

Chapter on freedom of association in Europe

Introduction

1. Freedom of association is an individual freedom protected by all the major international and European human rights instruments (see annex 1) and by all the national Constitutions of the member states of the European Union.¹

2. Restrictions on freedom of association, as protected under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, have been interpreted narrowly by the European Court of Human Rights (“the ECtHR”) to the effect that: “*only convincing and compelling reasons can justify restrictions on freedom of association [...] States have only a limited margin of appreciation.*”²

3. Furthermore, the importance of freedom of association within Europe is reflected in the fact that it is the sole region which has agreed an international Convention guaranteeing the right of any association, which has its headquarters in the ratifying state to automatically enjoy the same legal capacity to act in another member State. The Convention of the Council of Europe on the Recognition of the Legal Personality of International Non-Governmental Associations (CETS No 124 of 24 April 1986) has been ratified by eleven states³ as of 1 September 2007.⁴

4. Supported by these guarantees, European citizens are very active third sector participants: among the 27 member States of the European Union the number of registered associations is estimated to be more than 3 million,⁵ representing on average 6 associations per 1,000 people (note that this fails to take into account that registration is usually not necessary in common law countries such as the UK and Ireland).⁶ Of these States some have particularly high numbers of associations: e.g. France has close to 800,000 registered associations encompassing 10 to 12 million volunteers;⁷ the United Kingdom has almost 500,000 voluntary organisations with 600,000 employees representing 2,2 % of the total workforce.⁸ It is estimated that 90% of Danish citizens are members of at least one association, and that 73% are members of several.⁹ Voluntary working time in Sweden is estimated at 480 million hours

¹ The United Kingdom does not have a codified constitution but integrates the provisions of the European Convention on Human Rights (ECHR), including Article 11 protecting freedom of association into domestic law through the *Human Rights Act* 1998.

² *Sidiropoulos and others v. Grèce*, E.Ct.HR Application No. 57/1997/841/1047, (10/7/1998), par. 40

³ Austria, Belgium, Cyprus, France, United Kingdom, Netherlands, Greece, Former Yugoslav Republic of Macedonia, Netherlands, Portugal, Slovenia and Switzerland

⁴ Moreover, on October 10, 2007, the Committee of Ministers of the Council of Europe has adopted a Recommendation on the legal status of non-governmental organisations in Europe (CM/Rec(2007)14): “*This is the first international legal instrument that targets the legislator, the national authorities and the NGOs themselves. It aims to recommend standards to shape legislation and practice vis-à-vis NGOs, as well as the conduct and activities of the NGOs themselves in a democratic society based on the rule of law.*” (Please see: Please see: http://www.coe.int/t/e/legal_affairs/legal_cooperation/civil_society/Press%20release.asp#TopOfPage). However, Recommendations are not binding on member States.

⁵ *Guide de la liberté associative dans le monde, 183 législations analysées*, under the supervision of Michel Doucin, *La Documentation Française*, Paris, 2007, p. 576

⁶ *Ibid.* p. 632 and 678

⁷ *Ibid.* p. 622

⁸ *Ibid.* p. 682

⁹ *Ibid.* p. 606

per year, the equivalent of 300,000 full time jobs and worth 8 million Euros;¹⁰ whereas Hungary hires more than 90,000 employees.¹¹ German associations are particularly active in the health and social sectors: they manage 40% of hospitals, 85% of youth clubs and 55% of old people's homes.¹²

5. However, despite its strong protection in law by European institutions and EU Member States and its widespread exercise by millions of citizens there are a number of disturbing trends that are undermining its enjoyment. In particular, the so-called "war on terror" has resulted in the proscription of a number of associations combined with restrictions on operations. This, together with other discriminatory measures has had a disproportionate impact on minorities.

Impact of 'war on terror'

6. Since 11 September 2001 (and even before this date), the global fight against terrorism has resulted in frequent wide ranging restrictions on many human rights across numerous countries, including in Europe. Whilst such restrictions have most conspicuously impacted on individual liberty and privacy (e.g. extending detention without charge or trial for terrorist suspects; psychological profiling, interception of communications),¹³ there has also been breaches of freedom of association and related rights to free expression and assembly.

7. Arguing that associations - whether officially created or not - can be used by individuals to organise and carry out terrorist acts, some States have blacklisted individuals and organisations suspected of supporting and/or carrying out terrorist acts, frozen of funds, and thus activities, or required them to publicly disclose their sources of funding. However, as will be seen below, the process by which such decisions are reached are often flawed lacking transparency and due process.

Restricting minority rights

8. In addition, the last few years have also witnessed an increase in the restrictions placed on minority associations, whether these are national, religious or sexual. Whilst the motives behind some restrictions are security driven, others (e.g. the prevention of gay rights marches in some Eastern European countries) have their roots in longstanding discriminatory attitudes and behaviour.

9. This study adopts the same format as those undertaken on the Southern Mediterranean countries: the first section focuses on the formation and incorporation of associations, the second examines their suspension and dissolution, the third addresses their organisation and operation whilst the final one looks at funding and taxation. It is not an exhaustive survey but combines an analysis of particularly egregious legal restrictions that have been put in place with significant case studies of the impact felt by civil society.¹⁴

¹⁰ *Ibid.* p. 692

¹¹ *Ibid.* p. 631

¹² *Ibid.* p. 586

¹³ The police detention for persons suspected of terrorist acts can last up to 28 days in the United Kingdom (Terrorism Act 2006, Chapter 11, section 23)

¹⁴ This study only focuses on European countries members of the European Union

1. Formation and incorporation

10. Generally, laws governing the formation and incorporation of European associations are based on a “*principe déclaratif*” (“notification system”). Contrary to most of the South Mediterranean countries, where a group needs prior authorisation from authorities to form an association, this principle means in EU countries no such authorisation is required. Instead, the registration system is based on simple information/notification of the existence of such an association. As soon as authorities are informed, an association acquires a legal personality, which is distinct from that of its members and most likely to impact on the rights of third parties.

11. However, citing threats to national sovereignty and/or territorial integrity by minority movements, some States have refused to register some groups. Such cases occur particularly frequently, although not exclusively, in Southern Europe. In Greece, the group ‘*House of the Macedonian Civilization (Stegi Makedonikou Politismou)*’ was refused incorporation on the grounds that its members opposed the Greek identity of the country’s province of Macedonia, thereby threatening Greece’s territorial integrity.¹⁵ A refusal on similar grounds occurred in Bulgaria, where the registration of group «*OMO Ilinden PIRIN*» was denied for the reason that ‘*its statutes and programmes run contrary to the nation’s unity*’ in that they were aimed at defending the Macedonian minority within the province.¹⁶

12. These restrictions have occurred despite the fact that international human rights case law requires that only “relevant and sufficient”¹⁷ criteria should be used to justify registration refusal. Specifically, “*campaigning in favour of a change in the legal and constitutional order is not in itself incompatible with the principles of democracy*” and the “*opening’ of a border [...] does not seem to jeopardize a country’s integrity or national security.*”¹⁸ Refusing registration on the grounds that a group’s name includes words from a minority language in its title has also been considered to increase the risk of a potential breach of the right to freedom of association.¹⁹ In contrast, the refusal to register an association whose only aim is to provide its members with the benefits attached to the qualification of national minority is legitimate.²⁰

¹⁵ *Sidiropoulos and others v. Greece*, supra n.3

¹⁶ *United Macedonian Organisation Ilinden – PIRIN and others v. Bulgaria*, E.Ct.H.R. application No59489/00 (20 October 2005)

¹⁷ *Sidiropoulos and others v. Greece*, supra n.3

¹⁸ *Zhechev v. Bulgaria*, E.Ct.H.R. application No 57045/00 (21 June 2007) concerning the refusal to register the association “*Civil Society for Bulgarian Interests, National Dignity, Union and Integration – for Bulgaria*”

¹⁹ In its concluding observations concerning Greece, 25/04/2005, the United Nations Human Rights Committee “*notes with concern the apparent unwillingness of the Government to allow any private groups or associations to use associational names that include the appellation ‘Turk’ or ‘Macedonian’*”(par. 20). In its follow up report on Greece of March 2006, the Commissioner for Human Rights of the Council of Europe expressed concerns about the fact that “*it is not possible today in Greece for those who claim they are members of a minority to use any word they wish in the denominations by which they would like to identify themselves collectively, for instance when registering associations.*”(CommDH(2006)13 / 29 March 2006 par. 44)

²⁰ “*In the instant case the refusal was not a comprehensive, unconditional one directed against the cultural and practical objectives that the association wished to pursue, but were based solely on the mention, in the memorandum of association, of a specific appellation for the association. It was designed to counteract a particular, albeit only potential, abuse by the association of its status as conferred by registration. It by no means amounted to a denial of the distinctive ethnic and cultural identity of Silesians or to a disregard for the association’s primary aim, which was to “awaken and strengthen the national consciousness of Silesians”* (*Gozelik and others v. Poland*, E.Ct.H.R., application No 44158/98, (17 February 2004) par. 105)

13. Refusal also has to be placed on concrete evidence rather than supposition which, as noted by the European Court of Human Rights, can only be known by the State after an association has started functioning.²¹

14. When a refusal to register results in a violation of article 11 of the ECHR, the state must take all necessary measures to restore legality, including “*if the case arises, individual measures to put an end to the violation and erase its consequences with the aim to guarantee as much as possible restitutio in integrum (full compensation).*”²² This was the conclusion of the Committee of Ministers when monitoring the execution of the judgment in the refusal of the Bulgarian authorities to register the group « *OMO Ilinden PIRIN.* » However, despite repeated requests (the most recent being 7 February 2007) the Bulgarian government has continued to refuse to implement the judgment of the European Court and either to register the association and/or provide appropriate compensation.²³ On 23 August, the Sofia City Court rejected once again an application from the group; the case is now before the Supreme Court of Cassation.

