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The European Court of Human Right's jurisprudence on issues related to terrorism

REPORT BY

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Terrorism is a scourge which has affected many countries. It has claimed the lives of many innocent people and it goes against fundamental democratic values and human rights starting with the right to life, which all States bound by the Convention have a duty to protect[1].

Governments, police, secret police and the courts have been at the forefront of fighting terrorism, but how can they do this and make sure they respect their own human rights obligations?

- Would it be right to torture suspects to obtain information?
- What about surveillance of telephone calls or email?
- Should a government be able to cancel elections, close down newspapers or hold trials in secret?

These are the kinds of questions the European Court of Human Rights has had to answer in its work of upholding the European Convention on Human Rights in the signatory countries. Indeed, the Court's very first judgment[2], in 1960, *Lawless v. Ireland* concerned a man who had been detained in Ireland under special anti-terrorism powers.

As you will see, the Court's judgments show that **States have to reconcile their actions in fighting terrorism with their duty to respect human rights**.

Let me first of all point out that the Convention does give States some leeway to deal with what is regarded as emergency situations. This is found in **Article 15**, which allows States to derogate from certain obligations "in time of war or other public emergency threatening the life of the nation". Any measures can only be to the extent strictly required by the situation and have to be consistent with a State's other obligations under international law. We can find some very recent examples of States making use of Article 15 for instance in Turkey, following the failed *coup d'etat* in summer of 2016, as well as in Ukraine, following the 2014 events in Crimea. Further examples might strike even closer to home, for instance, ever since the November 2015 terrorist attacks in Paris, there has been a state of emergency in France, which allows for certain special measures in the fight against terrorism, such as administrative searches, house arrests etc. It would appear that the said measures prevented as many as twelve terrorist attacks in that country in the past year.

However, even before invoking Article 15, **States can restrict most Convention rights**, in other words **those which are not regarded as absolute**, on certain grounds. This includes, but is not limited to, emergency situations, for example, a threat of an imminent terrorist attack. States enjoy what the Court has called a wide margin of appreciation, in other words, **wide discretion, in balancing the rights of individuals against the interests of national security**[3].

On the other hand, and to answer one of the questions I raised earlier, **there are some rights which cannot be overridden**, including the right not to be subjected to torture or ill-treatment, as provided for in Article 3. This is one of the rights which are considered absolute by the Convention and no derogation is possible under any circumstances[4].

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[1] Article 1 of the Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002
[2] *Lawless v. Ireland*, 332/57, 14 November 1960
[3] *Leander v. Sweden*, 9248/81, § 59, 26 March 1987
[4] *Öcalan v. Turkey* [GC], 46221/99, § 179, CEDH 2005-IV and *A. and Others v. the United Kingdom* [GC], 3455/05, § 126, ECHR 2009

As will be shown in this presentation, **the fight against terrorism does not give States *carte blanche* to interfere with the rights of those within their jurisdiction**. Governments will always need to **demonstrate that the measures that they have taken to combat terrorism were justified on one or more of the grounds set out in the Convention text**, or as interpreted by the Court in its case-law.

Let's now take a look at some key cases involving issues related to terrorism.

1. Prevention of terrorism

In order to prevent terrorism, **States may take measures that, for example, interfere with the right to respect for private life, freedom of expression or association, or the right to free elections.**

Article 8 of the Convention guarantees to everyone the right to respect for his or her private life. However, the fight against terrorism permits the use of special surveillance methods to collect information which might help prevent terrorist acts or aid in the arrest and prosecution of suspected terrorists.

As early as the 1970s, the Court accepted that legislation granting powers of secret surveillance over mail, post and telecommunications was, in exceptional circumstances, necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime (*Klass v. Germany*)[5]. More recently, in *Uzun v. Germany*, the Court found that the surveillance of suspected terrorists using GPS did not violate their right to privacy guaranteed under Article 8[6]. The Court was satisfied that domestic legislation provided for adequate safeguards to prevent the arbitrary use of such methods.

