

# THE LEGAL RECOGNITION OF VICTIMS OF TERRORISM IN EUROPE

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## Abstract

At European level, the last two decades are marked by a proliferation of instruments to combat terrorism. Although these texts focus primarily on the prevention and repression of terrorist acts, increasing attention has been paid to the victims of terrorism. While no binding instrument is specifically dedicated to them, more and more instruments relating to the fight against terrorism explicitly include binding provisions to promote the rights of victims of terrorism. Besides, the Council of Europe and the European Union ("EU") have adopted several texts of soft law aimed at improving assistance, support and protection of victims of terrorism.

After defining who are the victims of terrorism and how/whether they are legally recognized, this paper will present the main types of rights and benefits provided to them by the Council of Europe (a) and the EU (b).

We will distinguish the rights and measures that relate to the direct victims of terrorism (i) from those that concern the indirect or vicarious victims of terrorism (ii).

## 1. Definition of victims of terrorism.

In order to benefit from effective protection and legal guarantees, victims of terrorism must be clearly defined or identifiable<sup>1</sup>. In the field of terrorism, this issue requires particular attention considering the controversial character of the definition of terrorism itself but also the multiplicity and diversity of the types of victims caused by terrorist attacks. Indeed, in addition to the people who are directly affected by the attacks (the "direct victims"), terrorist victimization extends to many other types of victims: the "secondary indirect victims"<sup>2</sup> on the one hand, and the "tertiary, vicarious or indirect victims"<sup>3</sup>, on the other hand.

Secondary indirect victims include the relatives of the direct victims as well as the persons who suffered damage either because they were present at the scene of the attack or because of their invention to help the victims on the site of the attack. But the circle of victims of terrorism extends way beyond this secondary victimization. Indeed, terrorist acts are specifically designed to

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<sup>1</sup> United Nations Office On Drugs And Crime ("UNODC"), " Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework, Vienna, 2016, § 1.

<sup>2</sup> R. Letschert et al., *Assisting Victims of Terrorism: Towards a European Standard of Justice*, op. cit., p. 300 et s.

<sup>3</sup> A. Schmid, J. Albert et A. Jongman, *Political terrorism: A new guide to actors, authors, concepts, data bases, theories and literature*, New Brunswick, Transaction Books, 1988, p. 5 ; M.H. Gozzi, *Le terrorisme*, Paris, Ellipses, 2003, p. 33 ; A. Pemberton, « Terrorism, Forgiveness and Restorative Justice », *Oñati Socio-legal Series*, 2014, 4, p. 369-389 ; R. Letschert et al., *Assisting Victims of Terrorism: Towards a European Standard of Justice*, Londres, Springer, 2010, p. 300 et s.; A. Schmid, « Magnitudes and Focus of Terrorist Victimization », in U. Ewald et K. Turkovic, *Large- Scale Victimization as a Potential Source of Terrorist Activities, Importance of regaining security in post- conflict societies*, Amsterdam, IOS Press, 2006.

spread terror within a much larger group than the direct victims<sup>4</sup>. According to many authors and politicians, this (social, ideological or political) group constitutes the main or ultimate target of the terrorist attack<sup>5</sup>. As a result, many members of the targeted community may suffer serious indirect damage resulting from the attack (the “indirect or vicarious victims”)<sup>6</sup>. Reinforced by the mass-mediatisation of terrorist attacks, this vicarious victimization includes serious psychological disorder<sup>7</sup> (intense feeling of fear or terror, post-traumatic stress disorder, depression, etc.), economic and financial loss<sup>8</sup> (especially for those working in the horeca/tourism sector, the (foreign) investment or the transport sector) and material damage (e.g. airport infrastructure).

In addition to this vicarious victimization within the target group, terrorist provocation strategy tends to generate new victims because of the political and social reactions to the attacks.

At political level, the strengthening of counter-terrorism measures has led to numerous human rights violations, thereby provoking additional victimization (the victims of the fight against terrorism)<sup>9</sup>. Often considered as combatants<sup>10</sup> or “unlawful combatants”<sup>11</sup> deprived of any protection, (suspected) perpetrators of terrorist acts are often subject to serious violations of their fundamental rights (torture, violation of the right to fair trial, of the presumption of innocence, of the right of access to an independent and impartial court, etc.<sup>12</sup>), as illustrated by the conditions

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<sup>4</sup> A. Schmid, J. Albert et A. Jongman, *Political terrorism: A new guide to actors, authors, concepts, data bases, theories and literature*, op. cit., p. 5 ; M.H. Gozzi, *Le terrorisme*, op. cit., p. 33 ; A. Pemberton, “Terrorism, Forgiveness and Restorative Justice”, op. cit., p. 369-389 ; R. Letschert et al., *Assisting Victims of Terrorism: Towards a European Standard of Justice*, Londres, Springer, 2010, p. 300 et s.; A.P. Schmid, “Magnitudes and Focus of Terrorist Victimization”, op. cit.

<sup>5</sup> *Ibidem* ; R. Ego, « Le terrorisme du XXI<sup>e</sup> siècle, une coproduction de la mondialisation », Entretien avec Antoine Garapon, in : « De la terreur au terrorisme », *La pensée de midi* 2010/2 (n° 31), p. 193 ; P. Mannoni, *Logiques du terrorisme*, op. cit., p. 69 et p 87; H. L'Heuillet, *Aux sources du terrorisme : de la petite guerre aux attentats-suicides*, Paris, Press Éditions, 2004, p. 74 ; A. Conte, *Human Rights in the Prevention and Punishment of Terrorism*, Berlin-Heidelberg, Springer-Verlag, 2010, p. 7 et s.

<sup>6</sup> A. Schmid, J. Albert et A. Jongman, *Political terrorism: A new guide to actors, authors, concepts, data bases, theories and literature*, op. cit., p. 5 ; M.H. Gozzi, *Le terrorisme*, op. cit., p. 33 ; A. Pemberton, “Terrorism, Forgiveness and Restorative Justice”, op. cit., p. 369-389 ; A.P. Schmid, “Magnitudes and Focus of Terrorist Victimization”, op. cit. ; R. Letschert et al., *Assisting Victims of Terrorism: Towards a European Standard of Justice*, Londres, Springer, 2010, p. 300 et s

<sup>7</sup> J. Salguero *et al.*, « Major depressive disorder following terrorist attacks: A systematic review of prevalence, course and correlates », *BMC Psychiatry*, 2011, 96, p. 2-11 ; W. Schlenger *et al.*, « Psychological reactions to terrorist attacks: findings from the National Study of Americans’ Reactions to September 11 », *JAMA*, 288(5), p. 591-598 ; R. Silver *et al.*, « Nationwide longitudinal study of psychological responses to September 11 », *JAMA*, 2002, 288(10) p. 1235-1244; M. Schuster *et al.*, « A national survey of stress reactions after the September 11, 2001, Terrorist attacks », *New England Journal of Medicine*, 345(20), p. 1507-1512.

<sup>8</sup> B.S. Frey *et al.*, « Calculating tragedy: assessing the costs of terrorism », *Journal of Economic Surveys*, 2007, (n°21), p. 1–24.

<sup>9</sup> Association Internationale de Droit Pénal, « Victimes et terrorisme », op. cit., p. 228 et s., p. 320 et p. 417 et s. ; E. David, « Le contrôle judiciaire des sanctions individuelles prises par l’UE dans le cadre de la lutte contre le terrorisme », in *Mélanges en hommage à Georges Vandensanden*, Bruxelles, Bruylant, 2008, p. 441-460 ; F. Leclercq et D. De Roy, « Terrorisme, droits de l’homme, Conseil de sécurité de l’O.N.U. et jurisprudence des juridictions de l’Union européenne », in *Liber amicorum Michel Melchior – Liège, Strasbourg, Bruxelles : parcours des droits de l’homme*, Limal, Anthemis, 2010, p. 769-791 ; J. Raflik, *Terrorisme et mondialisation. Approches historiques*, Paris, Gallimard, 2016, p. 324.

<sup>10</sup> J. A. Burger, « Terrorism », *Military Law and Law of War Review*, 2003, 42, p.470 et s .

<sup>11</sup> Based on this qualification, some US authors consider that terrorist combatants benefit neither from International Humanitarian Law nor from domestic criminal law (H. Carvalho, « Terrorism, Punishment, And Recognition », *New Criminal Law Review*, 2012, 15, p. 346 et s.; R.A. Duff, « Notes on Punishment and Terrorism », *American Behavioral Scientist*, 2008, 6, p. 758 et s).

<sup>12</sup> Association Internationale de Droit Pénal, « Victimes et terrorisme », op. cit., p. 320 et s. et p. 417 et s. ; E. David, « Le contrôle judiciaire des sanctions individuelles prises par l’UE dans le cadre de la lutte contre le terrorisme », op. cit., p. 441-

of detention in Guantanamo<sup>13</sup>. More generally, the fight against terror has justified the adoption of "exceptional" measures and legislation that restrict human rights and individual freedoms (restriction of the right to freedom of expression, of the right to privacy and the protection of personal data, special powers of investigation, etc.)<sup>14</sup>. The « war against terror » has also encouraged the use of armed force, which caused the death of more than 1 million civilians since 2001 (in Afghanistan, Pakistan, Philippines, Sahara/Sahel, Georgia, Kirghizstan, Irak, Syria)<sup>15</sup>.

Regarding social reactions, terrorist attacks have the effect of fostering a climate of hatred and mistrust against members of the group associated with the terrorists (in the case of jihadism, the Arab-Muslim community)<sup>16</sup>. In addition to increased islamophobia, stigmatization and discrimination, this phenomenon of "vicarious retribution"<sup>17</sup> can lead to violent reactions, as illustrated by the terrorist attacks of Christchurch of March 15, 2019 in New Zealand where 50 Muslims were killed.

It can therefore be concluded that terrorism causes a multitude of direct and indirect or vicarious victims. We will examine whether and how each of these types of victims is recognized by the legal definitions of victims of terrorism adopted by the Council of Europe and the EU.

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460 ; F. Leclercq et De Roy D., «Terrorisme, droits de l'homme, Conseil de sécurité de l'O.N.U. et jurisprudence des juridictions de l'Union européenne», *op. cit.*, p. 769-791.

<sup>13</sup> The position of the GW Bush administration who considered that terrorists do not benefit from the protection of the status of prisoners of war was used to "justify" numerous practices of torture on persons detained by the United States in the US military detention center of Guantanamo Bay.

<sup>14</sup> R. Alonso, « L'Espagne face aux terrorismes », *op. cit.*, p. 115 ; Association Internationale de Droit Pénal, « Victimes et terrorisme », *op. cit.*, p. 244 et s.; E. David, « Le contrôle judiciaire des sanctions individuelles prises par l'UE dans le cadre de la lutte contre le terrorisme », *op. cit.*, p. 441-460 ; E. Bribosia et A. Weyenbergh, *La fight against terrorism et droits fondamentaux*, Bruxelles, Némésis-Bruylant, 2002; P. De Hert et al., « La montée de l'Etat pénal : que peuvent les droits de l'homme ? », in Y. Cartuyvels, H. Dumont, Fr Ost, M. Van De Kerchove et S. Van Drooghenbroeck, *Les droits de l'homme : bouclier ou épée du droit pénal ?*, Bruxelles, Publications des FUSL/Bruylant, 2007 ; M. van de Kerchove et A. Weyemebergh, « La transposition des normes européennes : transferts de sens et de pouvoirs: L'exemple de la décision-cadre du 13 juin 2002 relative à la fight against terrorism », in A. Bailleux, Y. Cartuyvels, H. Dumont et F. Ost, *Traduction et droits européens: enjeux d'une rencontre. Hommage au recteur Michel van de Kerchove*, Bruxelles, Publications des FUSL, 2009, p. 225-313.

<sup>15</sup> According to the International Physicians for the Prevention of Nuclear War ("IPPNW") organization, this "war against terror" has caused, in the twelve years following its launch in 2001, the death of at least 1.3 million civilians, including many children, and this only in Iraq (about one million), Afghanistan (220,000) and Pakistan (80,000) (« IPPNW », prix Nobel de la paix en 1985), « *Body Count : Casualty Figures after 10 years of the 'War on Terror'* », 1<sup>st</sup> éd. : Washington, Berlin and Ottawa, March 2015. Available on : <http://www.psr.org/assets/pdfs/body-count.pdf>. See also : J. Raflik, *Terrorisme et mondialisation. Approches historiques*, *op. cit.*, p. 324; T. Delpeche, « Le terrorisme international et l'Europe », *op. cit.*, p. 38.

<sup>16</sup> R. Letschert & van Dijk, *The New Faces of Victimhood - Globalization, Transnational Crimes and Victim Rights*, Londres, Springer, 2011, p. 240-251 ; G.J. Rubin et al., « Psychological and behavioural reactions to the bombings in London on 7 July 2005: cross sectional survey of a representative sample of Londoners », *British Medical Journal*, 2005, 331, p. 606 et s. ; G.J. Rubin et al., « Enduring consequences of terrorism: 7-month follow-up survey of reactions to the bombings in London on 7 July 2005 », *British Journal of Psychiatry*, 2007, 190, p. 350-356; V. M. Esses et al., « Public Attitudes Toward Immigration in the United States and Canada in response to the 11 September, 2001 'Attack on America' », *Analyses of Social Issues and Public Policy*, 2002, 1, p. 69-85.

<sup>17</sup> According to Lickel et al., there is vicarious retribution when a member of a group commits an act of aggression against a member of an outgroup that he/she considers liable for an act that caused damage to a member of his own group but that had no personal consequence for him/her (B. Lickel et al., « Vicarious retribution: The role of collective blame in intergroup aggression », *Personality and Social Psychology Review*, 2006, 10, p. 372-390).