15. Finally, it should be noted that, although European States do not generally restrict the ability of foreigners to form and participate in associations²⁴ – in conformity with article 3 of the Convention of the Council of Europe on the Participation of Foreigners in Public Life at Local Level of 5 February 1992, ECTS No. 144²⁵ – the practice of Spain continues to cause concern. According to article 8 of the ‘organic law on the rights and freedoms of foreigners in Spain and their social integration’ of 22 December 2000, the right to freedom of association is limited to those foreigners who have been granted a resident’s permit or leave to remain.²⁶ However, the law does grant the right to free judicial assistance to defend their rights to the sole legal foreigners.²⁷ This restriction has been expressly criticised by the Council of Europe’s Commissioner for Human Rights in 2005.²⁸

²¹ *United Communist Party of Turkey v. Turkey*, the E.Ct H.R. argues that “*Admittedly, it cannot be ruled out that a party’s political programme may conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the party’s actions and the positions it defends. In the present case, the TBKP’s programme could hardly have been belied by any practical action it took, since it was dissolved immediately after being formed and accordingly did not even have time to take any action*” (*United Communist Party of Turkey v. Turkey*, application no. 133/1996/752/951, (30/1/1998) par. 58). It was confirmed recently in *Bekir-Ousta v. Greece*, E.Ct.H.R.application No 35151/05 (10 October 2007)

²² CM/Inf/DH(2007)8, 7 February 2007

²³ In his follow up report on Bulgaria of 2006, the Human Rights Commissioner of the Council of Europe further recommended to the authorities that “*appropriate measures be taken to allow the unrestricted exercise of the right of association by all minorities*” (CommDH(2006)6 / 29 March 2006 par. 28)

²⁴ In Lithuania, the nationality requirement was repealed in 2004 (CM/Monitor(2005)1volIIfinalrevF / 11 October 2005, par. 101) ; similarly Belgium no longer imposes any such requirement following its condemnation by the European Court of Justice on 29 June 1999 (*Guide de la liberté associative dans le monde, 183 législations analysées*, p. 591, supra n.4)

²⁵ “*Each Party undertakes, [...] to guarantee to foreign residents, on the same terms as to its own nationals [...] the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests. In particular, the right to freedom of association shall imply the right of foreign residents to form local associations of their own for purposes of mutual assistance, maintenance and expression of their cultural identity or defense of their interests in relation to matters falling within the province of the local authority, as well as the right to join any association*”

²⁶ « *Todos los extranjeros tendrán el derecho de asociación conforme a las leyes que lo regulan para los españoles y que podrán ejercer cuando obtengan autorización de estancia o residencia en España.* » (Ley organica 8/2000, 22 December 2000)

²⁷ Ángeles López Álvarez, *Reflexiones acerca de la Ley Orgánica 8/2000 sobre derechos y libertades de los extranjeros en España y su integración social*

²⁸ “*the aliens and immigration legislation has been criticised in a number of quarters on the grounds, amongst others, that the rights of assembly, association, demonstration, joining a trade union and striking are limited to*

2. Dissolution and suspension

16. Clearly, an association can be dissolved for internal reasons following a decision of its members. At the same time, external dissolution can be enforced if an association's activities are viewed as contravening relevant regulatory laws. However, such dissolution procedures are rare in Europe with national authorities only tending to intervene when the association acts in total contradiction of fundamental rights; for example, the pursuit of a racist goal.²⁹ Even in such cases, the justification is not always clear with some decisions apparently being more motivated by nationalist concerns than the protection of minority rights : e.g., the Greek Court of Cassation dissolved the association Turkish Union of Xanthi on the basis that “*its aim is illegal and contrary to Greek public order, since it is in contradiction with the international treaties signed in Lausanne (which only recognize the presence of a religious Muslim minority in the area of Western Thrace, and not a national Turkish minority). The reference to the Turkish identity does not reflect some remote Turkish origin but a current quality as members of a Turkish minority that would exist in Greece and would pursue the promotion within the Greek state of state interests of a foreign state and specifically Turkey. The association with its actions (...) gravely endangers Greek public order and national security (...) and raises a non-existent minority problem of ‘Turks.’*”³⁰

17. Even though outright dissolution might be rare, by freezing the assets of associations suspected of terrorism, recent counter terrorism laws have effectively suspended the activities of associations since it is clear that, without funds, an association cannot function properly.

Impact of ‘war on terror’: international and regional measures

18. Even before 11 September 2001, the United Nations Security Council, in the light of the takeover of Afghanistan by the Taliban, had adopted resolution 1267 (1999) requiring all states to “*freeze funds and other financial resources [...] owned or controlled [...] by the Taliban [...] as designated by the Committee established by paragraph 6.*”³¹ Subsequently, on March 8th 2001, this Committee, known as the ‘Sanctions Committee’,³² and composed of all Security Council members, drew up a (‘black’) list of persons and entities suspected of terrorism whose financial assets shall be frozen accordingly.

19. Since 11 September 2001 attacks, the United Nations has adopted several measures to prevent terrorist groups from abusing freedom of association on the basis that terrorism, as well as posing a threat to global security, also undermines human rights, the rule of law and pluralist democracies. In particular, the Security Council has adopted Resolution 1373 (2001), which sets out the general framework for the global fight against terrorism, ordered States to freeze the funds of individuals and groups suspected of terrorism and tasked the Sanctions

foreigners with a residence permit or leave to stay in Spain. “(Report of the Commissioner for Human Rights of the Council of Europe, March 2005, CommDH(2005)8 / 9 November 2005 par. 76)

²⁹ For example, France banned the association “Tribu Ka” on a charge of incitement of racial hatred (the association prohibited its meeting to non African people) in 2006 (*Guide de la liberté associative dans le monde, mentioned above*, p. 622)

³⁰ Source: <http://cm.greekhelsinki.gr>

³¹ Article 4, S/RES/1267 (1999)

³² As of 1 March 2007, no less than eleven sanctions committees were active, which were created by Security Council resolutions from 1993 (resolution 751 on Somalia) to 2006 (resolution 1718 on the Democratic People's Republic of Korea).

Committee with supervising the updating of the list of persons and entities suspected of terrorism whose financial assets shall be frozen (In fact, since September 11th, Sanctions Committee, established by resolution 1267 (amended different times) is the Committee in charge of updating the list of persons and entities suspected of terrorism whose financial assets shall be frozen).

20. Whilst the need to tackle the funding and support of terrorism cannot be denied, the process by which individuals and organisations are placed on the blacklist,³³ leaving aside the normal errors that will arise,³⁴ suffers from three major weaknesses. Firstly, the sanctions of freezing assets, which are criminal in nature, are determined by political rather than judicial bodies; secondly, the sanctions are adopted without those who are subjected to them being heard, or even notified; thirdly, they cannot be subject to judicial challenge since the Security Council did not provide any right of appeal against such decisions, and, in any event, its resolutions cannot be challenged in a court of law.³⁵ Removal from the list is only possible if all the members of the Sanctions Committee agree to it and, even then, the individual subjected to sanctions is neither heard nor informed of the evidence which led to his/her being put on the list.³⁶ In a recent Report of Dick Marty, MP at the Council of Europe, Syméon Karagiannis has commented this situation: “*To demonstrate a lack of guilt without knowing what you have been held guilty for must not be easy*” [NDTR *unofficial translation*].³⁷ Unsurprisingly, in the light of these failings, the process has been the subject of strong criticism, including by the United Nations Special Rapporteur on Terrorism and Human Rights.³⁸

21. However, despite these failings and criticism, the European Union, together with its members, in accordance with article 103 of the United Nations Charter³⁹ and article 307 of

³³ Any state can suggest adding an individual on the black list. If none of the 15 members of the Security Council raise any objection within 5 days, sanctions are applied (source : *UN Approves Appeals over Terrorism Blacklist*, David Crawford, *Wall Street Journal*, 21 September 2006)

³⁴ For example, in July 2007, a seven year old child was subjected to a thorough check before taking a plane in Florida as his name was on the American list of dangerous persons on the basis that he had the same name as a man suspected of terrorism. (Source : AP)

³⁵ In the case of *Yusuf et Al Barakaat International Foundation/Council and Commission*, T-306/01, of 21 September 2005, the Court of First Instance of the European Communities found that “*there is no judicial remedy available to the applicant, the Security Council not having thought it advisable to establish an independent international court responsible for ruling, in law and on the facts, in actions brought against individual decisions taken by the Sanctions Committee. [...] In the circumstances of this case, the applicants’ interest in having a court hear their case on its merits is not enough to outweigh the essential public interest in the maintenance of international peace and security in the face of a threat clearly identified by the Security Council in accordance with the Charter of the United Nations*”. Similarly, the European Court on Human Rights recently confirmed that “*the Convention could not be interpreted in a manner which would subject the acts and omissions of Contracting Parties which were covered by UNSC Resolutions and occurred prior to or in the course of such missions, To do so would be to interfere with the fulfillment of the UN’s key mission in the field including the effective conduct of its operations*” (ECHR, *Behrami et Behrami v. France and Saramati v. France, Germany and Norway* (n° 78166/01), 31 May 2007)