On the other hand, in *Gillian and Quinton v. UK*, powers granted to the police under anti-terrorist legislation to stop and search people without any reasonable grounds to suspect them of an offence were found to breach the applicants' right to respect for their private life[7] as the **discretion conferred on the police was too broad** and was **not accompanied by adequate legal safeguards against abuse**.

Let's look at **freedom of expression**, which is protected by Article 10.

In the context of the prevention of terrorism, in a case against Turkey, the Court found that the conviction of journalists for publishing statements by suspected members of an armed terrorist group, which were seen as an incitement to violence, had not violated the journalists' rights under Article 10[8]. In another case, *Sürek v. Turkey* the weekly newspaper owned by the applicant had published strongly-worded readers' letters accusing the authorities of brutal acts of suppression in south-east Turkey. The applicant was convicted of dissemination separatist propaganda. Given the overall context of terrorism in which the texts had been published and the fact that they were capable of stirring up violence and hatred, the Court found that the domestic authorities had given relevant and sufficient reasons for interfering with the applicant's freedom of expression and no violation of Article 10 was found[9].

The Court reached the same conclusion in the case of *Leroy v. France*. In that case the applicant had published a caricature and a provocative caption about the attack on the World

[5] *Klass and Others v. Germany*, 5029/71, 6 September 1978, Series A, No. 28, § 48
[6] *Uzun v. Germany*, 35623/05, § 80, ECHR 2010 (extracts)
[7] *Gillan and Quinton v. the United Kingdom*, 4158/05, § 87, ECHR 2010 (extracts)
[8] *Falakaoğlu and Saygılı v. Turkey*, 22147/02 and 24972/03, §§ 29-37, 23 January 2007
[9] *Sürek v. Turkey* (no. 1) [GC], 26682/95, §§ 59-65, ECHR 1999-IV

Trade Center in 2001 just a few days after the attack. He was moderately fined for complicity in condoning terrorism. The Court accepted that, given the timing of the publication, just two days after the attack, the applicant must have been aware of the impact it was likely to have and found no breach of the applicant's right to freedom of expression[10].

On the other hand, in *Ürper and Others v. Turkey,* the authorities had suspended on several occasions the publication of newspapers under anti-terrorist legislation for relatively short periods of time (15-30 days). The foregoing was found to breach Article 10[11] because the ban in the applicants' case had been imposed not on particular types of article, but on the future publication of entire newspapers, whose content was unknown at the time the court orders were made. By employing a form of censorship, the domestic courts had, in the Court's view, imposed unjustified limitations on the crucial "watchdog" role of the press.

So what about the **prevention of terrorism and the freedom of association**, which is protected by Article 11, and which includes the rights of political parties and other organisations? Well, in *Herri Batasuna and Batasuna v. Spain* the Spanish government was found not to have violated that provision when it dissolved two political parties whose direct political aims were contrary to the democratic principles of that country's Constitution[12]. The domestic courts had already concluded that the political parties in question had been instrumental to a terrorist organisation strategy and that the acts and speeches of their members had not ruled out the use of force in order to achieve their aims.

In another case against Spain *Etxeberria and Others v. Spain* the ECHR also had the opportunity to examine the issue of terrorism in the context of the **right to free elections.** It found no violation of the Convention for the exclusion from taking part in an election of electoral groups which had been dissolved on the grounds of their links with a terrorist organisation[13]. The dissolution of the groups had been proportionate to the aim of the protection of democracy and, given a lack of any arbitrariness on the part of the authorities, had not infringed the free expression of the opinion of the people.

2. Interventions seeking to stop terror attacks

In order to stop terrorist attacks, States may use lethal force.

