

A disrupted balance? Prevention of terrorism and compliance with fundamental legal rights and principles of law - The Dutch anti-terrorism legislation

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A Disrupted Balance?

Prevention of terrorism and compliance with fundamental legal rights and principles of law –
The Dutch anti-terrorism legislation.

Karin Veegens
20 December 2011

1. The protective value of procedural guarantees, especially of judicial control, in preventing the arbitrary application of anti-terrorism powers is undermined by the broad criteria for applying these powers.
2. The collective measures for combating terrorism have turned the criminal justice system into a pre-emptive control system as far as it concerns alleged terrorist activities.
3. From the Strasbourg perspective, intrusive interferences with suspects' fundamental rights during the pre-trial phase cannot be justified by the mere fact that the suspicion concerns terrorism.
4. Depriving persons of their liberty pursuant to Article 57 and/or 67 of the Dutch Code of Criminal Procedure on the basis of a 'light reasonable suspicion' in order to avert an alleged terrorist threat is *contra legem* and is in violation of Article 5 of the European Convention on Human Rights.
5. To better preserve the uniformity of criminal liability for inchoate offences, the possibility of lifting criminal liability in cases of voluntary withdrawal pursuant to Article 46b of the Dutch Criminal Code should also apply in cases of conspiracy and preparation in conformity with Article 96 of the Dutch Criminal Code.
6. A *reasonable* suspicion of an inchoate offence committed with terrorist *intent* during the pro-active phase could be considered a *contradictio in terminis*.
7. In criminal offences involving sexual or other abuse of a person in a dependent relationship with the perpetrator, the prevention of recidivism should always be decisive in determining the sentence.
8. The mainly solitary process of writing a dissertation is at odds with the fact that new scholarly insights primarily come about by continuously sharing knowledge with others.
9. Writing a dissertation requires a higher capacity to pose the right questions than to give the correct answers.
10. If all European countries had tackled their financial position as thoroughly as the fight against terrorism, there would be no euro crisis today.
11. Angst is een slechte raadgever, in het bijzonder bij de totstandkoming van straf(proces)rechtelijke wetgeving.