³⁶ As of 15 August 2007, only nine persons have been taken off the list in 6 years; including two associates of Youssef Nada whose case is famous (source : « *Pour lutter contre le terrorisme, l’ONU a établi une « liste noire » aux confins du droit* », *Le Monde*, 17 août 2007)

³⁷ Syméon Karagiannis, in Report of Dick Marty, AS/Jur (2007) 14, 19 March 2007, par. 60

³⁸ “*The inclusion on the list must be subject to a certain number of procedural guarantees. First is the right to be informed.*” (Report of Martin Scheinin, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism A/61/267, para. 38)

³⁹ “*In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.*”

the Treaty establishing the European Community,⁴⁰ is obliged to implement decisions of the Security Council. Hence in order to implement resolution 1373 (2001), the European Union established, through two⁴¹ legal instruments, its own procedures for freezing the funds of associations suspected of terrorism: The Council Common Position 2001/931/CFSP of 27 December 2001 on ‘the application of specific measures to combat terrorism’ and the Council Regulation (EC) No 2580/2001 of 27 December 2001 on ‘specific restrictive measures directed against certain persons and entities with a view to combating terrorism.’⁴² It could be noted that the European Parliament, which was not consulted on the process, criticized the procedure used by the Council in its Resolution “on the Council’s decision of 27 December 2001 on measures to counter terrorism” of 7 February 2002.⁴³

22. One problem with these arrangements is that these two European instruments create two different ‘blacklists’ of associations. Firstly, the Common Position 2001/931/CFSP establishes in its annex a list of persons, groups and entities involved in terrorist activities and whose funds must be frozen. This list is updated every six months.⁴⁴ In addition, the Council’s Decision 2001/927/CE which implement article 2 paragraph 3 of the Regulation (EC) No 2580/2001 establishes another list (*‘The Council, [...] shall establish, review and amend the list of persons, groups and entities’* whose funds must be frozen). Since 2001, this list is updated twice a year.⁴⁵ Unsurprisingly, as is outlined below (see: paragraph 24), the names on these two lists differ.

23. The problems are further exacerbated by the fact that, according to article 46 of the Treaty on European Union, no judicial appeal is possible against Common Positions taken in the framework of the CFSP. However, actions for annulment can be brought against those Regulations of ‘*direct and individual*’ concern to individuals and community Decisions before the Court of Justice of European Communities (“the ECJ”), under article 230 of the Treaty establishing the European Community.⁴⁶ It was on this basis that the case of *People’s Mujahedin of Iran* was taken before the ECJ (see paragraph 26 below).

24. The impossibility of contesting such a list becomes all the more disturbing given that it has been adopted by a political body without any of the evidence being subject to independent

⁴⁰ “*The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty*”

⁴¹ The Council adopted on 27 December 2001 a third instrument, the Common Position 2001/930/CFSP on ‘the fight against terrorism’. It contains all the elements of Resolution 1373 (2001)) but does not contain any provision on implementation.

⁴² Article 2 paragraph 3 of the Regulation (EC) No 2580/2001 is implemented by the Council’s community Decision 2001/927/EC of 27 December 2001 (see par. 21)

⁴³ The European Parliament “*deplores the choice of a legal basis which falls under the third pillar for the definition of the list of terrorist organisations, thereby excluding all consultation and effective scrutiny both by the national parliaments and by the European Parliament, and also evading the jurisdiction of the Court of Justice [and] regrets that this Common Position, which defines the list of European and non-European terrorist organisations, can be updated at any moment by the Council without any consultation of Parliament*”

⁴⁴ The list currently in force is the one contained in the Council’s Common Position 2007/448/CFSP of 28 June 2007 (see annex 2).

⁴⁵ The Council’s Decision 2007/445/CE of 28 June 2007 is the one currently in force. (See Annex 2).

⁴⁶ “*The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties [...] Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former*”

and impartial judicial scrutiny: “*The list in the Annex [of Common Position 2001/931/CFSP] shall be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds. Persons, groups and entities identified by the Security Council of the United Nations as being related to terrorism and against whom it has ordered sanctions may be included in the list.*”⁴⁷

25. Moreover, such lists adopted through a Common Position discriminate against European associations suspected of terrorism since only non-European associations appear to be entitled to contest the possible consequences of being included, although not the inclusion itself. Indeed, the Common Position 2001/931/CFSP precise, in its index, blacklisted European associations come under article 4⁴⁸ of this Common Position. However, in the cases *Segi and Gestoras Pro-Aminstía*⁴⁹ - two European associations - the European Court of Human Rights held inadmissible their claims since “*the applicants are subject only to Article 4 Common Position 2001/931/CFSP. [However, article 4] does not add any new powers which could be exercised against the applicants [...] Consequently, the Court considers that the situation complained of does not give the applicant associations the status of victims of a violation of the Convention within the meaning of Article 34 of the ECHR.*” In other words, no action is possible for them before the ECtHR. In 2004, the two associations then turned to the ECJ, but on 7 June 2004, the latter declared it was not competent to decide on their case because the matter concerns police and judicial cooperation, which falls outside community issues.⁵⁰ The result is that European associations appear to be deprived of their right to an effective remedy.⁵¹

26. The two European ‘blacklists’ are drafted within a body called ‘the clearing house’ before being adopted by the European Foreign Ministers. The whole procedure and, in particular the obscure ‘clearing house’ body, has been criticised for its secrecy and lack of transparency.⁵² The ‘clearing house’ is composed of national intelligence services and does not appear on the organisational chart of the EU Council. Moreover, when the ‘clearing house’ establishes a new list of names, it is forwarded to the ambassadors of the Member States of the European Union who adopt it as *A-point (Agenda item without discussion)*, i.e. automatically, without any further discussion.⁵³

⁴⁷ Article 1 paragraph 4 of the Council’s Common Position (2001/931/CFSP)

⁴⁸ Article 4 of Common Position 2001/931/CFSP: “*Member States shall, through police and judicial cooperation in criminal matters within the framework of Title VI of the Treaty on European Union, afford each other the widest possible assistance in preventing and combating terrorist acts. To that end they shall, with respect to enquiries and proceedings conducted by their authorities in respect of any of the persons, groups and entities listed in the Annex, fully exploit, upon request, their existing powers in accordance with acts of the European Union and other international agreements, arrangements and conventions which are binding upon Member States.*”

⁴⁹ Applications No 6422/02 and No. 9916/02

⁵⁰ Jugement T-333/02 7 June 2004; confirmed by ECJ 27 February 2007, case C-354/04 P.

⁵¹ It seems to be different for non-European associations since they come under article 2 and 3 of the Common Position 2001/931/CFSP relating to the freezing of funds, which affects the free movement of capital, a Community matter

⁵² Source: *EU’s secretive counter-terror group to face scrutiny* (EUobserver.com)

⁵³ It seems like a new procedure is currently ongoing (See document (10826/1/07 REV1) of the UE Council of 21 June 2007, which is, as of recently, considered as confidential)

27. On 13 December 2006, this lack of transparency and violation of the defendants' rights was condemned for the first time by the ECJ in the case '*People's Mujahedin of Iran*' (T-228/02) when it held that "*the decision ordering the freezing of the OMPI's funds [by EU] does not contain a sufficient statement of reasons and that it was adopted in the course of a procedure during which the right of the party concerned to a fair hearing was not observed, and that it is not in a position to review the lawfulness of that decision. Accordingly that decision must be annulled in so far as it concerns the OMPI.*" However, in complete violation of the legal decision of December 2006, the '*People's Mujahedin of Iran*' appeared on the two new 'black lists' (both the Common Position and the Decision) adopted on 28 June 2007 (see annex 2); the European Union claimed that it had this time fully respected its duty to inform by sending a letter of notification to each person and entities blacklisted.⁵⁴ On 11 July 2007, the confidential and inequitable nature of the procedure was again condemned in two further cases: *Jose Maria Sison /Council of the European Union*⁵⁵ and *Stichting Al-Aqsa / Council of the European Union*.⁵⁶ Further cases are pending (see annex 3).

Impact of 'war on terror': National measures

28. There are also concerns that some national authorities are adopting an overbroad approach to the designation of certain associations as supporting terrorism. On 7 June 2007 the Belgian Court of Cassation rejected the appeal of the association « *Groupe Islamique Combattant Marocain* against its naming as a terrorist organisation by the government, although it had never committed, attempted to commit or even threatened to commit a terrorist act, on the basis that it was sufficient for the organisation to '*aspire*' at perpetrating such acts : "*Violation of articles 139 [definition of a terrorist group] and 140 [participation in terrorist activities or group] of the Penal Code is established despite the fact that the vocation of the group has not been materialised by any activity in preparation of a terrorist act*" [**NDTR Unofficial translation**].⁵⁷ Such an analysis has been condemned by one commentator as amounting to '*assumed criminality*',⁵⁸ thereby contradicting fundamental criminal law principles relating to the presumption of innocence.

