

# DANGEROUSLY DISPROPORTIONATE

## THE EVER-EXPANDING NATIONAL SECURITY STATE IN EUROPE

### EXECUTIVE SUMMARY

Hundreds of people were killed and wounded in a spate of violent attacks in European Union (EU) states between January 2015 and December 2016. They were shot by armed men, blown up in suicide bomb attacks and deliberately run over as they walked in the street. These callous crimes did not just target individuals; they were also attacks on societies, on how people live and what people think. The need to protect people from such wanton violence is obvious and urgent. Upholding the right to life, enabling people to live freely, to move freely, to think freely: these are essential tasks for any government. But they are not tasks that can be achieved by any means. Crucially, they are not tasks that should, or can, be achieved by riding roughshod over the very rights that governments are purporting to uphold.

The last two years, however, have witnessed a profound shift in paradigm across Europe: a move from the view that it is the role of governments to provide security so that people can enjoy their rights, to the view that governments must restrict people's rights in order to provide security. The result has been an insidious redrawing of the boundaries between the powers of the state and the rights of individuals.

Individual EU states and regional bodies have responded to the attacks by proposing, adopting and implementing wave after wave of counter-terrorism measures that have eroded the rule of law, enhanced executive powers, peeled away judicial controls, restricted freedom of expression and exposed everyone to government surveillance. Brick by brick, the edifice of rights protection that was so carefully constructed after the Second World War, is being dismantled.

This report aims to give a bird's eye view of the national security landscape in Europe. It shows just how widespread and deep the "securitization" of Europe has become since 2014. The report reflects a world in which fear, alienation and prejudice are steadily chipping away at the cornerstones of the EU: fairness, equality and non-discrimination.

#### The report focuses on eight themes:

- **states of emergency/emergency laws**
- **principle of legality**
- **right to privacy/surveillance**
- **freedom of expression**
- **right to liberty**
- **freedom of movement**
- **stripping of nationality**
- **principle of *non-refoulement* (prohibition of the return of people to a place where they face a real risk of torture or other ill-treatment)**

Illustrative examples of human rights violations or concerns that appear throughout the report have been drawn from 14 EU member states and from counter-terrorism initiatives at the UN, Council of Europe and EU levels. The countries profiled in various sections of the report are Austria, Belgium, Bulgaria, Denmark, France, Germany, Hungary, Ireland, Luxembourg, Netherlands, Poland, Slovakia, Spain, and the United Kingdom (UK).

UN Security Council Resolution 2178, which was adopted at rocket speed in September 2014, required states to pass laws to counter the threat of “foreign terrorist fighters”. Since then, a large number of counter-terrorism measures have been proposed or implemented in most European states. Instead of strengthening the European human rights system, these measures have been steadily dismantling it, putting hard won rights at risk.

**Key common features of these counter-terrorism initiatives include:**

- expedited processes where legislation is fast-tracked to adoption with little or no consultation with parliaments, experts and others in civil society;
- derogation from human rights commitments in law or practice with often detrimental effects on people’s lives;
- consolidation of power in the hands of the executive, its agencies and the security and intelligence apparatus, often with little or no role for the judiciary in authorizing measures or providing effective scrutiny;
- ineffective or lack of independent oversight mechanisms to monitor implementation of counter-terrorism measures and operations, identify abuses and hold people accountable for human rights violations;
- imprecise and overly broad definitions of “terrorism” in laws, in violation of the principle of legality and leading to numerous abuses;
- standards of proof reduced from the traditional criminal standard of “reasonable suspicion” to mere “suspicion,” and in some states to no formal requirement of suspicion at all;
- tenuous, and sometimes no, link between so-called preparatory acts or inchoate offences and the actual criminal offence;
- use of administrative control measures to restrict people’s freedom of movement and association as a proxy for criminal sanctions, which would offer the people in question better safeguards against abuse;
- criminalization of various forms of expression that fall short of incitement to violence and threaten legitimate protest, freedom of expression, and artistic freedom;
- fewer possibilities to challenge counter-terrorism measures and operations, in particular due to the state’s use of secret evidence typically not disclosed to a person affected by the measures or their lawyer;
- states invoking national security concerns and the “threat of terrorism” to arbitrarily target migrants and refugees, human rights defenders, activists, political opponents, journalists, minority groups, and people lawfully exercising their rights to freedom of expression, association and assembly; and
- lack of attention to the needs and protection rights of particular groups, including women and children.

The recent wave of counter-terrorism measures also breaches one of the foundational principles of the EU, that of non-discrimination. Often, the measures have proved to be discriminatory on paper and in practice, and have had a disproportionate and profoundly negative impact, particularly on Muslims, foreign nationals or people perceived to be Muslim or foreign.

Men, women and children have been verbally and physically abused. Passengers have been removed from planes because they “looked like a terrorist”. Women have been banned from wearing a full body swimsuit on the beach in France. Refugee children in Greece have been arrested for playing with plastic guns. Instances of discrimination appear in every section of this report, highlighting that certain forms of discriminatory action by the state and its agents are increasingly seen as “acceptable” in the national security context. They are not.

One of the most alarming developments across the EU is the effort by states to make it easier to invoke and prolong a “state of emergency” as a response to terrorism or the threat of violent attacks. In a number of states, emergency measures that are supposed to be temporary have become embedded in ordinary criminal law. Powers intended to be exceptional are appearing more and more as permanent features of national law.

Given the febrile state of European politics, electorates should be extremely wary of the range of powers and extent of control over their lives that they are prepared to hand over to their governments. The rise of far right nationalist parties, anti-refugee sentiment, stereotyping and discrimination against Muslims and Muslim communities, intolerance for speech or other forms of expression – risk that these emergency powers will target certain people for

reasons that have nothing at all to do with a genuine threat to national security or from terrorism-related acts. Indeed, this is happening in Europe already.

The threshold for the triggering and extension of emergency measures has been lowered – and runs the risk of being reduced even further in coming years. While international human rights law is clear that exceptional measures should only be applied in genuinely exceptional circumstances - namely “in time of war or other public emergency threatening the life of the nation” - the disturbing idea that Europe faces a perpetual emergency is beginning to take hold.

There are many countries in Europe, particularly those with little history of terrorism, in which hard-line governments of whatever political persuasion will be tempted and increasingly able to impose states of emergency in response to the first serious terrorist attack they face. These governments will enjoy a range of sweeping powers whose use is unlikely to be restricted to those involved in the commission of terrorist acts. This has already proven to be case in France, where the extension – by a mainstream political party - of emergency powers well beyond the period of uncertainty that followed the Paris attacks has contributed significantly to the normalizing of the notion that a general threat of terrorist attacks threatens the very life of the nation.

Ultimately, however, the threat to the life of a nation – to social cohesion, to the functioning of democratic institutions, to respect for human rights and the rule of law – does not come from the isolated acts of a violent criminal fringe, however much they may wish to destroy these institutions and undermine these principles - but from governments and societies that are prepared to abandon their own values in confronting them.

Amnesty International is calling on all states, including EU member states, to renew their commitment in law and in practice to upholding their international human rights obligations in the context of countering terrorism. The steady regression in many aspects of rights protection in the EU must end.

*The full report, “Dangerously Disproportionate: The ever-expanding national security state in Europe” (Index: EUR 01/5342/2017), is available in English and French at [www.amnesty.org/en/documents/eur01/5342/2017/en/](http://www.amnesty.org/en/documents/eur01/5342/2017/en/).*