As already mentioned, States are under an obligation to protect everyone's right to life, as guaranteed by Article 2, and this includes the lives of suspected terrorists. The use of lethal force in self-defence must be "absolutely necessary" if it is to be justified under that provision. For example, in the case of *McCann and Others v. the United Kingdom* the 1988 killing by British military servicemen of three members of the Irish Republican Army suspected of preparing a bomb attack was found to violate Article 2 since the operation could have been carried out without recourse to lethal force[14].

On the other hand, the death of hostages in a Moscow theatre due to a gas that was used to neutralise the hostage-takers was not found to be contrary to Article 2 in the case of *Finogenov and Others v. Russia* [15]. Although the gas was dangerous and potentially lethal, it had not been intended to kill. The gas had produced the desired effect on the terrorists, rendering most of them unconscious, had helped in the liberation of the rest of the hostages and reduced the likelihood of an explosion. However, in that case the Court found separately

[10] *Leroy v. France*, 36109/03, §§ 36-48, 2 October 2008
[11] *Ürper and Others v. Turkey*, 14526/07 et al., §§ 44-45, 20 October 2009
[12] *Herri Batasuna and Batasuna v. Spain*, 25803/04 and 25817/04, §§ 94-95, ECHR 2009
[13] *Etxeberria and Others v. Spain*, 35579/03 et al., §§ 51-56, 30 June 2009
Herritarren Zerrenda v. Spain, 43518/04, § 43, 30 June 2009
[14] *McCann and Others v. the United Kingdom* [GC], 18984/91, 27 September 1995, § 213, Series A no. 324
[15] *Finogenov and Others v. Russia*, 18299/03 and 27311/03, ECHR 2011 (extracts)

that Russia had failed to comply with its positive obligations under Article 2 as the operation to rescue some 900 hostages had been insufficiently prepared.

The very recent case, *Tagayeva and Others v. Russia* is another good example of what the States are or are not supposed to do in the context of fight against terrorism. The case concerned the September 2004 terrorist attack on a school in Beslan. For over fifty hours heavily armed terrorists held captive over 1,000 people, the majority of them children. Following explosions, fire and an armed intervention, over 330 people lost their lives (including over 180 children) and over 750 people were injured. The applicants (over 400 people) had either been taken hostage and/or injured in the incident, or were family members of those taken hostage, killed or injured. They made allegations of a range of failings by the Russian State in relation to the attack. The Court held that there had been a **violation of Article 2** (right to life) of the Convention, arising from a failure to take preventive measures. The authorities had sufficiently specific information of a planned terrorist attack in the area, linked to an educational institution. Nevertheless, not enough had been done to disrupt the terrorists meeting and preparing; insufficient steps had been taken to prevent them travelling on the day of the attack; security at the school had not been increased; and neither the school nor the public had been warned of the threat. The Court also found that there had been:

1. a **violation of the procedural obligation under Article 2**, primarily because the investigation had not been capable of leading to a determination of whether the force used by the State agents had or had not been justified in the circumstances;

2. a further **violation of Article 2**, due to serious shortcomings in the planning and control of the security operation. The command structure of the operation had suffered from a lack of formal leadership, resulting in serious flaws in decision-making and coordination with other relevant agencies. T

3. a **violation of Article 2** arising from the use of lethal force by security forces. In the absence of proper legal rules, powerful weapons such as tank cannon, grenade launchers and flame-throwers had been used on the school. This had contributed to the casualties among the hostages and had not been compatible with the requirement under Article 2 that lethal force be used “no more than [is] absolutely necessary”.

3. Arrest and pre-trial detention of terrorist suspects

The arrest or pre-trial detention of suspected terrorists must be in conformity with their right to liberty and security, as guaranteed by Article 5.

First of all, there must be reasonable grounds for suspecting someone of terrorism if his or her arrest is to be justified under that provision[16]. However, the police may frequently need to arrest a suspected terrorist on the basis of information which is reliable but which cannot, without putting the source of the information in jeopardy, be revealed to the suspect or produced in court. The Court has therefore found that **Article 5 § 1 of the Convention should not be construed so as to put a disproportionate burden on the authorities when taking effective measures to counter terrorism in order to discharge their duty under the Convention to protect life**[17].