29. Such an assessment could equally be applied to recent British legislation. The *Terrorism Act 2006* includes in the 'blacklist' of terrorist individuals and entities, persons who not just commit, participate in, prepare or instigate a terrorist act but who incite it. However, it is not necessary to prove incitement to show that an individual or organisation is consciously

⁵⁴ Since 29 June 2007, The Council gives "*a statement of reasons [...] for each person or entity subject to an asset freeze*", doc. 11309/07)

⁵⁵ Mr. Sison, former chairman of the Philippines' Communist Party, which military wing NPA is on the European blacklist of associations suspected of terrorism, who resides in the Netherlands, was protesting the fact that his social insurance had been suspended and his bank account frozen

⁵⁶ In these two Cases, the Court notes that "*certain fundamental rights and safeguards, especially the rights of the defence and the right to effective judicial protection, and also the obligation to state reasons, are in principle fully applicable to the adoption of a Community decision freezing funds pursuant to regulation 2580/2001. [In this case] those rights and safeguards were not respected by the Council in its adoption of the contested decisions. Reasons were not given for those decisions, which were adopted in the context of procedures in which the rights of the defence of the persons concerned were not observed and the Court itself was unable to review the lawfulness of those decisions [...]* The Court concludes that *the contested decisions must be annulled* » (Press Release 47/07, Judgements of the Court of First Instance in cases T-47/03 and T-327/03)

⁵⁷ Annual Report of the Committee of Vigilance in the Fight against Terrorism (Committee T) – year 2006, p. 21

⁵⁸ Terms used by Denis Bosquet about the outcome of the judgement of first instance, « *Analyse de la première décision de justice rendue sur base de la loi belge du 27 décembre 2005, portant sur les modes d'investigation dans la lutte contre le terrorisme et la criminalité grave et organisée* », p. 5

encouraging terrorism.⁵⁹ Instead, according to the *Act*, persons are responsible for the manner in which their statements can be received, whatever their intention might be!⁶⁰ On the positive side, the United-Kingdom does have a special mechanism for associations to appeal against their inclusion on the ‘blacklist’.⁶¹

30. In some cases the inclusion of a particular association on a ‘blacklist’ is simply incoherent and contrary to the rule of law.⁶² On 8 July 2004, the French Court of Cassation⁶³ refused to extradite Amaya Recarte, spokesperson for the association Segi (an association appearing on the European ‘blacklist’ as it is considered the youth wing of Batasuna) to the Spanish judicial authorities, as was required by a European arrest warrant. This led Amnesty International to conclude that: *“It would seem therefore that, while France must have agreed to the inclusion of Segi on the list (as such a decision requires unanimity), in practice France does not consider their activities to amount to terrorist offences that require prosecution. This discrepancy calls into question not only the consistency of states’ practices but also the legitimacy of the lists themselves”*.⁶⁴

31. Thus, the obligation to ensure that any measures – whether criminal or civil – taken against an association suspected of terrorism have a strong basis in law is particularly significant in relation to some organisations, e.g. those working on behalf of the rights of others⁶⁵ or opposition movements⁶⁶ since suspicions are automatically raised that they are being penalised because of their activities.

⁵⁹ “A person commits an offence if: (a) he publishes a statement to which this section applies or causes another to publish such a statement; and b) at the time he publishes it or causes it to be published, he (i) intends members of the public to be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism or Convention offences; or (ii) is reckless as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offences.” (Part 1 - Terrorism Act 2006)

⁶⁰ Two of the associations prohibited under the *Terrorism Act 2000*, are accused of ‘incitement to terrorism’, as provided for by the *Terrorism Act 2006* (*Al Gurabaa* and *Saved Sect or Saviour Sect*)

⁶¹ “In United Kingdom, the proscribed organisation or any person affected by the organisation’s proscription may apply to the Secretary of State to remove the organisation from the list. Proscribed organisations can at any time make an application to the Secretary of State for de-proscription. Should an application be unsuccessful, the organisation or any person affected by their proscription can then appeal to the Proscribed Organisations Appeal Commission (POAC), set up under section 5 and schedule 3 of the *Terrorism Act 2000*. A party to that appeal may bring a further appeal to the Court of Appeal on a question of law with the permission of the Commission or the Court of Appeal. There may also be an appeal on a question of law in connection with proceedings brought before the Commission under the *Human Rights Act 1998*, by virtue of section 6(1) of the *Terrorism Act 2000* as applied by section 9 of that Act.”

⁶² In the United Kingdom and Denmark, controversy has surrounded the proposed prohibition of the organisation *Hizb ut-Tahrir*, a radical association created over 50 years ago with members throughout the Muslim world, the organisation seeks to establish an Islamic society in the Middle East.. Germany dissolved the association after 11 September 2001, considering that it was an Islamic movement seeking the destruction of Israel. Politicians in the United Kingdom have attempted several times to have the association proscribed but at time of writing it remains a lawful entity.

⁶³ Cour de Cassation (chambre criminelle), Amaya Recarte, 08/07/2004

⁶⁴ Amnesty International report, AI Index: IOR 61/013/2005, “*Counter-terrorism and criminal law in the EU*”, p.16

⁶⁵ The association Greenpeace Belgium is currently subject to a complaint for ‘criminal conspiracy’ for having demonstrated (peacefully) against Electrabel facilities at the end of December 2006.

⁶⁶ A case in point rose after Bahar Kimyongür was accused of being the chief of a terrorist and criminal organisation the *Revolutionary People’s Liberation Army/Front/Party* (DHKP/C), an association which appears on the European Union’s ‘blacklist’ and which, although it is engaged in armed struggle in Turkey, has never resorted to violence in another State. Bahar Kimyongür claims sympathy towards DHKP-C without being a member of it (according to him, he simply “collaborated to the information office close to this organisation as a translator and attaché”), but the Belgian Court of Appeal of Gand gave him the quality of “head of a terrorist

32. In light of these different (but by no means exhaustive) examples, there is a clear issue of the lack of proportionality between the measures taken and the actual or perceived threat frequently combined with an absence of due process and transparency. Both the ‘*assumed criminality*’ principle and the criminalisation of opposition movements are legitimate causes for concern and show how easily the rule of law in Europe can be subverted.

3. Organisation and operation

33. According to article 11(2) of the ECHR, the exercise of freedom of association is not absolute but can be subjected to limitations, provided that they are “*prescribed by law and [...] necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*”. This qualifying provision has been interpreted narrowly by the European Court of Human Rights when it held that “*States have only a limited margin of appreciation*” in applying article 11(2).⁶⁷

Impact of ‘war on terror’

34. Despite this strict approach, and the fact that a number of international instruments relating to counter-terrorism guarantee freedom of association,⁶⁸ many states have used the ‘war on terror’ to introduce a number of restrictions on freedom of association which has impacted significantly on the ability of several civil society organisations to operate effectively.

35. In the UK, the *Prevention of Terrorism Act 2005* empowers the Home Secretary to issue *control orders* against any individual suspected of taking part in activities linked with terrorism, when necessary for public safety. These measures which can effectively amount to house arrest, infringe not only a person’s liberty and freedom of movement but also communication and association.⁶⁹ Such restrictions are all the more concerning given that participation in terrorist activities, as defined under the Act, need not be based on concrete actions by the individual themselves, but can also include the provision of assistance to

and criminal organisation without consideration for the nature of its daily occupations which could be legal. Indeed a perfectly legal activity can constitute a terrorist crime, particularly when in carrying out such activity one participate in any way to terrorist activities, be it through the provision of data or material means to a terrorist group, or by giving any source of funding to any terrorist activity, when the person is aware that his/her participation contributes to crimes being committed by a terrorist group”. On 19 April 2007, the Belgian Court of Cassation quashed the decision of the Court of Appeal of Gand, which had sentenced Bahar Kimyongür to five years imprisonment.

⁶⁷ *Sidiropoulos and others v. Greece* supra n.3, par. 40

⁶⁸ For instance, the Convention of the Council of Europe for the Prevention of Terrorism of 16 May 2005, STCE no. 196, which entered into force on 1 June 2007, affirms already in its preamble (as well as in its article 12) that the Convention “*is not intended to affect established principles relating to freedom of expression and freedom of association*.” Similarly, the EU reference text, the Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA), specifies in its preamble « *Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.* »

⁶⁹ See article 1, paragraph 4 : “*In this Act “control order” means an order against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism [...] Those obligations may include, in particular [...] a restriction on his association or communications with specified persons or with other persons generally*”

individuals who are only suspected of committing acts or intending to do so.⁷⁰ Such a definition is overly broad, vague and subjective.

36. The law acknowledges that some of the restrictions are potentially incompatible with article 5 of the ECHR as regards the right to personal liberty and security thereby requiring a possible derogation. Consequently, the law provides for two types of control orders – derogatory measures and non-derogatory measures – each with a different procedure. On 1 August 2006, the English and Welsh Court of Appeal confirmed the decision of the High Court which had declared void and null many of the non-derogatory measures⁷¹. Although no breach of freedom of association was found, since this was not raised by the victims, it is doubtful whether the control order restrictions would meet the test of the European Court on Human Rights when it held that courts, in assessing any limitations on article 11 in respect of the fight against terrorism, “*must, with due regard to the circumstances of each case and a State’s margin of appreciation, ascertain whether a fair balance has been struck between the individual’s fundamental right to freedom of expression and a democratic society’s legitimate right to protect itself against the activities of terrorist organisations*”⁷² requiring a ‘*test of necessity*’ to be undertaken to ascertain whether the limitations meet answered a pressing need in a democratic society.