Within the Council of Europe, the *Guidelines on the protection of victims of terrorist acts* (adopted by the Committee of Ministers in 2005<sup>18</sup> and revised on 19 May 2017<sup>19</sup>) define the victims as “any person who has suffered direct physical or psychological harm as a result of a terrorist act, and, in appropriate circumstances, of their close family”<sup>20</sup>. It is further specified that assistance to victims should exclude all forms of arbitrariness or discriminatory treatment and should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act<sup>21</sup>. By limiting the victims to those who suffered physical or psychological harm, this definition does not include the persons who suffered direct economic damage or material loss resulting from the attack. Though it has been established that terrorist attacks may cause severe material/economic damage that are often excluded from insurance policies<sup>22</sup>. In this respect, it should be noted that the *2006 Recommendation of the Committee of Ministers on assistance to crime victims*<sup>23</sup> is larger as it includes people who have suffered economic loss caused by the criminal act. Moreover, the *Guidelines on the protection of victims of terrorist acts* exclude *de facto* legal entities as they may not suffer physical or psychological harm. Indirect victims are not recognized either, with the exception of close family members of the victim “in appropriate circumstances”.

At EU level, the *2017 Directive on combating terrorism and replacing the 2002 Council Framework Decision*<sup>24</sup> provides that “A victim of terrorism is that defined in Article 2 of Directive 2012/29/EU, namely a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, insofar as that was directly caused by a terrorist offence, or a family member of a person whose death was directly caused by a terrorist offence and who has suffered harm as a result of that person’s death”<sup>25</sup>.

It should be noted that the notion of “economic loss” provided by this definition is interpreted more broadly than the notion of “material loss” provided by most international and European definitions. However, legal entities are excluded by the definition, which is limited to natural persons. Besides, this definition only applies to victims who have suffered damage directly caused by the offense or family members of a person whose death was directly caused by a terrorist offence. Vicarious victims of terrorism are therefore not recognized by this definition even though they constitute the main target of terrorist attacks.

In the *European Parliament Resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism*<sup>26</sup>, the Parliament notes that to date there is no defined legal status

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<sup>18</sup> Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, adopted on 2 March 2005, principle n°1.

<sup>19</sup> Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, adopted on 19 May 2017, principle n°1.

<sup>20</sup> *Ibidem*.

<sup>21</sup> *Ibid*, principle 2.

<sup>22</sup> An example of this is the 9/11 attacks that caused billions of dollars of economic and material losses. (B.S. Frey *et al.*, « Calculating tragedy: assessing the costs of terrorism », *Journal of Economic Surveys*, 2007 (n°21), p. 1–24).

<sup>23</sup> Committee of Ministers of the Council of Europe, Recommendation Rec(2006)8 of the Committee of Ministers to Member States on assistance to crime victims, adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies), *article 1*.

<sup>24</sup> European Union (“EU”), *Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, OJEU 31 March 2017, par. 27.

<sup>25</sup> *Ibid*, preamble, par. 27.

<sup>26</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, 12 December 2018.

for victims of terrorism at European level, which would hinder their access to assistance or compensation right<sup>27</sup>. Therefore, the Parliament calls on the Commission to put forward a legislative proposal including a common definition of the status of victim of terrorism that would enable them to access assistance services<sup>28</sup>. The Parliament specifies that this definition must at least include those who have died, those who have suffered physical and/or psychological damage; those who suffered kidnapping or threats and relatives of those who have been killed<sup>29</sup>.

It therefore seems that, at European level, only direct victims are included in the legal definitions of victims of terrorism and therefore enjoy certain rights which, to a lesser extent, may apply to their relatives. However, we have seen that terrorism victimization extends way beyond the direct victims or their family and includes the multiple vicarious victims provoked by terrorist attacks. It should also be noted that these vicarious victims are recognized at international level. The “Framework principles for securing the human rights of victims of terrorism”<sup>30</sup> elaborated by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism define the victims of terrorism through a typology distinguishing four major categories of victims: **Direct victims of terrorism** (natural persons who have been killed or have suffered serious physical or psychological injury as the result of an act of terrorism) (i) ; **Secondary victims of terrorism** (immediate family or dependants of the direct victim) (ii) ; **Indirect victims of terrorism** (individuals who have suffered serious physical or psychological injury as the indirect result of an act of terrorism, including members of the public who have been killed or injured in consequence of antiterrorism measures, eyewitnesses who have sustained serious psychological harm as the result of witnessing a violent terrorist incident or its immediate aftermath, individuals who have been subjected to potentially lethal force by a public authority after being mistakenly identified as a suspected terrorist; rescue workers who suffer serious physical or psychological harm as the result of taking part in emergency relief) (iii); **Potential victims of terrorism** (the principal beneficiaries of the State’s positive obligations under article 6 of the International Covenant on Civil and Political Rights).

It should also be noted that, even though they are not included in European definitions of victims of terrorism, the vicarious victims are recognized by a series of texts adopted within the Council of Europe and the European Union, which stress the damages they may suffer as an indirect result of terrorist attacks. We will see that these texts recognize that terrorism provokes significant indirect victimization within the targeted group (stressing that terrorist attacks may have serious psychological and financial consequences on its members)<sup>31</sup> but also among the group associated (by error) to the authors of terrorist attacks (the Arab-Muslim community). Regarding these victims of discrimination/vicarious retribution, several instruments<sup>32</sup> recognize that terrorism and the fight against terrorism have generated a climate of hatred and mistrust towards the Arab-

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<sup>27</sup> *Ibid*, par. 204.

<sup>28</sup> *Ibidem*.

<sup>29</sup> *Ibid*, par. 205.

<sup>30</sup> UNO, “Framework principles for securing the human rights of victims of terrorism », Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, 2012, (A/HRC/20/14) p. 18.

<sup>31</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, 12 December 2018.

<sup>32</sup> See for instance : EU, European Council, *Declaration on combatting terrorism*, *op. cit.*, 2004 ; EU, European Council, *Conclusions and plan of action of the extraordinary European Council of 21 September 2001*, SN 140/01, p. 4 ; EU, European Council, *Council Conclusions the application of the EU Charter of Fundamental Rights*, 2015 (doc. 10005/16); EU, European Council, *Declaration on combatting terrorism*, *op. cit.*, 2004, Appendix I : « Strategic objectives of the EU in the fight against terrorism », objective 5; EU, European Council, *Conclusions and plan of action of the extraordinary European Council of 21 September 2001*, *op. cit.*, p. 4; EU, European Council, *EU Counter-Terrorism Strategy*, *op. cit.*, 2005, first objective ; EU, European Council, *EU Counter-Terrorism Strategy*, *op. cit.*, 2014; EU, European Council, *Council Conclusions the application of the EU Charter of Fundamental Rights*, 2015 (doc. 10005/16).

Muslim community, who is subject to increased discrimination, stigmatization, exclusion and vicarious retribution by western populations. The victims of the fight against terrorism are also recognized by a multitude of instruments that call on Member States to protect their rights and, as the case may be, to guarantee effective remedies and a right to reparation for victims of human rights violations committed in the context of the fight against terrorism<sup>33</sup>. The issue of the status of the relatives of foreign terrorist fighters is also addressed by the European institutions. In this respect, the EU Parliament states that children of foreign terrorist fighters who return to their country should be considered as victims who need a protection, even though they can also be potential perpetrators<sup>34</sup>.

## 2. Evolution of the legal recognition, the rights and the protection granted to victims of terrorism.

At European level, the issue of terrorism is addressed since the late seventies (*European Convention on the Suppression of Terrorism*<sup>35</sup> adopted by the Council of Europe in 1977). But it is only from the New York attacks of 11 September 2001 that the fight against terrorism became a main concern of European policies. While victims of terrorism remained for a long time neglected by these policies focusing on the prevention and repression of terrorism, their needs and rights slowly start to be considered by European institutions.

This section will examine the main types of rights and obligations provided by the Council of Europe (a) and the UE (b), by distinguishing the provisions that address the needs of direct victims from those that concern the vicarious or indirect victims of terrorism. Though it should be noted that the rights of immediate family members of deceased direct victims will be addressed together with the ones of direct victims, because of their higher similarity. It should also be stressed that this presentation is not exhaustive and is intended primarily to provide an overview of the main provisions and rights of victims of terrorism in Europe.

### a) Within the Council of Europe

The *European Convention on the Suppression of Terrorism*<sup>36</sup> adopted by the Council of Europe in 1977 constitutes one of the first main instruments in the field of terrorism. This Convention was subsequently amended by the *Protocol amending the European Convention on the Suppression of Terrorism of 2003*<sup>37</sup> in order to facilitate the extradition of terrorists through the "de-politicization" of terrorist offenses.

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<sup>33</sup> See for instance : Committee of Ministers of the Council of Europe, *Guidelines on human rights and the fight against terrorism*, op. cit., 2002; Parliamentary Assembly of the Council of Europe, *Recommendation 922(1984)1 on Defense of democracy against terrorism in Europe* ; *Recommendation 1024(1986) on the European response to international terrorism* ; *Recommendation 1550 (2002) and Resolution 1271 (2002) on the fight against terrorism and respect of human rights*, both adopted on 24 January 2002; EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, op. cit., 2018, par. 221; Committee of Ministers of the Council of Europe, *Recommendation Rec(1982) of the Committee of Ministers to Member States regarding international cooperation in the prosecution and repression of terrorist acts*, adopted during the 342<sup>nd</sup> meeting Ministers' Deputies on 15 January 1982 ; Committee of Ministers of the Council of Europe, *Statement on the fight against international terrorism*, adopted on 8 November 2001.

<sup>34</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, op. cit., par. Y.

<sup>35</sup> Council of Europe, *Convention on the Suppression of Terrorism*, 27 January 1977.

<sup>36</sup> *Ibidem*.

<sup>37</sup> Council of Europe, *Protocol amending the European Convention on the Suppression of Terrorism*, 15 May 2003.

Following the Madrid bombings of 2004, the Council of Europe stressed the need for additional efforts to fight terrorism and adopted a series of instruments in 2005: the *2005 Convention on the Prevention of Terrorism*<sup>38</sup>, the *Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism*<sup>39</sup>, the *Recommandation (2005)10 of the Committee of Ministers to Member States on "special investigation techniques" in relation to serious crimes including acts of terrorism* and the *Recommandation (2005)7 concerning identity and travel documents and the fight against terrorism*.

Besides the repression of terrorist acts, victims of terrorism have received increasing attention within the Council of Europe. Already in 1999, the Parliamentary Assembly of the Council of Europe asked the Committee of Ministers "to consider the incorporation of the principle of fuller protection for victims of terrorist acts at both national and international level"<sup>40</sup>. However, no concrete action was taken before the New York attacks of 11 September 2001. Since then, the Council of Europe has adopted a series of instruments to improve support and assistance to victims of terrorism and their families. While various texts concern the assistance to direct victims of terrorist acts (such as the *Guidelines on the protection of victims of terrorist acts* adopted in 2005<sup>41</sup> and revised in 2017<sup>42</sup>), indirect victims of terrorism are also subject to several instruments that aim to protect their rights (such as the *Guidelines on Human Rights and the Fight against Terrorism* of 2002)<sup>43</sup>.

We will examine the main provisions provided by these instruments, by distinguishing those relating to direct victims (i) from those that protect indirect victims of terrorism (ii).

(i) Protection of and assistance to direct victims of terrorism

Direct victims of terrorism are subject to several provisions and instruments aimed at improving the protection of their rights, regardless of their nationality or the arrest of the perpetrator of the terrorist act<sup>44</sup>.

### **A specific status and treatment for victims of terrorism**

The question of the need to provide specific status and treatment for victims of terrorism has been subject to several discussions within the Council of Europe.

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<sup>38</sup> Council of Europe, *Convention on the Prevention of Terrorism*, adopted on 16 May 2005.

<sup>39</sup> Council of Europe, *Convention on laundering, search, seizure and confiscation of the proceeds of crime and financing of terrorism*, 16 May 2005.

<sup>40</sup> Council of Europe, *Recommandation 1426 (1999) European democracies facing up to terrorism*, 20 September 1999.

<sup>41</sup> Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, adopted on 2 March 2005.

<sup>42</sup> Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, adopted on 19 May 2017.

<sup>43</sup> Committee of Ministers of the Council of Europe, *Guidelines on human rights and the fight against terrorism*, adopted by the Committee of Ministers at its 804th meeting (11 July 2002).

<sup>44</sup> See for instance : Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2005, guideline n°1.

During the High-Level Seminar on « Protecting human rights while fighting terrorism»<sup>45</sup> organized by the Council of Europe in June 2005, many participants noted that the specificity of terrorism stems from the fact that direct victims are targeted on behalf of the community. In such perspective, the community - represented by the state - would have a greater duty of solidarity towards victims of terrorism, requiring specific assistance measures that go beyond material compensation<sup>46</sup>.

Even though the *Guidelines on the protection of victims of terrorist acts* (adopted in 2005<sup>47</sup> and revised in 2017<sup>48</sup>) have been presented as responding to this need for a special approach for victims of terrorism<sup>49</sup>, it should be noted that these *Guidelines* largely reflect the existing instruments relating to the protection of crime victims. Apart from additional provisions regarding emergency assistance and media regulation, the *Guidelines* contain provisions very similar to those provided for in the *2006 Recommendation of the Committee of Ministers on assistance to crime victims*<sup>50</sup>.

In this respect, the explanatory memorandum of this Recommendation states that even though some countries have given priority to terrorist acts, the needs of victims of these acts are essentially the same as those of victims of other crimes<sup>51</sup>. The Recommendation notes, however, that “States may also consider it necessary to encourage the establishment or maintenance of specialised centres for victims of crimes of mass victimisation, including terrorism”<sup>52</sup>.

A similar position is adopted by the Group of Specialists on remedies for crime victims of the Council of Europe (CJ-S-VICT) who considers that “ the essential needs of victims of terrorism do not significantly differ from the needs of other victims of crimes: whether they are personally injured or whether their property is damaged, the result is the same irrespective of the motivation of criminals for their harmful conduct”<sup>53</sup>. The CJ-S-VICT however emphasizes that certain aspects of terrorist victimization require special attention (e.g. mass victimization, specific intent of terrorist attacks).