[16] *Fox, Campbell and Hartley v. the United Kingdom*, 12244/86, 12245/86 and 12383/86, 30 August 1990, Series A no. 182, § 35

[17] *O’Hara v. the United Kingdom*, 37555/97, § 35, ECHR 2001-X, *Sher and Others v. the United Kingdom*, 5201/11, 20 October 2015 (not final)

For example, in *A. and Others against the United Kingdom*, the UK Government considered it necessary to create an extended power permitting detention of persons suspected that they were "international terrorists". They issued a derogation notice under Article 15, in which they referred to the power to detain foreign nationals certified as "suspected international terrorists" who could not "for the time being" be removed from the United Kingdom. The Court ruled that the indefinite detention on national security grounds of foreign nationals suspected of terrorism, when those people could not be deported as they risked ill-treatment in the receiving State, was contrary to Article 5-1[18]. Britain's derogation under Article 15 was found to have unjustifiably discriminated between British and foreign nationals and the Court thus did not accept it as valid justification.

In general, the length of detention of a suspected terrorist – just like for any other person – should not exceed a reasonable time. For instance, in a number of cases against France, the pre-trial detention of detainees accused of belonging to a Basque terrorist organisation for between four and a half and almost six years was held to violate Article 5 § 3[19].

Furthermore, Article 5 § 4 guarantees the right of those suspected of terrorism **to have the lawfulness of that detention reviewed speedily**. The absence of such a review led to the finding of a violation of that provision in *M.S. v. Belgium*. The case concerned an Iraqi national suspected of having links with Al-Qaeda who had been detained in a closed transit centre pending deportation from Belgium[20].

States must also respect the procedural guarantees of review. No violation of Article 5 § 4 was found in the previously mentioned case of *A. and other v. UK* concerning the withholding on national security grounds of material relevant to the lawfulness of the detention of foreign nationals suspected of terrorism[21]. In that case, the procedural requirement of review was satisfied as the non-secret material against five of the applicants had been sufficiently detailed to enable an effective challenge of the lawfulness of the applicants' detention.

Furthermore, in *Sher v. UK* the Court stated that **Article 5 § 4 of the Convention cannot preclude the use of a closed hearing in which confidential sources of information supporting the authorities' line of investigation are submitted to a court in the absence of a detained terrorist suspect or his lawyer**. What is important is that the authorities disclose enough information to enable a detainee to know the nature of the allegations against him and to have the opportunity to refute them, and to participate effectively in proceedings concerning his continued detention[22].

4. Criminal proceedings against terrorist suspects

Just like anyone else facing criminal charges, those suspected of terrorism have the right to a fair trial, as guaranteed by Article 6.

In the first place, security or public order concerns cannot justify a violation of the right of the accused to remain silent and to not incriminate him or herself[23].

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[18] *A. and Others v. the United Kingdom* [GC], 3455/05, § 190, ECHR 2009
[19] *Berasategi v. France*, 29095/09, 26 January 2012; *Esparza Luri v. France*, 29119/09, 26 January 2012; *Guimon Esparza v. France*, 29116/09, 26 January 2012; *Sagarzazu v. France*, 29109/09, 26 January 2012 and *Soria Valderrama v. France*, 29101/09, 26 January 2012
[20] *M.S. v. Belgium*, 50012/08, § 166, 31 January 2012
[21] *A. and Others v. the United Kingdom* [GC], 3455/05, § 220-222, ECHR 2009
[22] *Sher and Others v. the United Kingdom*, 5201/11, 20 October 2015 (not final)
[23] *Heaney and McGuinness v. Ireland*, 34720/97, § 58, ECHR 2000‑XII

In *Salduz v. Turkey* the Court found that a statement which the police had taken from a minor, who had been arrested on suspicion of aiding and abetting a terrorist organisation and had not been allowed access to a lawyer during police custody, could not be used as evidence against him[24].