Restricting minority rights

37. Associations for the defence of minorities, in particular national ones, have also been subject to disproportionate limitations, including on some occasions harassment, by state authorities.⁷³ In the case *Ouranio Toxo vs Greece*, physical violence as well as destruction of the headquarters – the mayor of Florina has reportedly participated to those actions – of an association whose declared aims included the defense of the Macedonian minority living in Greece, the European Court of Human Rights found a violation of freedom of association stating that “*mention of the consciousness of belonging to a minority and the preservation and development of a minority's culture cannot be said to constitute a threat to “democratic society”, even though it may provoke tensions. The emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas*”⁷⁴

⁷⁰ Section 1 par. 9 Prevention Terrorism Act 2005 “(a) the commission, preparation or instigation of acts of terrorism; (b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so; (c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so; (d) conduct which gives support or assistance to individuals who are known or believed to be involved in terrorism-related activity; and for the purposes of this subsection it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.” Section 1 par. 9 Prevention Terrorism Act 2005

⁷¹ Case *Secretary of State for Home Department vs JJ; KK; GG; HH; NN; & LL*, No. T1/2006/9502, 1 August 2006

⁷² *Zana v. Turquie*, E.Ct.H.R., Application 18954/91 (25 November 1997), par. 55

⁷³ In his report of 5 June 2007, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Intolerance Mr. Doudou Diène, mentions that: “*the Head of the Appeals Prosecutor’s Office stated during a radio interview that all Roma were criminals and announced that “perpetrators, instigators and accomplices” of Roma people who had helped them in a case concerning the alleged forced expulsion of Roma families in the Makrigianni area of Patras would be “called on to take the stand”, specifically including among this group representatives of Greek Helsinki Monitor.*” (A/HRC/4/19/Add.1, p. 18)

⁷⁴ *Ouranio Toxo v. Greece*, E.Ct.H.R. Application No 74989/01 (20 October 2005) par. 40

38. The ECtHR has also ruled that minorities' right to exercise freedom of expression (an "essential foundation of a democratic society"⁷⁵ according to the Court), corollary of freedom of association, must also be subject to strictly defined limitations whether legal⁷⁶ or practical.⁷⁷

39. Besides, freedom of assembly – other corollary of freedom of association – may be subjected to restrictions. In a case *Stankov and the United Macedonian Organisation Ilinden*, in relation to the prohibition by authorities of the holding of commemorative meetings organised by the applicant association at the same time and place as official ceremonies,⁷⁸ the ECtHR held that: "the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies [...] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means."

40. Furthermore, sexual minorities have been particularly subjected to breaches of their right to freedom of assembly in a number of Eastern European countries. For example, the ECtHR, in finding a violation of article 11 ECHR by Poland following the banning of two 'Equality Marches' by homosexual rights associations in June 2005 in Warsaw and in November 2005 in Poznan on the grounds that these parades posed a threat to public security stated that "a genuine and effective respect for freedom of association and assembly [...] is of particular importance for persons holding unpopular views or belonging to minorities."⁷⁹ Despite this positive ruling and other criticism by authoritative human rights bodies gay rights marches have continued to be subject to harassment and intimidation.⁸⁰

4. Funding and taxation

41. In Europe – as in other regions – the strictest controls and monitoring of associations' activities relate to their financial operations. Whilst this is to be expected and is necessary it should not be used to unfairly penalise some associations solely on the basis of their aims and activities as opposed to their financial probity.

Controls at the international level

42. As outlined above (see section 2), European States have adopted measures to freeze the funds and financial assets of individuals, groups and entities involved in terrorist activities. However, in addition, on the grounds that terrorists and terrorist organisations use

⁷⁵ *Handyside v. United Kingdom* 1976 1 EHRR 737

⁷⁶ In Slovakia, law 300/2005 on the offence of defamation entered into force on 1 January 2006. The offence is punishable by a prison sentence (*Guide de la liberté associative dans le monde, mentioned above*, p. 686)

⁷⁷ In Greece, in July 2007, a new broadcasting law has issued that speaking language in radio broadcasting shall dominantly and preferentially be in Greek; which can be interpreted as limitation on freedom of media and expression (OSCE document, HDIM.NGO/135/07, 26 September 2007)

⁷⁸ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, E.Ct.H.R., Applications No 29221/95 and 29225/95 (2 October 2001), par. 97

⁷⁹ ECHR, *Baczowski and others v. Poland*, application No 1543/06, 3 May 2007, par. 64

⁸⁰ See in particular the follow-up report of the Commissioner for Human Rights of the Council of Europe (CommDH(2007)13 / 20 June 2007, par. 51 s.) and the report by the Special Representative of the UN Secretary General on Human Rights Defenders, 22/3/2006, E/CN.4/2006/95/Add.1, p. 188.

associations to collect and distribute funds, secure logistical support, encourage the recruitment of terrorists or support their activities, the Financial Action Task Force (which is a intergovernmental body, of which several European States are members⁸¹ and independent of the OECD) has developed tools to promote national and international policies aiming at combating money laundering and terrorist financing. One of FATF's many recommendations to date is of particular relevance: Special Recommendation VIII on non-profit organisations (NPOs), adopted in 1990, revised in 1996 and 2003.⁸² Among others comments, the Interpretative Note to the Special Recommendation (30 May 2007) states that « *NPOs should be licensed or registered. This information should be available to competent authorities* ». This article should not be used as a pretext to substitute the “*principe déclaratif*” (“notification system”) with a “prior authorization” approach. FATF has a mutual evaluation Programme to assess how member states are meeting their commitments.⁸³

43. In addition to FATF, the European Union has also developed tools to bar access to terrorists from an association's financial resources. An example is the European Commission's Communication ‘*The Prevention and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector*’ adopted on 29 November 2005, which includes in its annex ‘*a Framework for a Code of Conduct for NPOs to enhance Transparency and Accountability in the Non-profit Sector to Prevent Terrorist Financing and other Types of Criminal Abuse*.’⁸⁴ It also invites member States to carry out oversight of the non-profit sector and suggests that ‘*[t]he oversight role could either be dedicated to a single public body or entrusted to existing authorities or to self-regulatory bodies*’. How the proposed codes of conduct will be drafted and implemented (the European Commission foresees a meeting of experts for first quarter 2008) to ensure protection for freedom of association is particularly significant.⁸⁵

44. Whilst controls and monitoring of associations' activities related to their financial operations is perfectly understandable and justified in terms of civil society good governance such oversight should be transparent, fair and objective and not be used to disproportionately penalise associations for political reasons. Moreover, the whole debate on the financing of terrorism through associations is only relevant to a very small percentage of the three million associations currently active in the European Union.

Controls at the national level

⁸¹ Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Luxembourg, Portugal, Spain, Sweden, United Kingdom and the European Commission

⁸² The Interpretative Note to the Special Recommendation (30 May 2007) states that in order to prevent misuse of NPOs by terrorists, the only ‘*effective*’ approach is one that ‘*involves*’ no less than four elements “*a) Outreach to the [NPO] sector [on the issue of financing of terrorism] b) supervision or monitoring, c) effective investigation and information gathering and d) effective mechanisms for international co-operation*’.

⁸³ In 2006, for instance, FATF was happy to say that Special Recommendation VIII is ‘*fully respected*’ in Italy, where “*The Bank of Italia has issued operating guidelines regarding nonprofit organizations in July 2003 which require all financial intermediaries to pay special attention to the quality of associates, the beneficiaries and country of destination of donations as well as to possible inconsistencies between transactions and the subjective profile of the client. It also recalls the obligation to immediately declare all suspicious transactions to the UIC. In addition, NPOs are subject to the general obligation to transfer funds through authorized financial intermediaries for all transfers of €12,500 and more and to the obligation to declare cross-border transfers.*” (FATF, mutual evaluation programme, report of Italy, 2006, p. 92)

⁸⁴ COM/2005/0620 final

⁸⁵ On the adoption of the code of conduct, see the observations of the Swedish section of the International Commission of Jurists (25 August 2005) or the observations of the AEDH (15 September 2005)

45. Associations wishing to send funds abroad are subjected to increased surveillance. In France, donations or legacies made to a foreign entity or State by associations, foundations or congregations require an order of authorisation from the Interior Minister upon recommendation from the Foreign Minister.⁸⁶ In Denmark, the association Al-Aqsa was recently accused of providing funds to Hamas, the Palestinian organisation on the European ‘blacklist’ of terrorist entities. The association constantly denied those allegations, claiming that the money transferred to the *Islamic charitable Society* and the *World Assembly of Muslim youth* was for humanitarian purposes. On 26 March 2007, a court found in favour of the association. However, the case is currently on appeal. On September 19th, the firm “Fighters and Lovers” which sends the income from selling T-shirts to the associations FARC and FPLP - two associations on the European blacklists - was charged under article 114 B of Danish Criminal code, with offences potentially punishable with up to 6 years imprisonment⁸⁷ The case has yet to be heard but, it should be noted that the Danish Law on counter-terrorism includes an explanatory report which obliges the judiciary to take into account the need to respect human rights when making its decisions.⁸⁸

46. The accounts of associations closely linked to religious groups have been subjected to particularly close scrutiny in France. Article 19 of the law of 1905 on the separation of Church and State specify that, in order to benefit from donations or legacies, cultural associations must have as exclusive aim the exercise of a religious cult.⁸⁹ In 2005, the *Centre français pour le Culte Musulman* created, following advice from the authorities, a foundation “with a capital supplied in a balanced and diverse manner by members of the congregation as well as national enterprises and foreign countries which support the French model and whose deposits are transferred to the Deposit and Consignment Office (*Caisse des Dépôts et Consignations*)” [NDTR unofficial translation]⁹⁰ Yet, despite this, the foundation has been subjected to close control by the authorities, as reflected in article 16 of the foundation’s statutes providing that “the proceedings of the executive board mentioned in article 13 [on the resources of the foundation] and 14 [on the amendments to the statutes of the association] of the present statutes are only valid after approval by the government.”