The Group of Specialists on Assistance to Victims and Prevention of Repeat Victimisation (PC-S-AV) also considers that, overall, victims of terrorism should be considered and treated as victims in general<sup>54</sup>. However, the Group recognizes that terrorism victimization is characterized by a

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<sup>45</sup> Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism»* (13-14 June 2005), Strasbourg, 2005.

<sup>46</sup> *Ibid*, p. 75.

<sup>47</sup> Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2005.

<sup>48</sup> Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2017.

<sup>49</sup> Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism»* (13-14 June 2005), Strasbourg, 2005.

<sup>50</sup> Committee of Ministers of the Council of Europe, *Recommendation Rec(2006)8 of the Committee of Ministers to Member States on assistance to crime victims*, *op. cit.*, preamble.

<sup>51</sup> *Ibid*, **explanatory statement, par. 21.**

<sup>52</sup> *Ibid*, **art. 5.4.**

<sup>53</sup> Council of Europe, Group of Specialists on remedies for crime victims (“CJ-S-VICT”) -Directorate General of Human Rights and Legal Affairs, “Non-criminal remedies for crime victims”, adopted by the European Committee on Legal Cooperation (CDCJ) during its 83rd meeting on 4-6 June 2008, Strasbourg, 2009, art. 4.1.

<sup>54</sup> Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), summary report of the 1st meeting, Strasbourg, 28 February – 2 March 2005, adopted at the Second meeting (18 -20 May 2005), *Secretariat memorandum prepared by the Directorate General of Legal Affairs.*



series of specific features (e.g. the special responsibility and duty of solidarity of the community towards them as they are targeted on behalf of the community<sup>55</sup>, the fact that terrorist perpetrators are rarely subject to criminal trial, which requires an effective compensation system that allows rapid intervention outside the criminal justice system<sup>56</sup>).

### **Support and assistance to victims of terrorism**

Following various requests<sup>57</sup> from the European Ministers of Justice, the Council of Europe has adopted several measures to improve assistance to victims of terrorism at national level.

For instance, the *Recommendation 1677 (2004) of Parliamentary Assembly on Challenge of terrorism in Council of Europe Member States* of 6 October 2004 calls on Member States to adopt an integrated approach and a legislative framework to ensure the protection, rehabilitation and compensation of victims of terrorism.

More significantly, the *Guidelines on the protection of victims of terrorist acts* (adopted in 2005<sup>58</sup> and revised in 2017<sup>59</sup>) provide detailed guidelines on measures that Member States should take to provide adequate support and assistance to victims of terrorism and their families. Overall, the *Guidelines* largely reflect the general standards for assistance to crime victims, such as : medical, social, material and psychological assistance ; information to victims and their relatives (concerning their rights, possibilities of obtaining assistance, etc.); protection of the dignity, security and privacy of the victims; protection against intrusive media practices; specific training of those responsible for assisting victims.

A series of guidelines are also intended to promote victims' rights in the criminal proceeding, such as : effective access to justice ; right to review decisions not to prosecute ; witness protection (with emphasis on particularly high risks for witnesses of terrorist acts) ; right to participate in the criminal proceedings ; right to bring a civil action to obtain, at least, a symbolic remedy or the protection of a civil right ; information on the follow-up of the investigation and prosecution ; legal aid and interpretation services ; etc.

As regards the transnational nature of current terrorist victimization, the *Guidelines* provide that « If the victim does not normally reside on the territory of the State where the terrorist act occurred, that State should co-operate with the State of residence in ensuring that the victim receives such assistance »<sup>60</sup>.

It should also be noted that the *Proceedings of the High-Level Seminar on « Protecting human rights*

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<sup>55</sup> *Ibidem*.

<sup>56</sup> M. Kilchling et H.-J. Albrecht, "Victims of Terrorism Policies and Legislation in Europe. An Overview on Victim Related Assistance and Support", *forschung aktuell – research in brief*, Freiburg, 2005, p.18 et s.

<sup>57</sup> See for instance : Resolution n° 1 on the fight against international terrorism, adopted by the Ministers during the 24th Conference of European Ministers of Justice (Moscou, 4-5 October 2001) ; Resolution n° 1 on the fight against international terrorism, adopted by the Ministers during the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003) ; Resolution n° 3 on the fight against terrorism, adopted by the Ministers during the 26th Conference of European Ministers of Justice (Helsinki, 7-8 April 2005).

<sup>58</sup> Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2005.

<sup>59</sup> Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2017.

<sup>60</sup> Article III of the 2005 *Guidelines on the protection of victims of terrorist acts* and article V of the revised version of 2017.

*while fighting terrorism » of 2005*<sup>61</sup> point out that these *Guidelines* are only a starting point for other initiatives, with the long-term goal of developing binding instruments in this area, such as a protocol to the *2005 Convention on the Prevention of Terrorism* that would be dedicated to the assistance to victims of terrorism<sup>62</sup>. It should be stressed that this Convention already contains a provision on “protection, compensation and support for victims of terrorism” (article 13), asking Member States to adopt necessary measures to protect and support victims of terrorist acts committed on their territory<sup>63</sup>.

The *Proceedings of the High-Level Seminar on « Protecting human rights while fighting terrorism » of 2005*<sup>64</sup> also contain a series of measures that Member States should take to protect the rights of victims of terrorism (compensation, security, emergency and long-term assistance, protection of their dignity, of their privacy and family life, psychological support, effective access to justice and information, reintegration measures, etc.)<sup>65</sup>.

The work of the Group of specialists on assistance to victims and prevention of victimisation of the Council of Europe (PC-S-AV) should also be mentioned. Following the Madrid attacks of 2004, the PC-S-AV received specific mandate to examine, in collaboration with the Committee of Experts on Terrorism (CODEXTER), the situation and practice concerning the protection and compensation of victims of terrorism in the Member States in view of making appropriate proposals to the Committee of Ministers<sup>66</sup>. Accordingly, the PC-S-AV elaborated a series of reports and recommendations to improve assistance to victims of terrorism. For instance, the Group participated to the elaboration of the *2006 Recommendation of the Committee of Ministers on assistance to crime victims* with the aim of guiding Member States in defining their legislation and practice on assistance to victims of terrorism<sup>67</sup>.

In this regard, the *2006 Recommendation of the Committee of Ministers on assistance to crime victims* contains several provisions aimed at improving support for victims of terrorism<sup>68</sup>. For instance, article 9 of the recommendation encourages States “to promote the principle that insurance policies do not exclude damages caused by acts of terrorism unless other applicable provisions exist”. The recommendation also provides that specialized training should be provided to all personnel working with victims of specific categories of crime, such as terrorism (article 12.3). In this respect, the recommendation encourages the establishment of specialized centres for victims of crimes of mass victimization such as terrorism (article 5.4).

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<sup>61</sup> Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism» (13-14 June 2005)*, Strasbourg, 2005.

<sup>62</sup> *Ibidem*.

<sup>63</sup> Council of Europe, *Convention on the Prevention of Terrorism*, adopted on 16 May 2005, article 13.

<sup>64</sup> Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism» (13-14 June 2005)*, Strasbourg, 2005.

<sup>65</sup> *Ibidem* ; Opinion of the Commissioner for Human Rights on the draft Convention for the prevention of terrorism (CommDH(2005)1).

<sup>66</sup> Council of Europe, Ministers' Deputies, Notes on the Agenda, « Contribution of the Council of Europe to the fight against terrorism », 909 meeting, 15 December 2004, CM/Notes/909/2.3, appendix.

<sup>67</sup> Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), *Explanatory memorandum to the Recommendation Rec(2006)8 of the Committee of Ministers to Member States on assistance to crime victims*, adopted by the Committee of Ministers on 14 June 2006, doc. CM(2006)61.

<sup>68</sup> Committee of Ministers of the Council of Europe, Recommendation Rec(2006)8 of the Committee of Ministers to Member States on assistance to crime victims, adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies.

In its *summary report of the 1st meeting of May 24, 2005*<sup>69</sup>, the PC-S-AV also addresses the issue of multiple victimization that can generate terrorism. In this regard, the Group raises the interest of using methods in group work or networking of victims of the same event<sup>70</sup>. The PC-S-AV also calls on Member States to enhance their capabilities to provide large-scale emergency assistance to deal with mass-victimization situations<sup>71</sup>. In its document entitled "Victims of Terrorism"<sup>72</sup>, the Group specifies that assistance measures should be offered to isolated victims as well as to groups of victims of terrorist attacks.

## Reparation and compensation of victims of terrorism

Regarding the compensation of victims of terrorism, article 13 of the *2005 Convention on the Prevention of Terrorism*<sup>73</sup> calls on Member States to ensure financial assistance and compensation for victims of terrorism and their close family members.

According to the *Guidelines on the protection of victims of terrorist acts* (adopted in 2005<sup>74</sup> and revised in 2017<sup>75</sup>), States should provide fair, appropriate and prompt compensation regardless of the nationality or residency of the victim, on the basis of the principle of subsidiarity laid down in article 2 of the *1983 European Convention on Compensation to Victims of Violent Crimes*<sup>76</sup>. This principle of subsidiarity implies that the obligation of compensation by the State becomes effective only if compensation cannot be provided by those responsible for the terrorist act (perpetrators, organizers, supporters, etc.) or by any other sources derived from the confiscation of assets belonging to terrorist organizations.

It should also be noted that the *Guidelines* encourage States to consider other forms of reparation than the payment of compensation<sup>77</sup>. In this respect, several instruments<sup>78</sup> of the Council emphasize that material compensation is often not sufficient and must be accompanied by other

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<sup>69</sup> Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), summary report of the 1st meeting, Strasbourg, 28 February – 2 March 2005, adopted at the Second meeting (18 -20 May 2005), *Secretariat memorandum prepared by the Directorate General of Legal Affairs*.

<sup>70</sup> *Ibidem*.

<sup>71</sup> *Ibidem*.

<sup>72</sup> Council of Europe, Group of specialists on assistance to victims and prevention of victimization (PC-S-AV), "Victims of terrorism", adopted at the Second meeting (18 -20 May 2005), Strasbourg, May 20, 2005.

<sup>73</sup> Council of Europe, *Convention on the Prevention of Terrorism*, adopted on 16 May 2005.

<sup>74</sup> Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2005.

<sup>75</sup> Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2017.

<sup>76</sup> Council of Europe, *European Convention on Compensation to Victims of Violent Crimes*, signed in Strasbourg on 24 November 1983.

<sup>77</sup> Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2017, art. VIII.

<sup>78</sup> Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism» (13-14 June 2005)*, Strasbourg, 2005, p. 19, Council of Europe, CJ-S-VICT, « Non-criminal remedies for crime victims», *op.cit.*, 2009; Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), "Victims of terrorism", *op. cit.*, 2005.

appropriate reparation measures to ensure full recovery and rehabilitation of victims of terrorism (alternative dispute resolution, social reintegration measures, free medical care, etc.).

The Council has also underlined certain specificities that might impact the compensation of victims of terrorism, such as the lack of consensus on a definition of terrorism. In this regard, the Group of Specialists on remedies for crime victims (CJ-S-VICT) calls on States to harmonize their terminology, at least at the national level, in order to avoid discrepancies between the various source of funds available (insurance sector, public organizations and funds, victim support associations, etc.)<sup>79</sup>.

Concerning the transnational nature of terrorist victimization, the Council considers that States should provide compensation to all victims of a terrorist act committed on their territory, regardless of the nationality or residency of the victim<sup>80</sup>.

The collective/massive nature of terrorist victimization is also discussed by several texts that point out the opportunity of resorting to collective or symbolic forms of reparation in order to repair the damage caused to the community targeted by the terrorist act (e.g., construction of a memorial, of a hospital or a school)<sup>81</sup>.

Besides, considering that insurance companies tend to exclude the terrorist risk from their insurance policies because of the large-scale damage it can cause, the Council of Europe calls on states to induce insurance companies to guarantee full coverage of terrorist risks<sup>82</sup>.

Finally, the Council has raised the question of the creation of specific compensation funds for victims of terrorism, both at national<sup>83</sup> and European<sup>84</sup> levels. At European level, the Council specifies that such fund could also support awareness campaigns, first responders trainings, victims' associations or technical assistance measures<sup>85</sup>.

### **Enhanced cooperation and coordination to ensure effective assistance to victims of terrorism**

In order to improve crisis management and assistance to victims in case of terrorist attacks, the

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<sup>79</sup> Council of Europe, CJ-S-VICT, « Non-criminal remedies for crime victims», *op.cit.*, 2009.

<sup>80</sup> Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, art. XVII.

<sup>81</sup> Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), *Explanatory memorandum to the Recommendation Rec(2006)8 of the Committee of Ministers to Member States on assistance to crime victims*, *op. cit.*; Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), "Victims of terrorism", *op. cit.*, 2005.

<sup>82</sup> Council of Europe, Directorate General of Human Rights and Legal Affairs, « Non-criminal remedies for crime victims», *op. cit.*, 2009.

<sup>83</sup> *Ibidem* ; Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, art. VIII.

It should also be noted that such funds already exist in France, Spain and Turkey (project under discussion at Belgian level).

<sup>84</sup> Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism»*, *op. cit.*, 2005, workshop IV.

<sup>85</sup> *Ibidem*.

Council of Europe has repeatedly stressed the need to strengthen cooperation and coordination between Member States (*Resolution 1400 (2004) and Recommendation 1677 (2004) on the Challenge of terrorism in Council of Europe Member States*<sup>86</sup>, *Guidelines on the protection of victims of terrorist acts*<sup>87</sup>, *Proceedings of the High-Level Seminar on « Protecting human rights while fighting terrorism » of 2005*<sup>88</sup>, *Recommendation (2006)8 of the Committee of Ministers on assistance to crime victims*<sup>89</sup>).

