

AGENDA

JUSTICE PROJECT

Roundtable discussions on investigative procedures and procedural rights in counter terrorism: implementing the EU Directive 2017/541 on combating terrorism

Friday 27 September 2019, 9:00 – 17:30
Room 2.19, Campus Den Haag of Leiden University,
Turfmarkt 99, The Hague

Through roundtable discussions, participants will be invited to share their practices and experiences in the application of the investigative procedures and procedural rights related to the prosecution of the criminal offences enshrined in the EU Directive 2017/541 on combating terrorism within the different legal systems of the European Union (EU). These practices will be assessed in light of international human rights law principles in order to select best practices that could be promoted throughout the EU. This agenda provides some leading questions that will guide the exchanges.

*Please note that this event will be held under the **Chatham House Rules**.*

9:00 – 9:30 Welcome and registration of the participants

OPENING REMARKS

9:30 – 10:15 **Welcome and Introduction**
Presentation of the JUSTICE project, the EU Directive 2017/541 on combating terrorism and procedural rights in counter-terrorism

SESSION I. INVESTIGATIVE POWERS AND HUMAN RIGHTS

10:15 – 11:45 The EU Directive 2017/541 on combating terrorism requests Member States to adopt the necessary measures to ensure that effective investigative tools are available to investigate or prosecute terrorist offences (article 20). This session will frame the discussion around participants' experience in the investigation of terrorism offences covered by the directive, including through special investigative powers/tools, in their own national system. Questions for



consideration in the first part of the roundtable will include:

- What are the main human rights challenges that arise during the investigative stage and how can they be overcome? How do procedural and evidentiary rules differ in relation to the investigation and prosecution of these offences and other crimes, and what are the human rights implications?
- In particular, what special investigative techniques are employed and to what effect? What is the minimum threshold needed to trigger their use (from reasonable suspicion of a terrorist crime being committed or planned to 'indications' of terrorist activity or associations)?
- What are the challenges in practice in relation to this level of suspicion?
- When does the person investigated become a suspect and bearer of rights (including remedies)? What test is or should be applied?

11:45 – 12:00 *Coffee Break*

12:00 – 13:00 The second part of the session will be devoted to procedural **safeguards** to prevent abuse of investigative powers.

- What control – *prior authorization, supervision during the investigation or ex post facto review* – have the judicial authorities over use of special investigation techniques in the fight against terrorism? Is that judicial oversight equivalent for ordinary offences?
- What other safeguards exist in legislation/judicial practice to guard against overly broad application of special investigative powers to counter terrorism?
- What challenges arise in relation to access to information and evidence by suspects and the accused and how are rights best safeguarded in this context?

Case study (work in break-out groups)

13:00 – 14:00 *Lunch*

SESSION II. PRE-TRIAL DETENTION

14:00 – 15:30 This session will discuss approaches to pre-trial detention in participants own national system for terrorism-related offences, human rights challenges and solutions. Questions include:

- What are the main practical and human rights challenges in the use of pre-trial detention in terrorism cases?
- What are the criteria relied on to trigger pre-trial detention and what safeguards exist in national legislative/judicial practice to guard against its over broad application in terrorism cases? Are the safeguards – such



as access to a lawyer, challenge the detention or detailed reasons for arrest – applied differently in terrorism cases compared to ordinary offences?

- What are the best practices for a human rights compliant approach – e.g. binding time-limits on the length of remand, early and regular judicial review, better promotion of alternatives to detention or other?

15:30 – 15:45 *Coffee Break*

SESSION III. IMPLEMENTATION OF EU ARREST WARRANT AND CROSS-BORDER COOPERATION

15:45 – 17:00 The EU Directive 2017/541 on combating terrorism encourages a strong coordinated response and cooperation within and between the Member States to counter terrorism. However, human rights challenges also arise from inter-state cooperation in the current landscape. This session will discuss participants experience and insights into constructive and human rights compliant approaches to implementation at the national level of the EU arrest warrant and cross-border cooperation for terrorism offences.

- What are the main obstacles to cross-border cooperation in countering terrorism? For example, what is the impact of the double criminality requirement, and what are the challenges and good practice can be identified in this respect?
- How does the risk of violations of human rights in some Member States - such as prolonged pre-trial detention, unfair trial, use of unlawfully obtained evidence, or targeting of legitimate activity - impact on cooperation?
- How can human rights compliant approaches to cooperation be secured, what challenges arise and how can they be overcome?

17:00 – 17:30 **Conclusions and best practices**