47. Whatever measures that are put in place to hold associations accountable they must neither be discriminatory nor unnecessarily undermine the public perception of their credibility and ultimately their legitimacy.

⁸⁶ Article 3 of order 66-388 of 13 June 1966

⁸⁷ Article 114 A : “the person, or group of person, who, directly, or indirectly, provide an economical support or transport or collect funds or make available funds to one of the person who execute or prepare to execute one of the action listed in article 114 [which defines terrorism] is punish to imprisonment up to 10 years”

⁸⁸ Please see: http://www.djoef.dk/online/?Mival=view_artikel&&action_ID=3&ID=1708 (Only in Danish)

⁸⁹ This was reiterated in note No NOR/INT/A/04/00089/C of the Interior Ministry, 19 July 2004

⁹⁰ Statement by Dominique de Villepin, Former French Prime Minister, 20 March 2005

Conclusion

Despite the relatively high level of protection and enjoyment of freedom of association in Europe, this short survey demonstrates that it is susceptible to increasing pressures from recent political and demographic trends requiring extra vigilance from governments, the courts and civil society.

It is absolutely essential for States to refrain from using the fight against terrorism as an excuse to criminalise opposition movements. If Europe really wants to defeat terrorism, it must do so by respecting of the Rule of Law and Human Rights, otherwise it will merely create a breeding ground for new radical movements.

Similarly, it is fundamental for States to fully respect the enjoyment of the freedom of association of groups which defend minority rights. Indeed, there is no democratic society without “*pluralism, tolerance and broadmindedness*” (*Handyside v. United Kingdom* 1976 1 EHRR 737).

Recommendations

● To: United Nations and European Union

- The inclusion of a terrorist entity on a ‘blacklist’ of organisations suspected of terrorism must be able to be subjected to independent and impartial judicial scrutiny including the normal appeal process.
- “*Legislation and regulations, including legislation and regulations adopted in connection with the fight against terrorism [should be] implemented [...] in a manner that does not discriminate against persons or groups of persons, notably on grounds of actual or supposed “race”, colour, language, religion, nationality, national or ethnic origin; [...] particular attention [must be paid] to guarantee in a non discriminatory way the freedoms of association, expression, religion and movement*” (ECRI Recommendation)⁹¹
- In accordance with the recommendations of Martin Scheinin, the Human Rights Committee should adopt a general comment on the rights to freedom of association and peaceful assembly in the framework of the fight against terrorism (A/61/267, p. 22)

● To: National authorities

- “*In principle, the State should not need to resort to derogation measures with respects to the right to freedom of assembly and association*” (Martin Scheinin)⁹²
- Counter-terrorism measures related to associations should be precise in order to fully respect the rule of law principle and fundamental human rights
- In the case of a finding of a violation of article 11 of the ECHR, the respondent State should implement the decision comprehensively and without delay, including, if required, permitting the registration of the association if this has been unjustly denied

⁹¹ ECRI general policy recommendation on ‘Combating Racism while Fighting Terrorism, ECRI (2004) 26, 17 March 2004

⁹² *Ibid.*

ANNEXE 1: Freedom of association International and European standards

Article 22 - International Covenant on Civil and Political Rights (16 December 1966)

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 8 - International Covenant on Economic, Social and Cultural Rights (16 December 1966)

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

Article 5 - International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965)

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights [...] d) ix) The right to freedom of peaceful assembly and association;

Article 7 - The Convention on the Elimination of All Forms of Discrimination against Women (18 September 1979)

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: [...] c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 15 - Convention on the Rights of the Child (20 November 1989)

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 26 - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990)

States Parties recognize the right of migrant workers and members of their families:

- (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;
- (b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;
- (c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Article 11 - Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950)

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 5 - European Social Charter (revised) (3 May 1989)

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 12 - Charter of Fundamental Rights of the European Union (7 December 2000)

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

ANNEXE 2: European and British « Blacklists » of terrorists associations

Council Common Position 2007/448/PESC of 28 June 2007 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Positions 2006/380/CFSP and 2006/1011/CFSP

« [...] »

2. GROUPS AND ENTITIES

1. *Organisation Abou Nidal (Conseil révolutionnaire du Fatah, Brigades révolutionnaires arabes, Septembre noir, et Organisation révolutionnaire des musulmans socialistes)*

2. *Brigade des martyrs d'Al-Aqsa*

3. *Al-Aqsa e.V.*

4. *Al-Takfir et al-Hijra*

5. * *Cooperativa Artigiana Fuoco ed Affini — Occasionalmente Spettacolare*

6. * *Nuclei Armati per il Comunismo (Noyaux armés pour le communisme)*

7. *Aum Shinrikyo (AUM, Aum Vérité suprême, Aleph)*

8. *Babbar Khalsa*

9. * *Cellule contre le capital, les prisons, leurs gardiens et leurs cellules (CCCCC — Cellula Contro Capitale, Carcere i suoi Carcerieri e le sue Celle)*

10. *Parti communiste des Philippines, y compris la New People's Army (NPA), Philippines, lié à Sison Jose Maria C. (alias Armando Liwanag, alias Joma, responsable du Parti communiste des Philippines, y compris la NPA)*

11. * *Continuity Irish Republican Army (CIRA)*

12. * *EPANASTATIKOS AGONAS — Lutte révolutionnaire*

13. * *Euskadi Ta Askatasuna/Tierra Vasca y Libertad/Pays basque et liberté (ETA) (les organisations ci-après font partie du groupe terroriste ETA : K.a.s., Xaki; Ekin, Jarrai-Haika-Segi, Gestoras pro-amnistía, Askatasuna, Batasuna (alias Herri Batasuna, alias Euskal Herritarrok)*

14. *Gama'a al-Islamiyya (Groupe islamique), (Al-Gama'a al-Islamiyya, IG)*

15. *Front islamique des combattants du Grand Orient (IBDA-C)*

16. * *Grupos de Resistencia Antifascista Primero de Octubre/ Groupes de résistance antifasciste du 1er octobre*

(GRAPO)

17. Hamas (y compris Hamas-Izz al-Din al-Qassem)
18. Hizbul Mujahedin (HM)
19. Hofstadgroep
20. Holy Land Foundation for Relief and Development (Fondation de la Terre sainte pour le secours et le développement)
21. International Sikh Youth Federation (ISYF)
22. * Solidarietà Internazionale (Solidarité internationale)
23. Kahane Chai (Kach)
24. Khalistan Zindabad Force (KZF)
25. Parti des travailleurs du Kurdistan (PKK), (alias KADEK, alias KONGRA-GEL)
26. Tigres de libération de l'Eelam tamoul (TLET)
27. * Loyalist Volunteer Force (LVF)
28. Mujahedin-e Khalq Organisation (MEK ou MKO) [moins le «Conseil national de la Résistance d'Iran» (NCRI)] (Armée nationale de libération de l'Iran (la branche militante de la MEK), les Mujahidines du peuple d'Iran, la Société musulmane des étudiants iraniens)
29. Armée de libération nationale (Ejército de Liberación Nacional)
30. * Orange Volunteers (OV)
31. Front de libération de la Palestine (FLP)
32. Jihad islamique palestinienne
33. Front populaire de libération de la Palestine (FPLP)
34. Front populaire de libération de la Palestine — Commandement général (FPLP-Commandement général)
35. * Real IRA
36. * Brigate rosse per la Costruzione del Partito Comunista Combattente (Brigades rouges pour la construction du Parti communiste combattant)
37. * Red Hand Defenders (RHD)
38. Forces armées révolutionnaires de Colombie (FARC)
39. * Noyaux révolutionnaires/Epanastatiki Pirines
40. * Organisation révolutionnaire du 17 novembre/Dekati Evdomi Noemvri
41. Armée/Front/Parti révolutionnaire populaire de libération (DHKP/C), (Devrimci Sol (Gauche révolutionnaire), Dev Sol)
42. Sentier lumineux (SL) (Sendero Luminoso)
43. Stichting Al Aqsa (alias Stichting Al Aqsa Nederland, alias Al Aqsa Nederland)
44. TAK — Teyrbazen Azadiya Kurdistan, alias Faucons de la liberté du Kurdistan
45. * Brigata XX Luglio (Brigade du 20 juillet)
46. * Ulster Defence Association/Ulster Freedom Fighters (UDA/UFF)
47. Forces unies d'autodéfense de Colombie (Autodefensas Unidas de Colombia - AUC)
48. * F.A.I. — Federazione Anarchica Informale (Fédération anarchiste informelle) »