In addition to inter-state cooperation, the need to strengthen cooperation and coordination between the various local entities active in the field of victims assistance has been emphasized by several texts adopted within the Council of Europe<sup>90</sup>.

### **The role and participation of victims of terrorism and civil society as key elements of the fight against terrorism and the empowerment of victims' rights.**

The Council of Europe has repeatedly recognized the importance of the role and participation of victims of terrorism in the fight against terrorism and the societal recognition of its victims.

For instance, the *revised Guidelines on the protection of victims of terrorist acts* of 2017<sup>91</sup> encourage Member States to promote the involvement of victims of terrorism and their representatives in raising public awareness on the damage caused by terrorist violence (Article XII). States are also encouraged to "co-operate with and facilitate as much as possible the actions of civil society representatives, and especially those of the associations for the protection of victims" (Article XIII).

It should be noted that these last two provisions did not exist in the version of the *Guidelines on the protection of victims of terrorist acts* of 2005<sup>92</sup> and follow the report of the Secretary General of the Committee of Ministers of 2016<sup>93</sup>, which encouraged the revision of the 2005 *Guidelines* to promote the involvement of victims of terrorism in the fight against terrorism and public awareness.

### **Commemoration and tribute to the victims of terrorism**

Within the Council of Europe, several instruments<sup>94</sup> encourage the development of measures to

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<sup>86</sup> Council of Europe, *Resolution 1400 (2004) and Recommendation 1677 (2004) on the Challenge of terrorism in Council of Europe Member States*, adopted on 6 October 2004.

<sup>87</sup> Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2005.

<sup>88</sup> Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism» (13-14 June 2005)*, Strasbourg, 2005.

<sup>89</sup> Committee of Ministers of the Council of Europe, *Recommendation Rec(2006)8 of the Committee of Ministers to Member States on assistance to crime victims*, *op. cit.*, preamble.

<sup>90</sup> See for instance : Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), "Victims of terrorism", *op. cit.*, 2005.

<sup>91</sup> Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2017.

<sup>92</sup> Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2005.

<sup>93</sup> Secretary General of the Committee of Ministers of the Council of Europe, « Fight against violent extremism and radicalization leading to terrorism », *op. cit.*, 2016.

<sup>94</sup> See for instance : Council of Europe, CJ-S-VICT, « Non-criminal remedies for crime victims», *op.cit.*, 2009, art. 7.2 ; Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2017, article XII.

commemorate and pay tribute to the victims of terrorism (such as the erection of memorials, the organization of ceremonies or "story-telling"). Besides their positive impact for the victims, the Council notes that, considering the symbolic value of the victims of terrorism as representatives of the community targeted by the attacks, these measures would also allow this community to pay tribute to them and to promote their recognition<sup>95</sup>.

### **The role and liability of the media in the protection of victims of terrorism**

As the spread of terror sought by terrorism is only possible if the targeted group is affected by the information<sup>96</sup>, the media play a fundamental role in the terrorist strategy aimed at capturing the public's attention to achieve its goal<sup>97</sup>. Although it has been stated that terrorism would not exist/succeed without the intervention of the media<sup>98</sup>, terrorist attacks remain at the core of media coverage, at the expense of respect for privacy and dignity of the victims<sup>99</sup> but also of the broader psychological consequences on the public<sup>100</sup>. While R. Crelinsten speaks of a "double victimization"<sup>101</sup> by the media that tend to use the vulnerability of direct victims to increase their audience, many empirical studies point out a high correlation link between the media coverage of terrorist events and the development of psychological disorder among the audience, including the risk of developing post-traumatic stress disorder ("PTSD")<sup>102</sup>. For instance, B. Pfefferbaum found that children exposed to heavy media exposure during the 9/11 attacks had PTSD rates similar to those who actually knew someone who died or was injured in the attacks<sup>103</sup>.

Today more than ever, the development of communication technologies (television, internet, social networks, etc.) has led to unprecedented mass media information, allowing terrorists to reach almost instantaneously a global audience increasingly vulnerable to repeated visuals of

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<sup>95</sup> *Ibidem*.

<sup>96</sup> T. Garcin, « Terrorisme et médias », Paris, Défense nationale, 1987, p. 19 ; U. Yanay, *Victims of terrorism, is it a non issue ?*, *op. cit.*, p. 28.

<sup>97</sup> J.N. Breckenridge et P.G. Zimbardo, « The strategy of terrorism and the psychology of Mass-Mediated fear », *op. cit.*, p. 116 et s.; H. L'Heuillet, *Aux sources du terrorisme : de la petite guerre aux attentats-suicides*, *op. cit.*, p. 70 et s.; A. Schmid, « Strengthening the Role of Victims and Incorporating Victims in Efforts to Counter Violent Extremism and Terrorism », *op. cit.*, 2012, p.3 ; et M. Lazar, « Le terrorisme en Italie et en France. Questions de recherche », *op. cit.*, p. 43. ; P. Mannoni, *Logiques du terrorisme*, *op. cit.*, p. 58; D. Faisal, *Landscapes of the Jihad: Militancy, Morality, Modernity*, London, Hurst, 2005, p. 160 ; H.H.A. Cooper, « Terrorism: New dimensions of violent criminality », *op. cit.*, p. 20.

<sup>98</sup> C. Pompidou, S. Lacombe, « Les victimes du terrorisme », *op. cit.*, p. 4.

<sup>99</sup> A. Maercker et A. Mehr, « What if victims read a newspaper report about their victimization? A study on the relationship to ptsd symptoms in crime victims », *European Psychologist*, 2006, 11, p. 137-142.

<sup>100</sup> O. Renn et al., « The social amplification of risk : A conceptual framework », *Risk Analysis*, 1998, 8, p. 177-187; J.N. Breckenridge et P.G. Zimbardo, « The strategy of terrorism and the psychology of Mass-Mediated fear », *op. cit.*, p. 116 et s.

<sup>101</sup> Ronald Crelinsten, cited in A. Schmid, « Strengthening the Role of Victims and Incorporating Victims in Efforts to Counter Violent Extremism and Terrorism », *op. cit.*, p. 15.

<sup>102</sup> J. Ahern *et al.*, « Television images and psychological symptoms after the September 11 terrorist attacks », *Psychiatry*, 2002, 65, p. 289-300 ; P. Kratoski *et al.*, « Terrorist Victimization: Prevention, Control and Recovery », *op. cit.*, p. 257-268 ; R. Silver *et al.*, « Nationwide longitudinal study of psychological responses to September 11 », *op. cit.*, p. 1235-1244; J. Ahern *et al.*, « Television images and psychological symptoms after the September 11 terrorist attacks », *op. cit.*, p. 289-300; M. Schuster *et al.*, « A national survey of stress reactions after the September 11, 2001, Terrorist attacks », *op. cit.*, p. 1507-1512 ; K.T. Bernstein *et al.*, « Television watching and the risk of incident probable posttraumatic stress disorder: a prospective evaluation », *Journal of Nervous and Mental Disease*, 2007, 195, p. 41-47.

<sup>103</sup> B. Pfefferbaum, « Victims of Terrorism and the Media », *op. cit.*, p. 176.

bloody and violent attacks<sup>104</sup>. This is illustrated by the recent attack of Christchurch (New Zealand) of March 15, 2019, where 17 minutes of the massacre were transcribed live on Facebook and YouTube. This “over-mediatisation” of terrorist attacks may have serious psychological consequences for the direct victims and the targeted population, particularly for children. Moreover, it can favor the spread of terrorist violence by disseminating violent images reinforcing the dehumanization of victims. In this sense, a complaint was recently filed against Facebook and YouTube by the French Council of the Muslim cult (CFCM) for dissemination of violent messages inciting terrorism or seriously undermining the human dignity likely to be seen by a minor<sup>105</sup>.

The Council of Europe has repeatedly addressed the risks of media exposure of victims of terrorist attacks, stressing the obligation of the media to respect their security, privacy and dignity<sup>106</sup>. While recalling the importance of respecting the right to freedom of expression and information, the media are encouraged to adopt self-regulatory measures or codes of conduct in order to guarantee the protection of the rights of victims and prevent secondary victimization because of the media coverage of terrorist attacks<sup>107</sup>. The 2017 *Guidelines on the protection of victims of terrorist acts* also specify that victims should have an effective remedy when their right to privacy or family life has not been respected<sup>108</sup>.

Besides, several instruments<sup>109</sup> encourage the role of the media in strengthening the social recognition of victims of terrorism, by raising public awareness on their vulnerability and their needs.

## (ii) Protection of and assistance to indirect victims of terrorism

Although they are usually not included in the definition of "victims", we will see that indirect victims of terrorism are protected by several provisions and instruments adopted by the Council of Europe to improve their rights.

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<sup>104</sup> H. L'Heuillet, *Aux sources du terrorisme : de la petite guerre aux attentats-suicides*, *op. cit.*, p. 70-73 et p. 272 ; P. C. Kratoski et al., « Terrorist Victimization: Prevention, Control and Recovery », *International Review of Victimology*, 2001, 8, p. 259-260 ; R. Debray, « Le passage à l'infini », *Les Cahiers de médiologie*, 2002, 13, p. 11.

<sup>105</sup> The complaint was filed on March 25, 2019. See more info on: [https://www.lemonde.fr/pixels/article/2019/03/25/attentat-de-christchurch-le-conseil-francais-du-culte-musulman-porte-plainte-contre-facebook-et-youtube\\_5440972\\_4408996.html](https://www.lemonde.fr/pixels/article/2019/03/25/attentat-de-christchurch-le-conseil-francais-du-culte-musulman-porte-plainte-contre-facebook-et-youtube_5440972_4408996.html).

<sup>106</sup> Parliamentary Assembly of the Council of Europe, Recommendation 1706 (2005), « Media and terrorism », 20 June 2005 ; Council of Europe, Group of Specialists on remedies for crime victims (“CJ-S-VICT”) - Directorate General of Human Rights and Legal Affairs, “Non-criminal remedies for crime victims”, *op. cit.*, 2009 ; Group of Specialists on human rights and the fight against terrorism (DH-S-TER), report of the 2nd meeting held in Strasbourg on 13-15 February 2002, Strasbourg, 16 April 2002, DH-S-TER(2002)008 ; Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2017, art. IX (art. VIII de la version de 2005).

<sup>107</sup> *Ibidem*

<sup>108</sup> Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2017.

<sup>109</sup> Secretary General of the Committee of Ministers of the Council of Europe, « Fight against violent extremism and radicalization leading to terrorism », *op. cit.*, 2016 ; Steering Committee for Human Rights (CDDH) of the Council of Europe, in consultation with the Committee of Experts on Terrorism (CODEXTER), draft document for the elaboration of the *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, par. 71.

## Vicarious victims amongst the targeted population

Considering that terrorism has repeatedly been recognized as a serious violation of human rights, the Council of Europe has adopted numerous instruments<sup>110</sup> in view of reinforcing the protection of the fundamental rights of individuals against the terrorist threat.

In addition to the right to life and security, the *Guidelines on the protection of victims of terrorist acts* (adopted in 2005<sup>111</sup> and revised in 2017<sup>112</sup>) insist on the obligation of Member States to guarantee the right of people to live free from terror. More generally, the Council points out that States' obligation to protect their populations against the terrorist threat stems from their responsibility to ensure that all persons within their jurisdiction enjoy all the rights guaranteed by the ECHR<sup>113</sup>.

## Victims of discrimination / vicarious retribution in response to terrorist attacks

The link between inter-religious/ethnic discrimination and terrorism has been stressed by the Council of Europe since 1999<sup>114</sup>. Emphasizing that discrimination and lack of religious/cultural tolerance favor the spread of terrorism<sup>115</sup>, the Council has frequently stated that the fight against terrorism requires to strengthen social cohesion and to promote multicultural and inter-religious dialogue<sup>116</sup>.

Several instruments/provisions also aim to protect the rights of the people who suffer discrimination as a result of the adoption or implementation of anti-terrorism measures. For instance, the *2005 Convention on the Prevention of Terrorism*<sup>117</sup> provides that the implementation and enforcement of terrorism prevention policies must exclude any arbitrary, discriminatory or racist treatment (par. 2), including in the field of extradition (article 21).

Other instruments insist on the need to protect the rights of minority communities against the risk of reprisals and discrimination in reaction to terrorist attacks<sup>118</sup>. In this respect, Member States are invited to take appropriate measures to ensure the protection of minority groups often

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<sup>110</sup> Committee of Ministers of the Council of Europe, *Guidelines on human rights and the fight against terrorism*, adopted by the Committee of Ministers at its 804th meeting, 11 July 2002, article I; Council of Europe, *Convention on the prevention of terrorism*, *op. cit.*, 2005, article 2; Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism»*, *op. cit.*, 2005.

<sup>111</sup> Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2005.

<sup>112</sup> Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2017.

<sup>113</sup> Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism»*, *op. cit.*, 2005.

<sup>114</sup> Council of Europe, Recommendation 1426 (1999) « European Democracies facing terrorism » », 23 September 1999, par. 9.

<sup>115</sup> Parliamentary Assembly of the Council of Europe, Recommendation 1426 (1999), "European Democracies facing terrorism", 23 September 1999, par. 9; Parliamentary Assembly of the Council of Europe, Resolution 1258 (2001), "European Democracies facing terrorism", 26 September 2001, par. 9.

<sup>116</sup> Committee of Ministers of the Council of Europe, in cooperation with the President of the Group of Specialists on human rights and the fight against terrorism (DH-S-TER), draft document for the elaboration of the *Guidelines on human rights and the fight against terrorism*, Preliminary Note, 2002; Recommendation 1162 (1991), "Contribution of the Islamic civilisation to European culture"; Recommendation 1202 (1993), "Religious tolerance in a democratic society"; Recommendation 1396 (1999), "Religion and democracy"; Recommendation 1426 (1999), "European Democracies facing terrorism"; Resolution 1258 (2001), "European Democracies facing terrorism".

