



Didier Boyenval, of the European Observatory for Non-Discrimination and Fundamental Rights (EONDFR), assesses how EU member states are strengthening counterterrorism measures whilst avoiding discrimination

# Discrimination and counterterrorism

The terrorist attacks against the European Union in recent years have led member states to strengthen counterterrorism measures with the aim of reinforcing the protection of civil society, and their leaders will themselves be judged in this matter at the ballot box – notably in Germany and France. That is why the threat of terrorism is leading the EU to adopt preventive counterterrorism measures which affect human rights compliance and the fundamental rights of the European Charter (Article 21, Non-discrimination).

Counterterrorism is a complex and multifaceted subject that encompasses a host of different strategies for dealing with violent extremism, and existing national and international human rights frameworks prohibit all forms of discrimination.

To a certain extent, the discriminatory side effects of preventive counterterrorism measures are tolerated by society at large. For example, the majority of the population in several member states may not be aware of or concerned by the fact that some minorities are more likely to be stopped by law enforcement officials when driving.

However, these counterterrorism measures can lead to the stigmatisation of ethnic minorities and religious communities, most notably by stressing an implicit general connection between Islam and terrorism.

One of the most relevant indicators is that some minority communities in Europe feel that they are unduly targeted by the authorities as potential suspects, purely on the basis of their physical appearance, their religion, their birthplace, their accent or even their native language (speaking Arabic in a plane can raise a problem, for example).

The consequences of such counterterrorism measures may appear to have been counterproductive, leading to the mistrust of public authorities. Performing preventive counterterrorism measures without discrimination towards minority groups and religious communities is a great challenge that raises different issues.

## The issue of tools to assess the impact of discrimination

Assessing the impact of discrimination is essential while counterterrorism measures are adopted by the European Union. The European Union Agency for Fundamental Rights (FRA) is a dynamic and independent body to support the long tradition of safeguarding fundamental rights in



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the EU, and to develop specific tools to assess the impact of discrimination in its member states.

Consulting civil society through associations, NGOs (having developed a level of field experience or of expertise in non-discrimination) make it possible to obtain concrete data or useful informal feedback on possible discrimination cases. As far as the discrimination of Muslims and the risk of a growing Islamophobia are concerned, consulting imams about possible acts of discrimination also encourages useful informal feedback on possible discrimination cases.

## The issue of individual restrictions affecting freedom of movement

Implementing individual restrictions on entry into the European Union without stigmatising ethnic groups, ethnic minorities or religious communities is a difficult task at this time because of the terrorist attacks which have affected entire societies.

The principle of non-discrimination must ensure that persons living in an EU member state will not be disturbed because of their place of birth or their native language. At this time, this principle could be applied alongside an increased surveillance of the visas of persons coming from countries at risk of extremist jihadism (e.g. Syria, Iraq or Libya) to produce more effective counterterrorism measures.

## The issue of permanent and temporary 'security risk zones'

To identify permanent security risk zones (e.g. airports, administrative and judicial buildings, train stations, nuclear centres) or temporary security risk zones such as Christmas markets with 'preventive search' measures could be considered effective counterterrorism actions,

but they should be framed with a political will of non-discrimination, especially on either physical appearance or native language.

As in the Netherlands, for example, since 2002 anyone within a designated security risk zone during a set period of time may be subjected to a preventive search by law enforcement officials (Section 151b, Municipalities Act; Municipal by-laws lay down the rules that apply to everyone within a municipality. For more information, see Buro Jansen and Janssen, 'Preventief Fouilleren' [Preventive Searches] (Buro Jansen and Jansen). <http://www.preventieffouilleren.nl/>. Retrieved 21 March 2011).

The appropriate questions for the European Union include:

- Which public authorities will adopt this type of measure?;
- At what level, i.e. municipal, regional, national or European?;
- What would the budget for it be?; and
- How can we make non-discrimination principles effective in this case?

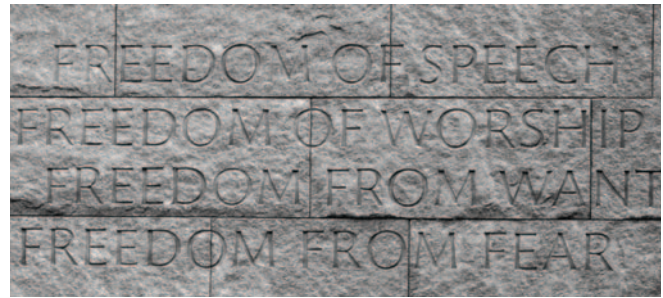
### **The issue of mass surveillance**

Preventing terrorist attacks is complex and may lead some member states to implement mass surveillance during set periods of time, such as in a state of emergency under the control of an official body.

In France, for example, the state of emergency implemented after the terrorist attacks of 13 November 2015, in which 130 people in Paris and Saint-Denis were killed, had already been extended by six months at the end of July 2016, and periodically renewed since.

To be effective in this case, the principle of non-discrimination requires regulation of the mass surveillance through the supervision of a commission presided over by a judicial judge. The judge then intervening only in the context of monitoring prior to and/or after the surveillance.

Mass surveillance also raises the issue of the length of data retention and the adoption of adequate measures regarding the data kept in the subject's personal file. Privacy and personal data protection concerns all personal data which



can under no circumstances undergo long-term retention or be used for ulterior purposes.

For example, local authorities in the UK have been criticised for their use of covert surveillance. It appears that some municipalities have abused these powers to investigate citizens for minor infractions instead of using them to fight and prevent serious crime and terrorism, and that use of the act has not been subjected to the appropriate judicial review (see 'Extent of Council Spying Revealed', BBC News (26 March 2009); 'Hidden Cameras in Parts of Birmingham "Will Be Removed"', BBC News (5 July 2010)).

### **The issue of judicial co-operation**

Encouraging judicial co-operation between the different EU member states through a system of bonuses for local officials could be useful for counterterrorism measures if the principles of non-discrimination are respected locally and don't lead to blind acts of denunciations.

### **The issue of creating a 'European council of Muslim worship'**

As for where extremist jihadism and the risk of a growing Islamophobia are concerned, creating a European council of Muslim worship to frame imams' designations, and to avoid terrorist propaganda in their preaching, could be an effective tool to combat discrimination against Muslims. In this period of protracted terrorism, the aim is to restore confidence in freedom of religion and to protect Muslims from acts of discrimination in the short, medium and long term.

### **Conclusion**

One of the side effects of the preventive counterterrorism measures is that it may breach non-discrimination standards.

With the appropriate and well-balanced tools, EU member states' compliance with non-discrimination standards may contribute to legitimising preventive counterterrorism measures throughout European society, and not just among the majority populations of some EU member states.

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