Council Decision of 28 June implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC

« [...] »

2. GROUPS AND ENTITIES

1. Organisation Abou Nidal (Conseil révolutionnaire du Fatah, Brigades révolutionnaires arabes, Septembre noir, et Organisation révolutionnaire des musulmans socialistes)
2. Brigade des martyrs d'Al-Aqsa
3. Al-Aqsa e.V.
4. Al-Takfir et al-Hijra
5. Aum Shinrikyo (AUM, Aum Vérité suprême, Aleph)
6. Babbar Khalsa
7. Parti communiste des Philippines, y compris la New People's Army (NPA), Philippines, lié à Sison Jose Maria C. (alias Armando Liwanag, alias Joma, responsable du Parti communiste des Philippines, y compris la NPA)
8. Gama'a al-Islamiyya (Groupe islamique), (Al-Gama'a al-Islamiyya, IG)
9. Front islamique des combattants du Grand Orient (IBDA-C)
10. Hamas (y compris Hamas-Izz al-Din al-Qassem)
11. Hizbul Mujahedin (HM)
12. Hofstadgroep
13. Holy Land Foundation for Relief and Development (Fondation de la Terre sainte pour le secours et le développement)
14. International Sikh Youth Federation (ISYF)
15. Kahane Chai (Kach)
16. Khalistan Zindabad Force (KZF)
17. Parti des travailleurs du Kurdistan (PKK), (alias KADEK, alias KONGRA-GEL)
18. Tigres de libération de l'Eelam tamoul (TLET)
19. Mujahedin-e Khalq Organisation (MEK ou MKO) [moins le «Conseil national de la Résistance d'Iran» (NCRI)] (Armée nationale de libération de l'Iran (la branche militante de la MEK), les Mujahidines du peuple d'Iran, la Société musulmane des étudiants iraniens)

20. *Armée de libération nationale (Ejército de Liberación Nacional)*
21. *Front de libération de la Palestine (FLP)*
22. *Jihad islamique palestinienne*
23. *Front populaire de libération de la Palestine (FPLP)*
24. *Front populaire de libération de la Palestine — Commandement général (FPLP-Commandement général)*
25. *Forces armées révolutionnaires de Colombie (FARC)*
26. *Armée/Front/Parti révolutionnaire populaire de libération (DHKP/C), (Devrimci Sol (Gauche révolutionnaire), Dev Sol)*
27. *Sentier lumineux (SL) (Sendero Luminoso)*
28. *Stichting Al Aqsa (alias Stichting Al Aqsa Nederland, alias Al Aqsa Nederland)*
29. *TAK — Teyrbazen Azadiya Kurdistan, alias Faucons de la liberté du Kurdistan*
30. *Forces unies d'autodéfense de Colombie (Autodefensas Unidas de Colombia — AUC) »*

List in the United Kingdom

(Source : <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act/proscribed-groups>)

- 17 November Revolutionary Organisation (N17)
- Abu Nidal Organisation (ANO)
- Abu Sayyaf Group (ASG)
- Al-Gama'at al-Islamiya (GI)
- Al Gurabaa
- Al Ittihad Al Islamia (AIAI)
- Al Qaida:
- Ansar Al Islam (AI)
- Ansar Al Sunna (AS)
- Armed Islamic Group (Groupe Islamique Armée) (GIA)
- Asbat Al-Ansar ('League of Parisans' or 'Band of Helpers')
- Babbar Khalsa (BK)
- Basque Homeland and Liberty (Euskadi ta Askatasuna) (ETA)
- Baluchistan Liberation Army (BLA)
- Egyptian Islamic Jihad (EIJ)
- Groupe Islamique Combattant Marocain (GICM)
- Hamas Izz al-Din al-Qassem Brigades
- Harakat-Ul-Jihad-Ul-Islami (HUJI)
- Harakat-Ul-Jihad-Ul-Islami (Bangladesh) (Huji-B)
- Harakat-Ul-Mujahideen/Alami (HuM/A) and Jundallah
- Harakat Mujahideen (HM)
- Hizballah External Security Organisation
- Hezb-E Islami Gulbuddin (HIG)
- International Sikh Youth Federation (ISYF)
- Islamic Army of Aden (IAA)
- Islamic Jihad Union (IJU)
- Islamic Movement of Uzbekistan (IMU)
- Jaish e Mohammed (JeM)
- Jeemah Islamiyah (JI)
- Khuddam Ul-Islam (Kul) and splinter group Jamaat Ul-Furquan (JuF)
- Kongra Gele Kurdistan (PKK)
- Lashkar e Tayyaba (LT)
- Liberation Tigers of Tamil Eelam (LTTE)
- Mujaheddin e Khalq (MeK)
- Palestinian Islamic Jihad - Shaqaqi (PIJ)
- Revolutionary Peoples' Liberation Party - Front (Devrimci Halk Kurtulus Partisi - Cephesi) (DHKP-C)
- Teyre Azadiye Kurdistan (TAK)
- Salafist Group for Call and Combat (Groupe Salafiste pour la Predication et le Combat) (GSPC)
- Saved Sect or Saviour Sect
- Sipah-E Sahaba Pakistan (SSP) (Aka Millat-E Islami Pakistan (MIP) - SSP was renamed MIP in April 2003 but is still referred to as SSP) and splinter group Lashkar-E Jhangvi (LeJ)
- Libyan Islamic Fighting Group (LIFG)
- Jammat-ul Mujahideen Bangladesh (JMB)
- Tehrik Nefaz-e Shari'at Muhammadi (TNSM)

Proscribed Irish groups:

- Continuity Army Council
- Cumann na mBan
- Fianna na hEireann
- Irish National Liberation Army
- Irish People's Liberation Organisation

Irish Republican Army
 Loyalist Volunteer Force
 Orange Volunteers
 Red Hand Commando
 Red Hand Defenders
 Saor Eire
 Ulster Defence Association
 Ulster Freedom Fighters
 Ulster Volunteer Force

ANNEXE 3 : Cases before European Courts – updated on 25 June 2007⁹³

Applicant(s)	Date	Case reference	Details	Judgment
Abdirisak Aden and Others [al-Barakaat, Sweden]	10 December 2001	<u>T-306/01</u> (OJ 2002 C 44/47)	The Applicants argued that the EU Council had exceeded its powers in freezing the resources associates of the Taleban under Regulation 467/2001 (March 2001) under Articles 60 EC and 301 EC. They sought annulment of Regulations 467/2001 and 2199/2001 (implementing legislation), arguing that the "fundamental legal principle of the right to a fair and equitable hearing" had been disregarded. Ultimately, the al-Barakaat trio were removed from the UN and EU lists (see below).	Application for interim relief ("urgency proceedings") dismissed, <u>7 May 2002</u> [2002] ECR II-2387 Dismissed, <u>21 September 2005</u> (appealed to ECJ, see case C-402/05 P, below)
Yassin Abdullah Kadi [Saudi Arabian businessman]	18 December 2001	<u>T-315/01</u> (OJ 2002 C 56/16)	Also concerns Regulation 467/2001 (above). Applicant sought an annulment of the Regulation as far as it relates to him, arguing interference with property rights and violation of the Community Law principle of effective judicial control because of the failure to provide any opportunity for redress. Later removed from ECJ register - applicant presumably	Dismissed, <u>21 September 2005</u>

⁹³ <http://www.statewatch.org/terrorlists/terrorlists.html>

			delisted	
Omar Mohamed Othman [Jordanian residing in the UK]	17 December 2001	<u>T-318/01</u> (OJ 2002 C 68/13)	Also seeks annulment of Regulation 467/2001 (above) and implementing Regulation 2062/2001. Argues misuse of Council powers and violation of articles 3 and 8, ECHR and violation of the principle of subsidiarity.	
Congrès National du Kurdistan [in respect to PKK]	2 July 2002	<u>T-206/02</u> (OJ 2002 C 247/13) Note: the UK and the Commission supported the Council	Sought annulment of the decision to proscribe the PKK arguing defamation, erroneous judgment, denial of freedom of expression and sought damages of 10,000 euro. Also argued failure to provide procedural remedies and that the PKK has been advocating non-violence since 1999.	Dismissed, <u>15 February 2005</u>
Organisation des Modjahedines du Peuple d'Iran (OMPI) [PMOI]	26 July 2002	<u>T-228/02</u> (OJ 2002 C 247/20)	The Applicants sought partial annulment of the Decisions and Common Positions implementing Common Position 2001/931 and Regulation 2580/2001 (on freezing the assets of "foreign" terrorists) and damages of 1 euro. In support of their claims, the applicants argued breach of the right to defence, failure to recognise its actions as resistance to occupation and tyranny and breach of the principle of non-discrimination.	Ruling in favour of applicant, <u>12 December 2006</u>
Kurdistan Workers Party (PKK) and Kurdistan National Congress (KNK)	31 July 2002	<u>T-229/02</u> (OJ 2002 C 233/32) Note: the UK and the Commission supported the Council	The Applicants sought annulment of the Decision to proscribe them and related damages. They argued that the EU had breached its own procedural rules in failing to recognise that the PKK had renounced violence,	Dismissed, <u>15 February 2005</u> (appealed to ECJ, see case C-229/05 P, below)