<sup>117</sup> Council of Europe, *Convention on the Prevention of Terrorism*, *op. cit.*, 16 May 2005.

<sup>118</sup> European Commission against Racism and Intolerance of the Council of Europe (ECRI), *General Policy Recommendation n°8 on combating racism while fighting terrorism*, adopted on 17 March 2004; Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), "Victims of terrorism", *op. cit.*, 2005.



associated with terrorists and experiencing violent reactions to the attacks<sup>119</sup>. The Council also emphasizes that this indirect victimization is part of the terrorist strategy designed to destroy social solidarity and create a climate of interethnic/religious hatred<sup>120</sup>.

In order to strengthen the protection of the victims of such discrimination, the *General Policy Recommendation n°8 on combating racism while fighting terrorism* of 2004 calls on Member States to set up a specialized and independent body to combat racism and discrimination, by providing adequate support to victims of these acts and by assisting them to file complaints for any act of racism or discrimination resulting from the fight against terrorism<sup>121</sup>.

In its *Declaration on Freedom of Expression and Information in the Media in the Context of the Fight against Terrorism* of 2005, the Committee of Ministers encourages the media to promote a climate of mutual understanding and tolerance. It asks them to refrain from serving as a vehicle for the expression of racist or xenophobic feelings or hatred, by insisting on the distinction between suspected or convicted terrorists and the group to which they belong or claim to belong<sup>122</sup>.

The Commissioner for Human Rights of the Council of Europe also insists on the need to protect minority communities against the risk of stigmatization by both the public opinion and public authorities, ensuring in particular that anti-terrorism measures are not based on purely racial or religious grounds<sup>123</sup>.

## Victims of the fight against terrorism

As guardian of human rights and the rule of law in Europe, the Council of Europe has addressed the issue of respect for human rights in the fight against terrorism since the early 1980s<sup>124</sup>. Both the Parliamentary Assembly<sup>125</sup> and the Committee of Ministers<sup>126</sup> of the Council of Europe have

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<sup>119</sup> *Ibid*, par. 3.1.

<sup>120</sup> Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), "Victims of terrorism", *op. cit.*, 2005 ; M. Kilchling and H.-J. Albrecht, "Victims of Terrorism Policies and Legislation in Europe. An Overview on Victim Related Assistance and Support", *op. cit.*, 2005, p.18 et s.

<sup>121</sup> European Commission against Racism and Intolerance of the Council of Europe (ECRI), *General Policy Recommendation n°8 on combating racism while fighting terrorism*, *op. cit.*, 2004.

<sup>122</sup> Committee of Ministers of the Council of Europe, *Statement on freedom of expression and information in the media in the context of the fight against terrorism*, 2 march 2005, 917th meeting.

<sup>123</sup> Council of Europe, *Proceedings of the High-Level Seminar "Protecting human rights while fighting terrorism"*, *op. cit.*, 2005.

<sup>124</sup> Parliamentary Assembly of the Council of Europe, *Recommendation 916(1981)*, « *Defense of democracy against terrorism in Europe - Tasks and problems* », 1981.

<sup>125</sup> Parliamentary Assembly of the Council of Europe, *Recommendation 922(1984)1 on Defense of democracy against terrorism in Europe ; Recommendation 1024(1986) on the European response to international terrorism ; Resolution 1132(1997)1 on the organization of a parliamentary conference to strengthen democratic systems in Europe and cooperation in the fight against terrorism ; Resolution 1258 and Recommendation 1534 on democracies facing terrorism of 26 September 2001 ; Recommendation 1550 (2002) and Resolution 1271 (2002) on the fight against terrorism and respect of human rights*, both adopted on 24 January 2002.

<sup>126</sup> Committee of Ministers of the Council of Europe, *Recommendation Rec(1982) of the Committee of Ministers to Member States regarding international cooperation in the prosecution and repression of terrorist acts*, adopted during the 342<sup>nd</sup> meeting

emphasized the importance of respecting fundamental rights and freedoms in the fight against terrorism and have adopted a series of instruments aimed at ensuring that counter-terrorism measures comply with the ECHR and international law (including international humanitarian and refugee law). Particularly, the *Guidelines on Human Rights and the Fight against Terrorism of 2002*<sup>127</sup> contain a series of measures that Member States should take in order to strengthen respect for human rights in all aspects of the fight against terrorism.

However, it should be noted that the *2002 Guidelines* provide that the fight against terrorism may justify a series of derogations, including regarding the rights of defense and the rights of detainees, in accordance with the principle of proportionality and the jurisprudence of the European Court of Human Rights<sup>128</sup>. In this respect, it should be noted that the Court considers that the imperatives of the fight against terrorism require a certain flexibility in interpreting some of the guarantees such as the right to a fair trial, the rights of defense, the conditions of detention, respect for privacy, the principle of non-refoulement, etc.<sup>129</sup>. Nevertheless, the Council recalls that a series of fundamental rights cannot suffer from any derogation under any circumstances : the right to life, the prohibition of torture or inhuman or degrading treatment, the principle that penalties must have a sound legal basis, the prohibition of criminal retroactivity and any provision of customary international humanitarian law.

In a more binding way, the *2005 Convention on the Prevention of Terrorism*<sup>130</sup> provides that all measures taken for the prevention or the fight against terrorism must respect the rule of law, International and European Human Rights Law and any other provisions of International Law (article 3), in accordance with the principles of proportionality and necessity (article 12).

Regarding the compensation of victims of the fight against terrorism, the *Proceedings of the High-Level Seminar on « Protecting human rights while fighting terrorism » of 2005*<sup>131</sup> stress the need for major efforts to repair the damage suffered by the population during anti-terrorist operations<sup>132</sup>. The Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER) also considers that victims of error or abuse committed in the fight against terrorism should be compensated, particularly for moral damages where the presumption of innocence has not been respected<sup>133</sup>. In this respect, the DH-S-TER underlines the risk of media lynching that hangs over suspected terrorists<sup>134</sup>. To avoid such risk, the *Declaration on Freedom of Expression and Information in the Media in the Context of the Fight against Terrorism* of 2 March 2005 emphasizes the need to respect the principle of presumption of innocence of all the persons subject to prosecution for terrorist acts.

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Ministers' Deputies on 15 January 1982 ; Committee of Ministers of the Council of Europe, *Statement on the fight against international terrorism*, adopted on 8 November 2001.

<sup>127</sup> Committee of Ministers of the Council of Europe, *Guidelines on human rights and the fight against terrorism*, *op. cit.*, 2002.

<sup>128</sup> *Ibidem*.

<sup>129</sup> See for instance : European Court of Human Rights, *Klass et autres c. Allemagne*, 6 september 1978, serie A n° 28, par. 48, regarding secret surveillance powers of correspondence justified by national security in response to the terrorist threat.

<sup>130</sup> Council of Europe, *Convention on the Prevention of Terrorism*, *op. cit.*, 16 May 2005.

<sup>131</sup> Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism» (13-14 June 2005)*, Strasbourg, 2005.

<sup>132</sup> Reports of the visits of the Commissioner for Human Rights in the United Kingdom (CommDH(2005)6) and in Turkey (CommDH(2003)15).

<sup>133</sup> Group of Specialists on human rights and the fight against terrorism (DH-S-TER), report of the 2nd meeting held in Strasbourg on 13-15 February 2002, *op. cit.*, 2002.

<sup>134</sup> *Ibidem*.

## b) Within the European Union

Although some counter-terrorism initiatives were taken following the establishment of an area of freedom, security and justice (1997)<sup>135</sup>, the fight against terrorism really became a major policy concern after the 9/11 attacks. While the *European Parliament Resolution of 5 September 2001* determined the role of the EU in the fight against terrorism<sup>136</sup>, the *Framework Decision of 13 June 2002 on the fight against terrorism* constituted the first main binding instrument in the field at EU level. In particular, a consensus on a common legal definition of terrorism was reached for the first time at European level (Article 1), which allowed the EU to provide minimum rules and sentences for terrorist offense. In addition to the repression of terrorism, the *2002 Framework Decision* addresses the issue of victims of terrorism by asking Member States to take specific measures to provide assistance to victims of terrorism<sup>137</sup> and their family<sup>138</sup>.

Following this decision, we will see that the EU has adopted a series of provisions aimed at providing adequate support and assistance to direct (i) and indirect (ii) victims of terrorism.

### (iii) Protection of and assistance to direct victims of terrorism

Although the EU has not adopted any legally binding instrument specifically dedicated to direct victims of terrorism, these latter are protected by several provisions aimed at strengthening their rights, which we will examine in this section.

### Specific status and treatment for victims of terrorism

Within the EU, the specific nature of terrorist victimization has been discussed on several occasions, pointing out their vulnerability, their symbolic value and their instrumentalisation by terrorists.

In this regard, the *2002 Framework Decision on the fight against terrorism* provides that "Victims of terrorist offences are vulnerable, and therefore specific measures are necessary with regard to them"<sup>139</sup>.

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<sup>135</sup> See for instance : UE, European Council, Joint Action 96/610/JAI of 15 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise to facilitate counter-terrorist cooperation between the Member States of the European Union ; European Council, Joint Action of 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network ; European Council, Joint action 98/733/JHA of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union ; European Council, Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property ; European Council, Tampere Council conclusions of 15 and 16 October 1999 ; European Council, Recommendation of 9 December 1999 on cooperation in combating the financing of terrorism.

<sup>136</sup> EU, European Parliament, *Resolution on the role of the EU in the fight against terrorism*, 5 September 2001 (2001/2016(INI)).

<sup>137</sup> *Ibid*, preamble, par. 8.

<sup>138</sup> *Ibid*, article 10.

<sup>139</sup> EU, *Framework Decision of 13 June 2002 on the fight against terrorism* (2002/475/JAI), article 10, par. 8.

Similarly, the 2017 *Directive on combating terrorism*, which replaces the 2002 *Framework Decision*, encourages Member States to adopt measures of protection, support and assistance responding to the “specific needs” of victims of terrorism<sup>140</sup>.

The 2012 *Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime* also seems to recognize the specificity of victims of terrorism by stating that: “Victims of terrorism have suffered attacks that are intended ultimately to harm society. They may therefore need special attention, support and protection due to the particular nature of the crime that has been committed against them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society. Member States should therefore take particular account of the needs of victims of terrorism, and should seek to protect their dignity and security”<sup>141</sup>. In addition, the 2012 *Directive* notes that victims of terrorism tend to suffer from a high rate of secondary victimization, intimidation and reprisals, requiring, where appropriate, specific protection measures<sup>142</sup>.

More recently, the *European Parliament Resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism*<sup>143</sup> stresses that “victims of terrorism have a very specific status, and meeting their needs is not only a legal obligation under EU, international and national law but also a responsibility for the whole of our societies”<sup>144</sup>.

### **Assistance and support services to victims of terrorism**

Within the EU, the need to strengthen European and national efforts to improve protection and assistance to victims of terrorism has been emphasized on several occasions<sup>145</sup>.

While the 2002 *Framework Decision on the fight against terrorism* encourages Member States to adopt measures to ensure adequate support for victims of terrorism<sup>146</sup> and their family<sup>147</sup>, it does not specify what these measures should be and mainly focuses on the definition and punishment of terrorist offenses. There is therefore a major step forward with the 2017 *Directive on combating terrorism*<sup>148</sup> that replaces the 2002 *Framework Decision* and extends its purpose to « measures of protection of, and support and assistance to, victims of terrorism» (article 1- Subject matter). Accordingly, the 2017 *Directive* contains a title V dedicated to the “protection of, support to, and rights of victims of terrorism”. For instance, article 24 asks Member States to ensure support services addressing the specific needs of victims of terrorism, immediately after a terrorist attack and for as long as necessary. The 2017 *Directive* also specifies that these services shall be

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<sup>140</sup> EU, *Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, OJEU 31 March 2017, par. 27 and 29.

<sup>141</sup> *Ibid*, par. 16.

<sup>142</sup> *Ibid*, par. 57 and art. 22, par. 3.

<sup>143</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018.

<sup>144</sup> *Ibid*, preamble, par. EX.

<sup>145</sup> EU, European Council, Declaration on combating terrorism of 25 March 2004, *op. cit.*, 2004 ; EU, European Council, *EU Counter-Terrorism Strategy*, Bruxelles, 30 November 2005 ; UE, Commission Européenne, *Programme de solidarité de l'UE face aux conséquences des menaces et des attentats terroristes*, Doc. n°15480/04, Bruxelles, le 1er décembre 2004.<sup>[1]</sup>

<sup>146</sup> EU, *Framework Decision of 13 June 2002 on the fight against terrorism*, *op. cit.*, preamble, par. 8.

<sup>147</sup> *Ibid*, article 10.

<sup>148</sup> EU, *Directive 2017/541 of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, *op. cit.*

confidential, free of charge and easily accessible and shall include, amongst others : emotional and psychological support, provision of any relevant information, assistance with compensation claims (article 24.3).

On the short term, Member States are asked to improve support services in the framework of their national emergency-response infrastructures, by providing a comprehensive response to the needs of victims and their family members, including appropriate identification, communication, first aid, medical treatment and psychological/emotional support (article 24.4 et 24.5)

On the longer term, the 2017 *Directive* specifies that Member States shall ensure that victims of terrorism have access to legal aid and effective protection measures in the course of criminal proceedings, where the risks of intimidation and retaliation require to protect their dignity and physical integrity (article 25).

Finally, the *European Parliament Resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism*<sup>149</sup> provides that Member States must protect, recognise, support and compensate victims of terrorism, who should be at the center of the fight against terrorism<sup>150</sup>. In view of improving assistance and support to victims of terrorism, the Parliament “calls on the Commission to put forward a legislative proposal on the victims of terrorism that responds effectively to victims’ needs in the short and long term”<sup>151</sup>.