The Court further developed this principle in a recent GC ca*Se Ibrahim and Other v. UK*, which concerned delayed access to a lawyer of persons suspected of involvement in bombs detonated on the London public transport system. The first three applicants were arrested but were refused legal assistance for periods of between four and eight hours to enable the police to conduct "safety interviews". The Court recalled that the first stage of the *Salduz* test required the Court to assess whether there were **compelling reasons** for the restriction, while the second stage required it to **evaluate the prejudice caused** to the rights of the defence by the restriction, in other words, to examine the impact of the restriction on the overall fairness of the proceedings and decide whether the proceedings as a whole were fair.

The criterion of compelling reasons was a stringent one: having regard to the fundamental nature and importance of early access to legal advice, in particular at the first interrogation of the suspect, **restrictions on access to legal advice were permitted only in exceptional circumstances, and had to be of a temporary nature and be based on an individual assessment of the particular circumstances of the case**. Relevant considerations when assessing whether compelling reasons had been demonstrated were

1. whether the decision to restrict legal advice had a basis in domestic law and
2. whether the scope and content of any restrictions on legal advice were sufficiently circumscribed by law so as to guide operational decision-making by those responsible for applying them.

Where a respondent Government convincingly demonstrated the existence of an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case, this could amount to compelling reasons to restrict access to legal advice for the purposes of Article 6. However, a non-specific claim of a risk of leaks could not.

The Court reiterated that in assessing whether there has been a breach of the right to a fair trial it is necessary to view the proceedings as a whole. The absence of compelling reasons does not, therefore, lead in itself to a finding of a violation of Article 6.

However, the outcome of the "compelling reasons" test was nevertheless relevant to the assessment of overall fairness. **Where compelling reasons were found** to have been established, a holistic assessment of the entirety of the proceedings had to be conducted to determine whether they were "fair" for the purposes of Article 6 § 1. **Where there were no compelling reasons**, the Court had to apply a very strict scrutiny to its fairness assessment. The onus would be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice.

As regards the first three applicants, the Government had shown that there had been compelling reasons for the temporary restrictions on their right to legal advice and hence the Court found no violation. The fourth applicant was not suspected of having detonated a bomb and was initially interviewed by the police as a witness. However, he started to incriminate himself by explaining his encounter with one of the suspected bombers shortly after the attacks and the assistance he had provided to that suspect. The police did not, at

[24] *Salduz v. Turkey* [GC], 36391/02, §§ 62-63, ECHR 2008

that stage, arrest and advise him of his right to silence and to legal assistance, but continued to question him as a witness and took a written statement. He was subsequently arrested and offered legal advice. In his case the Government failed to prove the existence of compelling reasons for the restriction of his right to legal advice or to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice. Violation was found.

Coming back more generally to fair trial guarantees of terrorist suspects, the Court has held that **use in criminal proceedings of statements obtained as a result of torture or any other form of ill-treatment renders the proceedings as a whole automatically unfair**, in breach of Article 6 of the Convention[25]. This applies not only where the victim of the treatment contrary to Article 3 is the actual defendant, but also where third parties are concerned.

For instance, in *Othman v. UK* the Court held that the expulsion of an applicant from the United Kingdom to Jordan, where he had been convicted in his absence of terrorism, would violate his right to a fair trial because there was a real risk that evidence obtained through the torture of other people would be admitted against him in a retrial in Jordan[26].

Another example is the case of *El Haski v. Belgium*, where a Moroccan national was arrested and prosecuted in Belgium for participating in terrorist activities. The Court found that the incriminating statements, which had been obtained from a witness in a third country, should not have been admitted into evidence by the Belgian courts without first ascertaining that the witness in question had not been subjected to treatment contrary to Article 3, as it had been claimed by the applicant[27].