			breach of civil, cultural and political rights, breach of fundamental rights and principles of Community law and misuse of Council powers.	
Chafiq Ayadi [Irish resident]	22 August 2002	<u>T-253/02</u> (OJ 2002 C 289/25)	Seeks annulment of Regulation 881/2002 implementing Regulation 467/2001 (on freezing Taleban associates' assets. above). Argues that UN measures do not impose a duty to apply such measures, misuse of Council and Commission powers and violation of the principles of subsidiarity and proportionality and respect for human rights. Also argues failure to provide opportunity for judicial redress and reasons.	Dismissed, <u>12 July 2006</u>
Gestoras Pro Amnistía association, Juan Mari Olano Olano and Julen Zelarain Errasti [a Basque Group and associated individuals]	31 October 2002	<u>T-333/02</u> (OJ 2002 C 19/36)	The Applicants sought combined damages of 1.2 million euro. Arguments identical to those in case T-338/02, below.	Dismissed, <u>7 June 2004</u> (appealed to ECJ, see case C-354/04 P, below)
SEGI association, Araitz Zubimendi Izaga and Aritza Galarraga [a Basque Group and associated individuals]	13 November 2002	<u>T-338/02</u> (OJ 2003 C 7/24)	The Applicants sought combined damages of 1.2 million euro. They argued that their fundamental rights to the presumption of innocence, a fair hearing, freedom of speech, self-determination and privacy had been breached. They also argued that the procedure used to adopt Common Position 2001/931 and Regulation 2580/2001 was unlawful and failed to provide them with adequate defence rights.	Dismissed, <u>7 June 2004</u> (appealed to ECJ, see case C-355/04 P, below)
Jose Maria Sison [accused of being	6 February 2003	<u>T-47/03</u> (OJ 2003 C 101/41)	Seeks partial annulment of the	Application for interim relief

head of the "New People's Army" in The Philippines, residing in Holland]			Decisions to proscribe Mr. Sison, annulment of Regulation 2580/2001 and damages of at least 100,000 euro. Argues that Mr. Sison is a political refugee recognised by the Netherlands, that he is not head of the New People's Army, that his fundamental rights under articles 6, 7, 10 and 11 ECHR have been breached. Also argues that Regulation 2580/2001 is unlawful.	dismissed, 15 May 2003 [2003] ECR I-2047
Jose Maria Sison	24 March 2003	<u>T-110/03</u> (OJ 2003 C 146/39)	Mr. Sison's lawyers requested from the General Secretariat of the EU Council all documents which formed the of the Decision to proscribe the applicant and the New People's Army as well as access to any information regarding which Member States provided documents mentioned in the contested Decision. The Council refused on the grounds that these documents constituted "sensitive information" (and exception in the Regulation on public access to documents) and suggested their release would breach the Council's Security Regulations.	Dismissed, 26 April 2005
Jose Maria Sison	30 April 2003	<u>T-150/03</u> (OJ 2003 C 213/36)	Seeks annulment of Council's Decision to reject Mr. Sison's lawyers' "confirmatory application" (appeal) contesting the Decision of the Council to refuse access the to documents requested above.	Dismissed, 26 April 2005
Stichting al-Asqa	19 September 2003	<u>T-327/03</u> (OJ 2003 C 289/30)	The Applicants sought annulment of the Decision to proscribe them and asked the	

			Court to declare inapplicable Regulation 2580/2001 and provide related damages. They argue violation of procedural rules and the right to a fair hearing and breach of other fundamental rights.	
Jose Maria Sison	12 December 2003	<u>T-405/03</u> (OJ 2004 C 35/17)	Joined to cases T-110/03 and T-150/03 (above). Concerns reply to "confirmatory application".	Dismissed, <u>26 April 2005</u>
Faraj Hassan [UK resident]	12 February 2004	<u>T-49/04</u> (OJ 2004 C 94/140)	Seeks annulment of Regulation 881/2002 implementing Regulation 467/2001 (on freezing Taleban associates' assets. above) as far it relates to the proscription of the applicant, and related damages. Argues that the measures "annihilate his peaceful enjoyment of his property and his private and family life" and that the defendants "wholly failed to provide him, both before and after the decision was taken, with a fair hearing or effective remedy". Also claims that the measures violate the principle of proportionality.	Dismissed, <u>12 July 2006</u>
Zubeyir Aydar on behalf of Kongra-Gel and 10 others [proscribed as alias of PKK]	25 June 2004	<u>T-253/04</u> (OJ 2004 C 262/28)	The Applicants seek annulment of the Decision to proscribe them, arguing "failure to apply accessible, objective criteria to the correct facts", breach of freedom of expression, breach of principles of Community law and misuse of power. Also argues failure to ensure right to a fair hearing.	
Hani El Sayyed Elsebai Yusef [UK]	6 January 2006	<u>T-2/06</u>	Seeks annulment of Regulation 881/2002	Rejected (application received too late),

resident]			implementing Regulation 467/2001 (on freezing Taleban associates' assets. above) as far it relates to the proscription of the applicant. The applicant was listed pursuant to Regulation (EC) No 1629/2005 of 5 October 2005, amending for the 54th time Council Regulation (EC) No 881/2002. The Regulation 1629/2005 was published in the Official Journal of the European Union on 6 October 2005 so the time-limit for commencing annulment proceedings expired on 30 December 2005.	<u>31 May 2006</u>
Al-Bashir Mohammed Al-Faqih [Libyan, UK resident]	5 May 2006	<u>T-135/06</u>	Seeks the annulment of Regulation 246/2006 by which the applicant was included in the list of persons, groups and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (pursuant to Article 2 of Regulation No 881/2002). Argues that the Council was not competent to adopt Article 2 of Regulation in that Articles 60 EC, 301 EC and 308 EC do not confer on the Council the power to do so. Also argues that the Council and the Commission misused their powers and that Article 2 of Regulation No 881/2002 as amended infringes the fundamental principles of Community law (subsidiarity, proportionality and respect for fundamental rights). Also cites	

			infringement of an essential procedural requirement in the adoption of Regulation No 881/2002 to state adequate reasons why the measures considered necessary cannot be determined by individual Member States.	
Sanabel Relief Agency Ltd [UK-based]	5 May 2006	T-136/06	Pleas and arguments identical to those in case T-135/06, above	
Ghunia Abdrabba [UK resident]	5 May 2006	T-137/06	Pleas and arguments identical to those in case T-135/06, above	
Taher Nasuf [UK resident]	5 May 2006	T-138/06	Pleas and arguments identical to those in case T-135/06, above	
Organisation des Modjahedines du Peuple d'Iran (OMPI) [PMOI]	June 2007	T-157/07	arguments not yet reported	

The European Court of Justice

Applicant(s)	Date	Case reference	Details	Judgment
Gestoras Pro Amnistía association, Juan Mari Olano and Julen Zelarain Errasti	17 August 2004	<u>C-354/04</u> P (OJ 2004 C 251/9)	Appeal against CFI judgment in Case T-333/02, above; joined with case C-355/04 (below).	Opinion of AG recommending rejection <u>26 October 2006</u>
SEGI association, Aritz Zubimendi Izaga and Aritza Galarraga	17 August 2004	<u>C-355/04</u> P (OJ 2004 C 251/10)	Appeal against CFI judgment in Case T-338/02, above; joined with case C-354/04 (above).	Opinion of AG recommending rejection <u>26 October 2006</u>
Kurdistan Workers Party (PKK) and Kurdistan National Congress (KNK)	18 May 2005	<u>C-229/05</u> P (OJ 2005 C 243/2)	Appeal against CFI judgment in Case T-229/02, above.	Ruling in favour of applicant (case to return to CFI) <u>18 January 2007</u>
Jose Maria Sison (access to documents cases)	27 June 2005	<u>C-266/05</u> P (OJ 2005 C 243/4)	Appeal against CFI judgment in Cases T-110/03, T-150/03 and T-405/03, above.	Dismissed <u>1 February 2007</u>
Kadi v Council and Commission	24 November 2005	<u>C-402/05</u> P (Council doc. 15408/05; not yet published in OJ)	Appeal against CFI judgment in Case T-315/01, above.	
Yusuf and Al Barakaat International Foundation v Council	1 December 2005	<u>C-415/05</u> P (Council doc. 5064/06; not yet published in OJ)	Appeal against CFI judgment in Case T-315/01, above.	

		published in OJ)		
Gerda and Christiane Möllendorf (concerns Salem-Abdul Ghani El-Rafei, Dr. Kamal Rafehi and Ageel A. Al-Ageel)	21 February 2006	C-117/06 (OJ 2006 C 108/6)	P	Reference from German Courts regarding sale of property by persons listed by UN Taleban Sanctions Committee.

The European Court of Human Rights

The European Court of Human Rights has held that *all* judicial remedies (including the EU Courts) must be exhausted before it can consider any cases - leaving applicants facing lengthy procedures.

- See: **Judgment** (23 May 2002) in Case Nos. 6422/02 and 9916/02, SEGI association, Gestoras Pro Amnistía and Others vs. Council of the European Union.