The Parliament notes that terrorism may have particularly severe psychological consequences for victims who should therefore benefit from effective psychological/emotional support on the short, medium and long term<sup>152</sup>. On the short term, Member States are asked to provide effective emergency assistance, including first aid, medical treatment, cash advances to help cover immediate expenses, certified childcare and home support, tax relief schemes and help with transport in the case of disability.

The right of information of the victims and their families is also stressed. While Member States are asked to provide all relevant information with a single point of contact <sup>153</sup>, the European Commission is invited to establish a single on-line platform in all EU languages covering the rights of and support for victims of terrorism<sup>154</sup>.

On the longer term, Member States are invited to guarantee effective access to justice (including legal aid and protection against the risk of intimidation or retaliation), especially in the case of attacks involving transnational victims.

It should also be noted that, considering the ideological dimension of terrorism, specific attention is paid to the protection of dignity of victims. In this respect, Member States are invited “to set up legal mechanisms to criminalise the glorification of a specific act of terrorism as it humiliates the victims and causes secondary victimisation by damaging the victims’ dignity and recovery”<sup>155</sup>. The Parliament also calls on Member States to forbid homages to those found guilty of terrorist

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<sup>149</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism, op. cit.*, 2018.

<sup>150</sup> *Ibidem*.

<sup>151</sup> *Ibid*, par. 204.

<sup>152</sup> *Ibidem*.

<sup>153</sup> *Ibid*, par 203.

<sup>154</sup> *Ibid*, par 203.

<sup>155</sup> *Ibid*, par. 212.

activities and to protect victims against secondary victimisation arising from humiliation, harassment, fear or attacks by the social entourage of the aggressors<sup>156</sup>.

### **Reparation and compensation of victims of terrorism**

Even though there is currently no EU compensation fund dedicated to the reparation of victims of terrorism, several provisions have been adopted to guarantee the compensation of victims of terrorism. For instance, the *2004 Declaration on combatting terrorism* stressed the need to adopt the *Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims* and called on the European Commission to ensure the allocation of the funds available in the 2004 budget for supporting victims of terrorism<sup>157</sup>.

More recently, the *European Parliament Resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism*<sup>158</sup> called on the Member States to facilitate the compensation of victims of terrorism, in particular through the introduction of a simplified procedure at national level for granting automatic compensation immediately after an attack, while periodically reviewing the need for further compensation depending on the evolution of the victim's situation. With this in mind, the Parliament invited the European Commission to formulate a legislative proposal on "a standardised form for claiming compensation, outlining clear duties and deadlines for insurers"<sup>159</sup>.

The Parliament also highlights that the levels and procedures of compensation vary considerably from one Member State to another, which would reinforce the feeling of injustice among the victims of terrorist attack and aggravate their suffering. With this in mind, the Commission is encouraged to initiate a dialogue with the Member States in order to reduce these disparities<sup>160</sup>.

Finally, it should be noted that the Parliament calls on the Commission to amend the provisions on the European Solidarity Fund (which was set up in 2002 to express EU's solidarity in case of major natural disasters) in order to include compensation of victims of large-scale terrorist attacks<sup>161</sup>.

### **Enhanced cooperation and coordination to ensure effective assistance to victims of terrorism**

In order to ensure effective assistance to victims of large-scale terrorist attacks, the need to strengthen cooperation and coordination amongst Member States has been raised several times<sup>162</sup>.

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<sup>156</sup> *Ibid*, par. 214-215.

<sup>157</sup> European Council, *Declaration on combating Terrorism*, *op. cit.*, 2004, par. 4.

<sup>158</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018.

<sup>159</sup> *Ibid*, par. 204.

<sup>160</sup> *Ibid*, par. 218.

<sup>161</sup> *Ibid*, par 217.

<sup>162</sup> See for instance : EU, European Council, *Declaration on combating Terrorism*, *op. cit.*, 2004 ; EU, European Commission, "EU Solidarity Programme on the Consequences of Terrorist Threats and Attacks", Doc. n°15480/04, Brussels, 1st December 2004.<sup>[1]</sup><sup>[2]</sup>

In this regard, the 2005 *EU Counter-Terrorism Strategy*<sup>163</sup> stresses the benefits of resorting to the EU mutual assistance and coordination mechanisms used to deal with large-scale natural disasters.

Besides cooperation in crisis situations, the EU encourages Member States to cooperate in the establishment of assistance systems for victims of terrorist acts. For instance, the 2017 *Directive on combating terrorism*<sup>164</sup> asks Member States to strengthen cooperation in order to guarantee adequate assistance to victims of terrorism, in particular for those who reside in another Member State than the one where the terrorist act was committed.

In order to facilitate the coordination of assistance to victims of terrorism, the *European Parliament Resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism*<sup>165</sup> calls on the Commission to establish an EU Coordination Centre for victims of terrorism (CCVT), which would ensure adequate crisis support and coordinated assistance to victims of terrorism, in particular for transnational victims (exchange of knowledge, protocols and best practices, setting-up of registers of victims of terrorism in Member States and at European level, public register of accredited victim support organisations, etc.)<sup>166</sup>.

At national level, Member States are asked to improve support services in the framework of their national emergency-response infrastructures, by strengthening the coordination between all relevant entities in view of offering a comprehensive response to the needs of victims of terrorism, with a single authority responsible for acting as a national contact point for the CCVT.

### **The role and participation of victims of terrorism and civil society as key elements of the fight against terrorism and the empowerment of victims' rights**

The EU has repeatedly emphasized the role and participation of civil society and of victims of terrorism in the fight against this phenomenon and the empowerment of victims' rights.

For instance, the 2005 *EU Counter-Terrorism Strategy*<sup>167</sup> insists on the role of victims' associations and their interaction with European institutions in order to improve support for victims of terrorism. Several EU instruments also stress the need to strengthen the participation by and cooperation with local communities, civil society, grassroots actors, NGOs and the private sector in order to prevent terrorist radicalization<sup>168</sup>. According to these instruments, these actors play an indispensable role in the fight against terrorism, by promoting effective counter-speech and

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<sup>163</sup> EU, European Council, *EU Counter-Terrorism Strategy*, Brussels, 30 November 2005.

<sup>164</sup> EU, *Directive 2017/541 of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, *op. cit.*, art. 26.

<sup>165</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018.

<sup>166</sup> *Ibid*, par. 201 et 202.

<sup>167</sup> EU, European Council, *EU Counter-Terrorism Strategy*, Brussels, 30 November 2005.

<sup>168</sup> *Ibidem*; EU, *Directive 2017/541 of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, *op. cit.*, preamble; EU, European Council, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the prevention of radicalisation leading to violent extremism*, 2016, (2016/C 467/02).

messages against extremist ideology and by helping people at risk to develop a sense of belonging and positive identity<sup>169</sup>

In particular, the role of the victims of terrorism in the fight against terrorism and the prevention of radicalization has been encouraged on several occasions, emphasizing the effectiveness of their speeches in "de-legitimizing" the terrorist narrative and illustrating the disastrous human consequences of terrorist attacks<sup>170</sup>.

Some instruments<sup>171</sup> also present the participation of young people as a key factor in preventing radicalization, promoting democratic values, social integration, active citizenship and positive identity building.

Finally, the European Council has stressed the interest of disseminating the testimonies of former terrorists who have abandoned violent extremism or of members of their family, in order to counter the terrorist propaganda<sup>172</sup>. Similarly, the *European Parliament Resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism* notes that meetings in schools with victims of terrorist attacks, persons who have de-radicalized or returnees and their families, could be an effective instrument to prevent radicalization<sup>173</sup>.

### **Commemoration and tribute to the victims of terrorism**

The EU has repeatedly recognised the need to pay tribute to the victims of terrorist attacks as a sign of solidarity from the community on behalf of which they have been sacrificed.

In such perspective, various measures have been taken to commemorate victims of terrorism at EU level, such as the "European Day of Remembrance of Victims of Terrorism" (EDVT). This remembrance day was proclaimed by the European Council on March 11th following the Madrid attacks of March 2004<sup>174</sup>. Since then, 14 JEVT have been celebrated, bringing together victims' associations, front-line workers, victims of terrorism and representatives of the Member States to pay tribute to the victims of terrorism. These events also gave the victims the opportunity to express their voice and share their stories<sup>175</sup>. Both the European Commission<sup>176</sup> and the European Parliament<sup>177</sup> have stressed the positive impact of the JEVT on victims, encouraging Member States to promote their celebration throughout Europe.

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<sup>169</sup> *Ibidem*.

<sup>170</sup> EU, European Council, *EU Counter-Terrorism Strategy*, Brussels, 19 May 2014 ; Statement by Gilles de Kerchove during the European Day of Remembrance of Victims of Terrorism, 11 March 2012; EU, European Council, *Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism*, 20 November 2015.

<sup>171</sup> EU, European Commission, *European Security Research Programme*, Strasbourg, 28 April 2015, COM(2015) ; EU, European Council, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the role of the youth sector in an integrated and cross-sectoral approach to preventing and combating violent radicalisation of young people*, 30 May 2016 (doc. 9640/16).

<sup>172</sup> EU, European Council, *EU Counter-Terrorism Strategy*, Brussels, 19 May 2014, par. 30 et s

<sup>173</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018, par. 45.

<sup>174</sup> EU, European Council, *Declaration on combatting terrorism*, *op. cit.* 2004.

<sup>175</sup> *Ibidem*.

<sup>176</sup> *Ibidem*.

<sup>177</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018, par. 220.



## The role and liability of the media in the protection of victims of terrorist attacks

While many EU instruments<sup>178</sup> encourage the role of the media in the fight against terrorism and the prevention of radicalization, provisions to protect victims of terrorism from intrusive media practices are lacking.

It should be noted, however, that the recent *European Parliament Resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism* addresses this issue, encouraging the EU to promote good practices for the media on matters that are sensitive topics for victims of terrorism and their families<sup>179</sup>. The Parliament also recalls that the media must respect the dignity and privacy of victims and their families, while avoiding revealing their identity without their prior consent<sup>180</sup>.

### (i) Protection of and assistance to indirect victims of terrorism

Although the indirect victims of terrorism are not included in the definitions of victims of terrorism adopted within the EU, we will see that a series of European provisions call on the Member States to acknowledge and remedy their suffering.

#### *Vicarious victims amongst the targeted population*

Since 2001, the EU has adopted numerous instruments and provisions in order to strengthen the protection of citizens against the terrorist threat, whether in prevention (e.g. strengthening the security of transport and critical infrastructures) or in response to terrorist attacks (improvement of civil protection, communication and provision of accurate and adequate information to the population, etc.)<sup>181</sup>.

In this respect, the *European Parliament Resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism* stresses that this obligation of protection against terrorist attacks derives from international and regional human rights law, which require states to protect the right to life and the right to security of all individuals under their

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<sup>178</sup> EU, European Council, *EU Counter-Terrorism Strategy*, Brussels, 19 May 2014, par. 30 et s. ; EU, European Council, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the prevention of radicalisation leading to violent extremism*, op. cit., 2016; EU, *Directive 2017/541 of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, op. cit., 2017, preamble, par. 20. EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, op. cit., 2018.

<sup>179</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, op. cit., 2018.

<sup>180</sup> *Ibidem*.

<sup>181</sup> EU, European Council, *Declaration on combatting terrorism*, op. cit. 2004, par. 11 and Appendix I : Strategic objectives of the European Union in the fight against terrorism, objective 5 ; EU, European Commission, *"EU Solidarity Programme on the Consequences of Terrorist Threats and Attacks"*, Doc. n°15480/04, Brussels, 1st December 2004 ; EU, European Council, *Decision 2007/124/EC, Euratom of 12 February 2007 establishing for the period 2007-2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme 'Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks'*, 24 February 2007, p. 1 ; EU, European Council, *EU Counter-Terrorism Strategy*, Brussels, 30 November 2005 + revised version of 19 May 2014 ; EU, European Council, *Council Conclusions on the renewed EU Internal Security Strategy for the period 2015-2020*, 17 June 2015 ; Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of the Regions Action Plan to support the protection of public spaces (COM(2017) 612), 18 October 2017.

jurisdiction<sup>182</sup>.

*Victims of discrimination/vicarious retribution in response to terrorist attacks*

With regard to victims of discrimination/vicarious retribution, the EU recognizes that terrorism and the fight against terrorism have fostered discrimination, stigmatization, exclusion and vicarious retribution against minority communities living in the West, especially against immigrants of Arab-Muslim appearance<sup>183</sup>.

In response to this phenomenon, several EU instruments<sup>184</sup> recognize the need to protect minority communities against the risk of reprisals following terrorist attacks, pointing out that this phenomenon is precisely sought after by the terrorist strategy aimed at reinforcing social divisions and creating a climate of interethnic/religious hatred conducive to violent radicalization. Accordingly, Member States are invited to adopt measures aimed at promoting intercultural dialogue, tolerance, mutual respect and equal opportunities for all, while combating racism, xenophobia and assimilations of terrorism with the Muslim community<sup>185</sup>.

More recently, the *Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism*<sup>186</sup> (2015) and the *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the prevention of radicalisation leading to violent extremism*<sup>187</sup> (2016) call on Member States to promote tolerance and combat xenophobia, discrimination, hate speech, social marginalization and the degradation of the social fabric, stressing that these conditions favour radicalization.

Similarly, the *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the role of the youth sector in an integrated and cross-sectoral approach to preventing and combating violent radicalisation of young people*<sup>188</sup> (2016) stress that discrimination, exclusion and injustice favour the spread of violent radicalization, requiring to strengthen intercultural dialogue, mutual respect, empathy, integration, sense of identity and

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<sup>182</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018, par. 223.

<sup>183</sup> See for instance : EU, European Council, *Declaration on combatting terrorism*, *op. cit.*, 2004 ; EU, European Council, *Conclusions and plan of action of the extraordinary European Council of 21 September 2001*, SN 140/01, p. 4 ; EU, European Council, *Council Conclusions the application of the EU Charter of Fundamental Rights*, 2015 (doc. 10005/16).

