carried out four major studies for the European Union's Directorate-General on the Internal Market, relating to the implementation of EC Directives harmonising data protection law in the EU and the EEA. He is a member of the advisory council of the Foundation for Information Policy Research (FIPR), the leading UK think-tank on IT policy.