Combatting Terrorism and the Rule of Law

Prof. Dr. iur. Marc Thommen
Zürich/Switzerland
I. Introduction

- 7 April 2015 a man was arrested at Zurich Airport.

- He was about to board a plane to Istanbul.

- Suspicion: Join the Islamic State.
I. Introduction

- Conviction: Violation Islamic State Act.
- 18 months imprisonment (suspended).
I. Introduction

- Preparation, Internet-searches
- «Terrorist attack»
- «Al-Qaida»
- «Islamic State»
- Flight to Istanbul
Overview

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II. Fighting terrorism in Switzerland today
   a. Substantive Criminal Law
   b. Procedural Law
   c. Intelligence Act

III. Fighting terrorism in Switzerland tomorrow

IV. Conclusion
Overview

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II. Terrorism in Switzerland?

- 1970s: Terror years
- 21 February 1970: Swissair plane 330 to Tel Aviv crashed.
- A bomb had exploded on board.
- 39 passengers, 9 crew members killed.
- The Popular Front for the Liberation of Palestine claimed responsibility.
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Substantive Criminal Law

- Preparatory Acts (Art. 260\textsuperscript{bis})
- Criminal Organisation (Art. 260\textsuperscript{ter})
- Financing Terrorism (Art. 260\textsuperscript{quinquies})
- Unconstitutional Organisations (Art. 275\textsuperscript{ter})
- Confiscation (Art. 72)
- Al-Qaida/IS-Act
Substantive Criminal Law

Common features:
- Not aimed at terrorist act itself (Murder, etc.)
- Extension criminal law
- Intervention before attack occurs.
- Aimed at terrorists and supporters
Criminal vs. terrorist organisations
Substantive Criminal Law

Convictions 2016:
- Preparatory Acts: 14
- Crim. Organisation: 13
- Financing Terrorism: 0
- Unconstitutional Organisations: 0
Substantive Criminal Law

Purpose of substantive criminal law measures?

Stepping stone for:
- Procedural measures
- International legal assistance.
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Procedural Law

Ordinary measures:
- Detention on remand
- Search of premises
- Seizure of assets

Covert Surveillance:
- Observation
- Wiretapping
- Undercover Investigation
- Government Malware
«Early Intervention»
«Early Intervention»

Suspicion

Prevention (Policing)

Repression (Criminal Law/Procedure)

Terrorist
«Early Intervention»

Prevention (Policing)  Repression (Criminal Law/Procedure)

Suspicion

Terrorist Organisation

Terrorist
«Early Intervention»

- Substantive Criminal Law as a stepping stone for early procedural measures.
- Pro: Early intervention
- Con: Uncontrollable widening of criminal law.
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Intelligence Act

- Information Gathering
- Threat assessment
- Independent of criminal investigation
- Sources: domestic and foreign agencies

Markus Seiler
Head of Swiss Intelligence Agency
Intelligence Act

Intelligence Service Act: 1\textsuperscript{st} September 2017:
- Monitor phones & mail accounts
- Systems for tracking people
- Wiretapping private rooms
- Governmental malware
Intelligence Act

- Intelligence Service does not give away its sources
- Tipping-off to prosecutors
- Initial evidence cannot be challenged in court (ECHR 6 III d).
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Several new acts in preparation:
- Doubling of sentences for criminal organisations
- Jihad Travelling as an separate offence

Federal Parliament, Bern
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IV. Conclusion

1. Don’t trade freedom for safety.
2. Prevention through substantive criminal law.
3. Nothing to hide – nothing to fear?

Federal Parliament, Bern
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Nothing to hide?
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