<sup>184</sup> EU, European Council, *Declaration on combatting terrorism*, *op. cit.*, 2004, Appendix I : « Strategic objectives of the EU in the fight against terrorism », objective 5 ; EU, European Council, *Conclusions and plan of action of the extraordinary European Council of 21 September 2001*, *op. cit.*, p. 4 ; EU, European Council, *EU Counter-Terrorism Strategy*, *op. cit.*, 2005, first objective ; EU, European Council, *EU Counter-Terrorism Strategy*, *op. cit.*, 2014 ; EU, European Council, *Council Conclusions the application of the EU Charter of Fundamental Rights*, 2015 (doc. 10005/16).

<sup>185</sup> *Ibidem*.

<sup>186</sup> European Council, *Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism*, 20 November 2015.

<sup>187</sup> EU, European Council, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the prevention of radicalisation leading to violent extremism*, *op. cit.*, 2016.

<sup>188</sup> European Council, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the role of the youth sector in an integrated and cross-sectoral approach to preventing and combating violent radicalisation of young people*, 30 May 2016 (doc. 9640/16).

belonging. These conclusions also recall that counter-terrorism measures should not lead to stigmatization, discrimination or xenophobia<sup>189</sup>.

Regarding the issue of discrimination in counter-terrorism policies, the Preamble of the *2017 Directive on combating terrorism*<sup>190</sup> and the *European Parliament Resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism*<sup>191</sup> state that the adoption and implementation of counter-terrorism measures must exclude any form of racism or discriminatory treatment. The Parliament also stresses that political discourse invoking the terrorist threat should avoid undermining social cohesion and polarisation within societies<sup>192</sup>. It calls on the Member States to implement the CT Directive and Framework Decision on Racism and Xenophobia<sup>193</sup>, by taking effective measures to counter hate speech inciting to terrorism or hate crimes. The Parliament also insists on the necessity to guarantee the freedom of religion and the right to exercise it freely, while encouraging inter-religious and cross-cultural dialogue as well as cooperation with religious communities and local authorities to prevent radicalisation<sup>194</sup>.

### *Victims of the fight against terrorism*

Victims of human rights violations committed in the context of the fight against terrorism are protected by a series of European instruments<sup>195</sup> which recall that the fight against terrorism cannot in any way exempt Member States from meeting their obligations under international and European law, in particular human rights, international humanitarian law and refugee law (e.g. right to privacy, protection of personal data, freedom of expression, prohibition of torture, rights of the defense such as the presumption of innocence, the right to a fair trial, etc.)

In the last few years, the EU has paid increased attention to the issue of respect for human rights in the fight against terrorism, as illustrated by the evolution of counter-terrorism instruments. While the *2005 EU Counter-Terrorism Strategy*<sup>196</sup> contained no reference to human rights law, the *revised Strategy of 2014*<sup>197</sup> stresses the need to respect fundamental rights and the rule of law in the fight against terrorism, pointing out that human rights violations provoke feelings of anger and injustice conducive to terrorist radicalization<sup>198</sup>. The *2017 Directive on combating terrorism*<sup>199</sup> also includes a provision specifically devoted to the respect of "Fundamental Rights and Freedoms"

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<sup>189</sup> *Ibid*, par. 9.

<sup>190</sup> EU, *Directive 2017/541 of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, *op. cit.*

<sup>191</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018, par. FI.

<sup>192</sup> *Ibid*, par. AH.

<sup>193</sup> *Ibid*, par. 38.

<sup>194</sup> *Ibid*, par. 35.

<sup>195</sup> For instance : EU, *Framework Decision of 13 June 2002 on the fight against terrorism*, *op. cit.*, art. 1 ; EU, European Council, *Declaration on combatting terrorism*, *op. cit.*, 2004, introduction ; EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018, par. 221.

<sup>196</sup> EU, European Council, *EU Counter-Terrorism Strategy*, *op. cit.*, 2005.

<sup>197</sup> EU, European Council, *EU Counter-Terrorism Strategy*, *op. cit.*, 2014.

<sup>198</sup> *Ibid*, par. 15 and 16.

<sup>199</sup> EU, *Directive 2017/541 of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, *op. cit.*

(Article 23), a provision that was not included in the 2002 *Framework Decision* that the 2017 *Directive* replaces.

Similarly, the *Council Conclusions on the renewed EU Internal Security Strategy for the period 2015-2020*<sup>200</sup> and the *Conclusions on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism of 2015*<sup>201</sup> stress the need to ensure respect for fundamental rights in all aspects of the fight against terrorism. Besides, Member States are invited to improve the conditions of detention of perpetrators of terrorist acts while implementing effective rehabilitation and de-radicalization programs in prison but also outside prisons with reintegration strategies, including for terrorist fighters returning to their country of origin (the “returnees”).

In the same perspective, the *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the prevention of radicalisation leading to violent extremism of 2016*<sup>202</sup> encourage the development of de-radicalization and rehabilitation programs for returnees, their families and in particular their children. In this respect, the *European Parliament Resolution of 12 December 2018 on findings and recommendations of the Special Committee on Terrorism* considers that these children need protection measures as victims but also specific attention as they could also be potential perpetrators<sup>203</sup>. The EU Parliament resolution also aims to strengthen the respect of human rights in the fight against terrorism and calls on the Member States to guarantee individuals effective remedies to challenge violations of their fundamental rights (including those relating to privacy and data protection, freedom of thought and expression, non-discrimination, procedural safeguards such as the presumption of innocence, the right to a fair trial, the right to information, and control by a judicial authority)<sup>204</sup>. The *Resolution of 12 December 2018* also stresses that “inhuman detention conditions, overcrowding and ill treatment are counter-productive as regards the objective of combating radicalisation and violent extremism”<sup>205</sup>. The Parliament points out that even if the prevention of radicalisation in prisons may require to establish differentiated detention rules, any specific programme dedicated to a certain group of prisoners must respect the same human rights and international obligations as for any prisoner.

### 3. Conclusion.

While European initiatives to strengthen the fight against terrorism have considerably increased since the beginning of the twenty-first century, little attention has been paid to victims of terrorism. Nevertheless, a number of *soft law* instruments have gradually been developed to improve assistance and support to victims of terrorism (such as the *Guidelines on the protection of victims of terrorist acts* of the Council of Europe<sup>206</sup>). In addition, we have seen that more and more instruments relating to the fight against terrorism or the prevention of radicalization explicitly

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<sup>200</sup> EU, European Council, *Council Conclusions on the renewed EU Internal Security Strategy for the period 2015-2020*, *op. cit.*, 2015.

<sup>201</sup> EU, European Council, *Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism*, *op. cit.*, 2015.

<sup>202</sup> EU, European Council, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the prevention of radicalisation leading to violent extremism*, *op. cit.*, 2016.

<sup>203</sup> EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018, preamble, par. Y.

<sup>204</sup> *Ibidem*.

<sup>205</sup> *Ibid*, par. 58.

<sup>206</sup> Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, adopted on 2 March 2005, principle n°1.

include provisions aimed at improving assistance, support and protection of victims of terrorism (such as the 2005 *Convention on the Prevention of Terrorism* or the 2017 *EU Directive on Combating Terrorism*).

The question of the need to provide for a specific status and differential treatment for victims of terrorism has been discussed on several occasions. In this respect, it should be noted that the discussions held in the Council of Europe and the EU did not result in a unanimous position. However, a consensus was reached on the symbolic value attached to victims of terrorism who are randomly killed as representatives or "symbols" of the targeted group, its values and its people (as illustrated by the political/media tendency to present jihadist attacks as an "attack against the West and its values of democracy, modernity and freedom"). In this sense, the victims of terrorism would represent an image of "sacrifice" in the name of the community, implying that this community, represented by public authorities, has a greater responsibility and duty of solidarity towards them.

While there is a certain consensus on the specific value/status of victims of terrorism, the specificity of their needs and the necessity to provide them with special treatment are more controversial. In this respect, several European instruments note that the needs of victims of terrorism do not differ significantly from those of victims of serious crimes<sup>207</sup>. This is in line with most scientific studies carried out on this subject. However, we have seen that other European instruments insist on the specificity of their needs, stressing that victims of terrorism are particularly vulnerable and need special protection measures<sup>208</sup>. These instruments underline the particularly strong psychological impact of terrorist attacks and the higher risk of secondary victimization, in particular because of the media coverage of the attacks and the ideological dimension of terrorism.

These two factors (mediatisation and ideological purpose of terrorist attacks) also favour the development of strong emotional reactions among the population who might blame the state or European organizations for failing their duty to guarantee the security of their citizens<sup>209</sup>. This could put more pressure on these political bodies to become more supportive towards victims of terrorism<sup>210</sup>.

Based on the above, it has been suggested that the specific treatment of victims of terrorism should be understood in the light of the political and ideological issues raised by terrorism and of the symbolic value of its victims as representatives of the targeted population, rather than because of the specificity of their needs. This is illustrated by the fact that the specific legislations adopted for victims of terrorism contain very similar provisions to those provided by the instruments concerning assistance to victims of crime in general. Nevertheless, it is possible to

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<sup>207</sup> See for instance : Committee of Ministers of the Council of Europe, Recommendation of the Committee of Ministers to Member States on assistance to crime victims, adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies, Rec(2006)8 ; Council of Europe, CJ-S-VICT -Directorate General of Human Rights and Legal Affairs, "Non-criminal remedies for crime victims", *op. cit.*, 2009.

<sup>208</sup> See for instance : Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism»*, *op. cit.*, 2005 ; EU, *Framework Decision of 13 June 2002 on the fight against terrorism*, *op. cit.*, par. 8. ; EU, *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, *op. cit.*, 2012.

<sup>209</sup> A. Conte, *Human Rights in the Prevention and Punishment of Terrorism*, *op. cit.*, p. 18.

<sup>210</sup> *Ibidem* ;U. Yanay, *Victims of terrorism, is it a non issue ?*, Hebrew university of Jerusaleme, 1993.

identify certain provisions and measures of assistance specifically designed for victims of terrorism.

For instance, the often massive and transnational nature of terrorism victimization is taken into account by several provisions aimed at improving the capacity of European states to respond to large-scale attacks (strengthening of national emergency response frameworks, reinforcement of inter-state cooperation and coordination to ensure effective emergency and long-term assistance, particularly for foreign victims, etc.)<sup>211</sup>. However, it should be noted that, while these provisions are not commonly included in European legislations concerning assistance to crime victims, they are very similar to those provided in the European instruments regulating management of large-scale natural disasters<sup>212</sup>.

Regarding the compensation of victims of terrorism, we have seen that several European instruments highlight particular difficulties that victims may face. For instance, it is pointed out that terrorist perpetrators are often not prosecuted (e.g. in the case of suicide bombings), which can be problematic in countries where the compensation of victims depends solely on the outcome of legal proceedings<sup>213</sup>.

Considering the mass-victimization terrorism can provoke, several provisions also stress the need to guarantee subsidiary compensation by the State, eventually in collaboration with the insurance sector<sup>214</sup>. This obligation of compensation is generally governed by the principles of subsidiarity and of territoriality<sup>215</sup>. While the principle of subsidiarity implies that the obligation of compensation by the State becomes effective only if it cannot be provided by those responsible for the terrorist act, the principle of territoriality implies that the primary responsibility for ensuring the compensation of victims rests with the State on whose territory the terrorist act took place, regardless of the nationality of the victims.

It should also be noted that the Council of Europe pointed out that it would be useful to create a specific compensation funds for victims of terrorism, whether at national or European level<sup>216</sup>. At EU level, it has been suggested that a European Fund for Victims of Terrorism could cover not only the compensation of victims, but also awareness campaigns, technical assistance, training and support to victims' associations, etc.<sup>217</sup>.

Besides the material and financial compensation, many European instruments note that the reparation and rehabilitation of victims of terrorism require restorative measures taking into

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<sup>211</sup> See for instance : article III of the *2005 Guidelines on the protection of victims of terrorist acts* and article V of the revised version of 2017.

<sup>212</sup>In this respect, some counter-terrorism instruments expressly refer to the coordination mechanisms used to deal with crisis situations and natural disasters (e.g. the *EU Counter-Terrorism Strategy* of 2005 which refers to the EU's Mutual Assistance Framework and Civil Protection Mechanism for dealing with crisis situations).

<sup>213</sup> Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), summary report of the 1st meeting, *op. cit.*, 2005.

<sup>214</sup> See for instance : Council of Europe, CJ-S-VICT -Directorate General of Human Rights and Legal Affairs, "Non-criminal remedies for crime victims", *op. cit.*, 2009 ; Committee of Ministers of the Council of Europe, *Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2005, art. XVII.

<sup>215</sup> *Ibidem*.

<sup>216</sup> Committee of Ministers of the Council of Europe, *Revised Guidelines on the protection of victims of terrorist acts*, *op. cit.*, 2017, *op. cit.*, art. VIII ; Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism»*, *op. cit.*, 2005, workshop IV.

<sup>217</sup> *Ibidem*.

account their physical and psychological damage but also their specific symbolic value<sup>218</sup>.

In particular, the European institutions have encouraged the development of commemoration and tribute measures for the victims of terrorism. These measures have multiplied over the years (observation of minutes of silence, construction of memorials, organization of commemoration ceremonies/days, etc.)<sup>219</sup>. The positive impact of these measures has been highlighted by several European instruments that underline their capacity to strengthen the resilience, the dignity and the recognition of victims of terrorism, while enabling the targeted community to pay tribute to them as a gesture of solidarity<sup>220</sup>. However, it should be noted that some victims complained about the too "formal" or bureaucratic aspect of some of these measures, which would not take enough into account the views of the victims in the planning of their organization.

In this respect, it should be noted that several European instruments encourage the participation of victims of terrorism in the drafting of legislation and measures that concern them. Besides, we have seen that several European instruments aim to strengthen their role and participation in the fight against terrorism, stressing that their specific status gives them greater legitimacy and credibility to counter extremist rhetoric and prevent radicalization<sup>221</sup>. The participation of victims was also presented as a way to strengthen their recognition and resilience, giving them a voice and the opportunity to express themselves<sup>222</sup>.