5. Treatment in places of detention of suspected or convicted terrorists

Suspected terrorists in pre-trial detention also have to be treated in a way which is not contrary to Article 3 and, as mentioned earlier, its absolute ban on torture and inhuman and degrading treatment. As early as 1978 in Ireland v. UK the Court found the **use of certain interrogation techniques** such as hooding, the deprivation of sleep, food and drink and the subjection to noise, to be **incompatible with Article 3** in view of the intense physical and mental suffering they cause to the victims[28].

Convicted terrorists also enjoy the same protection from treatment contrary to Article 3 while in prison. For example, in *Frerot v. France* full body searches, including the most intimate parts of the person, to which a convicted terrorist was subjected after each prison visit for over two years have been considered to constitute degrading treatment[29].

On the other hand, in *Ramirez Sanchez v. France* the Court found no violation of Article 3 in the case of a dangerous international terrorist who had been sentenced to life imprisonment and kept in solitary confinement for eight years[30]. The Court decided that his overall conditions of detention had not been severe enough to amount to inhuman or degrading treatment as it took into account the physical conditions of the applicant's detention, the fact that he had not been in complete isolation, and also his character and the danger he posed.
In the case of another detained terrorist, *Ocalan v. Turkey*, the Court found that the lack of communication facilities coupled with major difficulties of access to the prison for his family

[25] *Gäfgen v. Germany* [GC], 22978/05, § 187, 1 June 2010
[26] *Othman (Abu Qatada) v. United Kingdom*, 8139/09, §§ 285 and 287, ECHR 2012
[27] *El Haski v. Belgium*, 649/08, § 99, 25 September 2012
[28] *Ireland v. the United Kingdom,* 5310/71, judgment of 18 January 1978, Series A no. 25, § 168
[29] *Frérot v. France*, 70204/01, §§ 47-48, 12 June 2007
[30] *Ramirez Sanchez v. France* [GC], 59450/00, § 150, ECHR 2006-IX

members amounted to inhuman treatment[31]. However, an increase in activities with other detainees and in the frequency of family visits was found to have made his subsequent detention compatible with Article 3.

6. Expulsion and/or extradition of suspected or convicted terrorists

Where there is a real risk of a suspected or convicted terrorist being subjected to ill-treatment in another State, the prohibition on a return to that country is absolute, regardless of his or her past offences or conduct[32].

For example, in *Saadi v. Italy* the Court ruled that enforcing a decision to deport a terrorist to Tunisia, where he had been convicted in his absence, would violate his rights under Article 3 since the Italian Government had not been provided with sufficient diplomatic assurances that he would not risk treatment prohibited by the Convention[33].

The Court has also been faced with cases where respondent States have extradited or deported suspected terrorists **despite** the Court's indication to the Government concerned under Rule 39 of the Rules of Court to refrain from doing so until it has had an opportunity to examine the merits of the applicant's complaints. For example, in *Trabelsi v. Belgium* the Court found a violation of Article 3 and Article 34 where , despite a Rule 39 indication by the Court, a Tunisian national was extradited from Belgium to the United States where he faced a potentially irreducible life sentence for terrorist offences[34].

Most recently, the Court has also had to deal with cases concerning the taking of citizenship of suspected terrorists. In its decision *K2 v. UK*, the Court examined the case brought by a naturalised British citizen, who had left the United Kingdom, got involved in terrorism-related activities in Somalia and was subsequently deprived of his UK citizenship by an order made by the Secretary of State for the Home Department. The Court recalled that an arbitrary denial of or revocation of citizenship might, in certain circumstances, raise an issue under Article 8 because of its impact on the private life of the individual. Two issues had to be assessed:

1. **whether the revocation was arbitrary** (which was a stricter standard than that of proportionality) and
2. **what the consequences of revocation were for the applicant**.

