

Using the Notion of Terrorism Irrespective of the Principle of Legality While Countering Terrorism

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Abstract : In recent years, given the fact that the acts of terrorism and the threat of the latter are taking place without any border and distinction, it has led the states to deal with the terrorism as a priority issue. More recently, as seen in different countries during state of emergency, the adoption of anti-terrorism measures motivated by the sole need of the prevention of terrorism targets directly the fundamental rights of individuals. Therefore, a contribution to the understanding of the value of the principle of legality is becoming more and more important nowadays. This paper aims to reflect the probable effects of the adoption of anti-terrorism measures regardless of the principle of legality, on the fundamental rights. In this respect, this paper will first discuss the margin of appreciation of the national authorities by countering terrorism, and then, the importance of the respect of the legality of the anti-terrorism measures will be examined in the light of actual examples. Indeed, one of the major findings of this study is the fact that the anti-terrorism laws and measures were taken in this framework must be subject to close scrutiny in democracies, which adopted the principle of the rule of law and respect human rights. Although the state's margin of appreciation in the field of counter-terrorism is broad, these measures which are based on the legitimate aim of a democracies' legitimate right to protect itself against the activities of terrorist organizations should have the legal basis and be strictly required by the exigencies of the fight against terrorism. While combating terrorism, the legal basis shall only be achieved if the legal consequences of an individuals' actions related to terrorism shall be clear and foreseeable by the individuals of a society. On the other hand, particularly during the state of emergency, the ambiguity of the law might be used to include a wide range of actions under acts of terrorism. This is becoming more dangerous where freedom of expression, freedom of the press, freedom of association and the right to information is in the substance of these actions. Disregarding the principle of legality is susceptible to create a chilling effect on the exercise of human rights, and therefore, the fight against terrorism can be transformed into a repressive regime on opponents. As a result, the efforts to counter terrorism of the national authorities irrespective of the principle of legality are susceptible to cause a transformation of the rule of law to a state of law which cannot be appreciated in a democratic society.

Keywords : anti-terrorism measures, chilling effect, predictability, the principle of legality, state of emergency

Conference Title : ICHRT 2018 : International Conference on Human Rights and Terrorism

Conference Location : London, United Kingdom

Conference Dates : May 14-15, 2018