In addition to the participation of the direct victims of terrorism, the role of civil society is encouraged by a multitude of European instruments that call on Member States to strengthen the participation of civil society in the fight against terrorism and the prevention of radicalization, on the one hand, and in the assistance to victims, on the other hand<sup>223</sup>. More particularly, the role of civil society associations, local leaders, influential/famous people and relatives of people who may be radicalized (parents, brothers, sisters, teachers, religious leaders, etc.) is encouraged by many counter-terrorism instruments<sup>224</sup>, which invite States to organize, for all these actors, specific training on assistance to victims of terrorism but also on the prevention of radicalization and the strengthening of intercultural dialogue, tolerance, human rights and citizenship<sup>225</sup>.

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<sup>218</sup> See for instance : Council of Europe, CJ-S-VICT -Directorate General of Human Rights and Legal Affairs, "Non-criminal remedies for crime victims", *op. cit.*, 2009 ; Council of Europe, *Proceedings of the High-Level Seminar «Protecting human rights while fighting terrorism»*, *op. cit.*, 2005 ; EU, *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, *op. cit.*, 2012.

<sup>219</sup> See for instance : Council of Europe, CJ-S-VICT -Directorate General of Human Rights and Legal Affairs, "Non-criminal remedies for crime victims", *op. cit.*, 2009, art. 7.2 ; European Commission, "Friday 9 March : 14<sup>th</sup> European Day of Remembrance of Victims of Terrorism", *op. cit.*, 2018 ; EU, European Council, *Declaration on combatting terrorism*, *op. cit.*, 2004.

<sup>220</sup> *Ibidem*.

<sup>221</sup> See for instance : EU, European Council, *EU Counter-Terrorism Strategy*, *op. cit.*, 2014 ; Statement by Gilles de Kerchove during the European Day of Remembrance of Victims of Terrorism, 11 March 2012.

<sup>222</sup> *Ibidem*.

<sup>223</sup> See for instance : EU, European Council, *EU Counter-Terrorism Strategy*, *op. cit.*, 2005, par. 28 ; European Council, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the role of the youth sector in an integrated and cross-sectoral approach to preventing and combating violent radicalisation of young people*, *op. cit.*, 2016 ; EU, European Council, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the prevention of radicalisation leading to violent extremism*, *op. cit.*, 2016.

<sup>224</sup> *Ibidem*.

<sup>225</sup> *Ibidem*.

Another peculiarity that can be observed in European legislation regarding victims of terrorism is the increased concern for the vulnerability of victims to the (over)mediatisation of terrorist attacks. Regarding the additional damage media can cause to the direct victims of terrorist acts (undermining their dignity/private lives, reinforcing the feeling of dehumanization and instrumentalisation, risk for their security, etc.<sup>226</sup>), several European instruments insist on the need to protect victims against intrusive practices of the media, encouraging states as well as the media sector to adopt self-regulation measures in order to guarantee the security, the privacy and the protection of the dignity of victims and their relatives<sup>227</sup>. Some of the texts also highlight the positive impact that the media could have on direct victims, by offering them the opportunity to express themselves if they wish and by promoting public awareness of their situation. The mediatisation of victims' testimonies was also presented as an effective means to illustrate the human consequences of terrorism and to counter terrorist propaganda. Several European legislations also stress the interest of disseminating the stories and testimonies of former terrorist fighters or "de-radicalized" people, underlining the positive impact they can have to disqualify the extremist discourse. In this respect, it should be noted that the majority of the European provisions identified focus on the role of the media in the fight against terrorism and the prevention of radicalization<sup>228</sup>.

Another aspect of European legislation concerning victims of terrorism is the increased concern for the psychological impact of terrorism. The need to provide psychological support on the short, medium and long term is emphasized not only for direct victims but also for their relatives who may suffer serious psychological damage, especially when faced with the uncertainty and suffering related to the long and difficult identification of victims of large-scale terrorist attacks<sup>229</sup>.

More broadly, the immediate family members of deceased victims are granted a series of rights similar to those provided for direct victims (right to information, respect for privacy and family life, respect for dignity, compensation, effective access to justice, participation in the judicial process, etc.).

In addition to the relatives of the direct victims, we have seen that members of the target population may suffer significant damage (psychological, material, financial) as an indirect result of terrorist attacks<sup>230</sup>. Even though these numerous vicarious victims are generally not included in the European definitions of "victims of terrorism", we have examined several provisions and instruments aimed at strengthening the protection of their fundamental rights (protection of the right to life, to security, to live free from fear ; improvement of civil protection, communication and provision of accurate information to the population to limit the psychological and financial

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<sup>226</sup> An example of this phenomenon is the hostage-taking of the hyper-kosher in Paris in 2015, where BFM-TV had revealed certain information that put some hidden hostages at risk. Following a complaint against the media company, this latter agreed to pay 60,000 euros to the Jewish Social Fund for victims of terrorism and adopted a code of conduct to ensure the safety of victims in such situations.

<sup>227</sup> See for instance : Council of Europe, CJ-S-VICT -Directorate General of Human Rights and Legal Affairs, "Non-criminal remedies for crime victims", *op. cit.*, 2009.

<sup>228</sup> See for instance : EU, European Council, *EU Counter-Terrorism Strategy*, *op. cit.*, 2014 ; EU, European Council, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the prevention of radicalisation leading to violent extremism*, *op. cit.*, 2016 ; Parliamentary Assembly of the Council of Europe, *Recommendation 941(1982) on Democracies facing terrorism in Europe*, *op. cit.*, 1982, par.7.

<sup>229</sup> An example of this phenomenon is illustrated by the New-York attacks of 11 September 2001, for which nearly 40% of the 2.753 persons declared missing in the World Trade Center had still not been identified more than 15 years after the attack (Le Parisien, « 11 Septembre : quinze ans après, 1113 victimes toujours non identifiées », 11 September 2016).

<sup>230</sup> H. L'Heuillet, *Aux sources du terrorisme: de la petite guerre aux attentats-suicides*, *op. cit.*, p. 79 ; S. Freedman, « Psychological Effects of Terror Attacks », *op. cit.*, p. 141; M.H Gozzi, *Le terrorisme*, *op. cit.*, p. 31 et 65 ; S. Galea et al., « Psychological sequelae of the September 11 terrorist attacks in New York City », *op. cit.*, p. 982-987.



impact of large-scale attacks)<sup>231</sup>. It should also be noted that some provisions encourage the adoption of symbolic or collective reparation measures (such as the granting of funds for the construction of hospitals, memorials, schools, etc.), emphasizing the broader impact terrorism may have on the community associated with the direct victims of the attacks<sup>232</sup>.

In addition to the vicarious victims among the target population, we have seen that victims of the fight against terrorism are protected by a multitude of laws, insofar as they suffer serious violations of their fundamental rights.

As guardian of human rights, the Council of Europe has been particularly active in this area, adopting a series of instruments specifically dedicated to the respect and protection of human rights in the fight against terrorism (such as the *2002 Guidelines on Human Rights and the fight against terrorism* or the *Recommendation 1550 (2002) on the fight against terrorism and respect for human rights*). Besides, many counter-terrorism instruments adopted within the Council of Europe<sup>233</sup> and the EU<sup>234</sup> include provisions aimed at ensuring compliance with International and European Human Rights Law and, more broadly, all other obligations under International law, including International Humanitarian Law and Refugee Law.

It should also be noted that, in order to strengthen the rights of victims of the fight against terrorism, several European provisions require States to ensure effective remedies and a right to reparation for victims of human rights violations committed in the context of the fight against terrorism<sup>235</sup>. In addition, a series of provisions aim to protect the rights of former terrorist fighters and detainees during and after their release from prison, while offering them learning and development opportunities<sup>236</sup>. Member States are also encouraged to develop rehabilitation, de-radicalization and reintegration programs for these detainees as well as for their family members, in particular for their children<sup>237</sup>.

Finally, it should be noted that both the Council of Europe and the EU stress the need to combat the growing phenomenon of discrimination and stigmatization of minorities associated (by error) with the perpetrators of terrorist acts (i.e., the Arab-Muslim Community)<sup>238</sup>. The European

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<sup>231</sup> See for instance : EU, European Council, *Declaration on combatting terrorism*, *op. cit.*, 2004, par. 11 and Appendix 1.

<sup>232</sup> See for instance : Council of Europe, Group of specialists on assistance to victims and prevention of victimisation (PC-S-AV), *Explanatory memorandum to the Recommendation Rec(2006)8 of the Committee of Ministers to Member States on assistance to crime victims*, *op. cit.*

<sup>233</sup> See for instance : Parliamentary Assembly of the Council of Europe, *Recommendation 922(1984)1 on Defense of democracy against terrorism in Europe ; Recommendation 1024(1986) on the European response to international terrorism ; Resolution 1132(1997)1 on the organization of a parliamentary conference to strengthen democratic systems in Europe and cooperation in the fight against terrorism ; Resolution 1258 and Recommendation 1534 on democracies facing terrorism of 26 September 2001.*

<sup>234</sup> See for instance : Article 23 of the EU *Directive 2017/541 of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, *op. cit.*, 2017).

<sup>235</sup> See for instance : EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018, par. 221.

<sup>236</sup> See for instance : EU, European Council, *Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism*, *op. cit.*, 2015 ; EU, European Council, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the prevention of radicalisation leading to violent extremism*, *op. cit.*, 2016.

<sup>237</sup> *Ibidem* ; EU, European Parliament, *Resolution on findings and recommendations of the Special Committee on Terrorism*, *op. cit.*, 2018, preamble, par. Y.

<sup>238</sup> See for instance : Parliamentary Assembly of the Council of Europe, *Recommendation 1426 (1999)*, « European

institutions address not only the issue of discrimination that may result from the adoption or implementation of counter-terrorism measures, but also the phenomenon of discrimination and vicarious retribution arising from social reactions to terrorist attacks<sup>239</sup>.

Pointing out that this additional victimization favors the spread of terrorism<sup>240</sup>, the Council of Europe and the EU call on Member States to take effective measures to strengthen the rights and protection of minority communities against the risk of retaliation and discrimination following terrorist attacks<sup>241</sup>. In such perspective, States are invited to promote a climate of tolerance, mutual respect and interreligious dialogue, while combating nationalistic, racist and xenophobic drifts, as well as the assimilations of terrorism with the Arab or Muslim world<sup>242</sup>. To this end, collaboration with the media, the youth work and civil society is strongly encouraged. The creation of a specialized and independent body providing support and legal assistance to victims of racism or discrimination resulting from the fight against terrorism is also supported by the European Commission against Racism and Intolerance of the Council of Europe (ECRI)<sup>243</sup>.

On the basis of the above, it can be concluded that even though they are not included in the legal definitions of “victims”, the vicarious or indirect victims of terrorism are protected by a series of instruments and provisions adopted by the EU and the Council of Europe. Direct victims of terrorism have also been subject to an increasing number of protective measures and instruments aimed at improving assistance and protection of their rights. However, we have seen that these provisions are very similar to those provided for victims of criminal offenses or serious violence and, as the case may be, for victims of violations of human rights. Some specificities have nevertheless been underlined, with more “restorative” measures aimed at providing adequate support and assistance to victims of terrorism (such as the establishment of a European compensation fund for victims of terrorism, the proclamation of 11 March as “European Day of Remembrance of Victims of Terrorism”, the organization of commemoration ceremonies, the participation of victims and civil society in the fight against terrorism, the granting of a specific status or the awarding of medals to victims, the promotion of intercultural dialogue, the development of reintegration / rehabilitation program for former jihadists and their family, the mediatization of victims and deradicalized peoples’ testimonies, etc.).

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Democracies facing terrorism », *op. cit.*, par. 9 ; Parliamentary Assembly of the Council of Europe, Resolution 1258 (2001), « Democracies facing terrorism », *op. cit.*, 2001 ; Council of Europe, « 11 September : Multicultural and inter-religious dialogue - Note by the Secretary General », *op. cit.*, 2001.

<sup>239</sup> See for instance : EU, European Council, *Declaration on combatting terrorism*, *op. cit.*, 2004 ; EU, European Council, *Conclusions and plan of action of the extraordinary European Council of 21 September 2001*, *op. cit.*, p. 4.

<sup>240</sup> See for instance : Parliamentary Assembly of the Council of Europe, Council of Europe, *Recommendation 1426 (1999) European democracies facing up to terrorism*, 20 September 1999, *op. cit.*, par. 9 ; Parliamentary Assembly of the Council of Europe, Resolution 1258 (2001), « Democracies facing terrorism », *op. cit.*, 2001 ; Council of Europe, « 11 September : Multicultural and inter-religious dialogue - Note by the Secretary General », *op. cit.*, 2001.

<sup>241</sup> See for instance : Council of Europe, *Convention on the prevention of terrorism of 2005*, *op. cit.*, article 12, par. 2 ; European Commission against Racism and Intolerance of the Council of Europe (ECRI), *General Policy Recommendation n°8 on combating racism while fighting terrorism*, *op. cit.*, 2004 ; EU, European Council, *Declaration on combatting terrorism*, *op. cit.*, 2004 ; EU, European Council, *Conclusions and plan of action of the extraordinary European Council of 21 September 2001*, *op. cit.*, p. 4.

<sup>242</sup> See for instance : EU, European Council, *EU Counter-Terrorism Strategy*, *op. cit.*, 2005 ; EU, European Council, *Council Conclusions the application of the EU Charter of Fundamental Rights*, *op. cit.*, 2015.

<sup>243</sup> EU, European Council, *Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism*, *op. cit.*, 2015.

<sup>244</sup> European Commission against Racism and Intolerance of the Council of Europe (ECRI), *General Policy Recommendation n°8 on combating racism while fighting terrorism*, *op. cit.*, 2004.