In determining **arbitrariness**, the Court had regard to

i. **whether the revocation was in accordance with the law**;
ii. whether it was accompanied by the **necessary procedural safeguards**, including whether the person deprived of citizenship was allowed the **opportunity to challenge the decision** before courts affording the relevant guarantees; and
iii.)whether the authorities had acted **diligently and swiftly**. It found in the affirmative in respect of all three conditions and thus concluded that the revocation of his citizenship had not been arbitrary.

As to the **consequences of the revocation**, the Court noted that the applicant was not rendered stateless as he had obtained a Sudanese passport. Furthermore, he had left the United Kingdom voluntarily prior to the decision to deprive him of his citizenship; his wife and child were no longer living in the United Kingdom and could freely visit Sudan and even live

[31] *Öcalan v. Turkey* (no. 2), 24069/03 et al., 18 March 2014
[32] *Saadi v. Italy* [GC], 37201/06, ECHR 2008
[33] *Saadi v. Italy* [GC], 37201/06, § 147-149, ECHR 2008
[34] *Trabelsi v. Belgium*, 140/10, §§ 121-139 and 144-154, 4 September 2014

there if they wished; and the applicant's own natal family could – and did – visit him "reasonably often". Inadmissible under Article 8.

7. "Extraordinary renditions" of terrorist suspects

In recent years, certain States have been involved in what is called "extraordinary rendition" of suspected terrorists. Also known as "extrajudicial transfer", it is a measure involving the transfer of people from one jurisdiction or State to another, for the purposes of detention and interrogation outside the ordinary legal system. It is absolutely incompatible with the rule of law and the values protected by the Convention because of its deliberate disregard of the guarantees of due process[35].

In *El-Masri v. FYROM* the Court found a violation of Article 5 in the case of the unlawful detention of a German national of Lebanese origin who had been suspected to have links with terrorists. He had been handed over to agents working for the CIA operating at the time in "the former Yugoslav Republic of Macedonia"[36]. In that case, the Court also found a violation of Article 3 on account of the torture and inhuman and degrading treatment to which the applicant had been subjected while in detention.

Breaches of Articles 2, 3, 5 and 6 were also found in *Al Nashiri v. Poland*. The case concerned suspected terrorist, who had been handed over to CIA agents operating in Poland and had been detained at the US naval base in Guantanamo Bay following an "extraordinary rendition"[37]. In its judgment, the Court also required Poland to seek assurances from the US authorities that the applicant would not be sentenced to death as a result of his "extraordinary rendition".

8. Final observations

Recent and past history demonstrate that States face serious challenges from terrorism and the violence it spawns and that they frequently need to take exceptionally stringent measures in response. As the Court stated in one of the aforementioned judgments, **a State cannot be required "to wait for disaster to strike before taking measures to deal with it"** [38].

As has been shown in this presentation, in their fight against terrorism, States must strike a balance between their duty to protect national security and the lives of everyone within their jurisdiction and the obligation to respect other rights and freedoms guaranteed by the Convention.

When examining whether anti-terrorism measures comply with or violate the Convention, the European Court of Human Rights will look carefully at all the circumstances of the case. That kind of scrutiny, at European level, is to help make sure that the fight against terrorism and the protection of human rights can co-exist.

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This presentation is largely based on the CourTalks video entitled "Terrorism" available on the ECHR's website. References to all mentioned cases can be found in the video, its script as well as in the Court's Factsheet covering the same subject.

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[35] *Babar Ahmad and Others v. the United Kingdom* (dec.), 24027/07, 11949/08 and 36742/08, § 114, 6 July 2010
[36] *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 39630/09, ECHR 2012
[37] *Al Nashiri v. Poland,* 28761/11, §§ 518-519, 24 July 2014
[38] *A. and Others v. the United Kingdom* [GC], 3455/05, § 177, ECHR 2009