

Terrorism and Anti-Terror Legislation:
The Terrorised Legislator?

Für meine Eltern

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Terrorism and Anti-Terror Legislation:
The Terrorised Legislator?
A Comparison of Counter-Terror Legislation
and Its Implications on Human Rights in the
Legal Systems of the United Kingdom, Spain,
Germany and France

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Antwerp – Oxford – Portland

This book has been defended as a doctoral thesis at Leiden University.

Anna Oehmichen

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PREFACE

This thesis was carried out between September 2005 and October 2008 at the Department for Criminal Law and Criminology, Law Faculty, University of Leiden, under the bi-national supervision of Hans Nijboer (University of Leiden) and Hans-Heiner Kühne (University of Trier, Germany). For the present publication, legal developments until August 2009 could be taken into account. The study was defended in Leiden on 16th June 2009. It was partially funded by the German Academic Exchange Service (DAAD).

The idea to write a comparative study on anti-terror legislation emerged shortly after the attacks of September 11th. The subsequent legislative activity in Germany was amazing in many ways and made me very curious of what happened in other countries. Thus in 2002 I planned to choose for this doctoral subject should I ever really decide to engage in a PhD. After my clerkship at the International Criminal Court in The Hague, I had become addicted to the international air of the Netherlands and therefore decided that this would be the best place to write a comparative legal study in English language. Also, the Netherlands seemed suitable as a ‘neutral’ territory to study the legislation of the United Kingdom, Spain, Germany and France from an objective external perspective. To this end, Leiden University has proven to be an excellent place with great research facilities in an open, disciplined, and, at the same time, relaxed environment.

The dissertation consists of three parts: a historical overview on selected terrorist movements in the world, an examination of human-rights sensitive anti-terror laws adopted in the United Kingdom, Spain, Germany and France within the last forty years, and a final comparison and analysis of the findings of the previous parts.

I hope both legal practitioners and future legislators will find the present study useful, when applying and passing new counter-terror legislation.

Anna Oehmichen
July 2009

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A thesis in comparative legal studies cannot be completed without the necessary material and technical facilities. I am very grateful for the work space, printing and copying facilities that Leiden University offered. I would like to thank the Department of Criminal Law and Criminology for the support and for integrating me, the buitenlandse promovenda, in their academic agenda:

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Furthermore, I am much indebted to my research school, the Onderzoeksschool Maatschappelijke Veiligheid (*OMV*) as well as to the Meijers' Institute, for the academic education and training throughout the PhD period. In particular, the OMV provided me the social academic network I needed to “keep calm and carry on”. In this context, I would like to thank particularly the girls of the “OMV Seminar Organizing Committee”, for an excellent collaboration and teamwork in organising two PhD Seminars. It was, above all, great fun!

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Equally, if not more important for the completion of this thesis are my friends, with whom I shared many special moments in life; who were there for me not only during the PhD but also before and after; who influenced my thoughts and ideas, my choices and tastes. I am grateful for the many distractions and for making life so interesting!

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LIST OF ABBREVIATIONS

§ (plural: §§)	German sign for sections of legal statutes
A. D.	<i>Anno domini</i> (Medieval Latin: In the year of (the/Our) Lord)
AAA	<i>Alianza Anticomunista Argentina</i> (Argentine Anticommunist Alliance)
AC	Appeal Cases
AD	<i>Action directe</i> (French terrorist group called Direct Action)
AN	<i>Audiencia Nacional</i> (National Audience = Spanish High Court competent for terrorist affairs)
ANAPO	Alianza Nacional Popular (National Popular Alliance, Colombian left-wing political party)
ANC	African National Congress
Art. / Arts.	Article / Articles
Ass.	[<i>In French Part:</i>] <i>Assise</i> (referring to the Assize Court)
ATCSA 2001	(UK) Anti-Terrorism, Crime, and Security Act 2001
ARB	<i>Armée Révolutionnaire Bretonne</i> (Breton Revolutionary Army)
AUC	<i>Autodefensas Unidas de Colombia</i> (Self-Defense Units of Colombia)
AZRG	<i>Ausländerzentralregistergesetz</i> (German Foreigners' Central Registration Act)
BBC	British Broadcasting Corporation
BDA	<i>Bundesvereinigung der Deutschen Arbeitgeberverbände</i> (Federal Association of the German Employer's Union)
BDI	<i>Bundesverband der Deutschen Industrie</i> (Federal Association of the German Industry)
BGBI.	<i>Bundesgesetzblatt</i> (German Official Gazette)
BGH	<i>Bundesgerichtshof</i> (German Federal Court of Justice)
BGHSt	<i>Entscheidungssammlung des Bundesgerichtshofs</i> (Collection of the Decisions of the Federal Court of Justice in Criminal Matters)
BGS	<i>Bundsgrenzschutz</i> (German Federal Border Guard)
BGSG	<i>Bundsgrenzschutzgesetz</i> (German Federal Border Guard Act)
BKA	<i>Bundeskriminalamt</i> (German Federal Office of Criminal Investigation)
BKAG	<i>Bundeskriminalamtsgesetz</i> (German Act of the Federal Office of Criminal Investigation)
BND	<i>Bundesnachrichtendienst</i> (Federal Intelligence Service)
BNDG	<i>Bundesnachrichtendienstgesetz</i> (Federal Intelligence Service Act)
BOE	<i>Buletín Oficial del Estado</i> (Spanish Official State Bulletin)
BR	<i>Brigate Rosse</i> (Italian Red Brigades)
BT-Dr	<i>Bundestag-Drucksachen</i> (German Prints of the <i>Bundestag</i>)
BtMG	<i>Betäubungsmittelgesetz</i> (<i>German Act on Narcotics</i>)

List of Abbreviations

Bull. Crim.	<i>Bulletin des arrêts de la Cour de Cassation, Chambre Criminelle</i> (Paris) (Judgments of the French Supreme Court)
<i>BVerfGE</i>	<i>Gesammelte Entscheidungen des Bundesverfassungsgerichts</i> (Collected Decisions of the German Federal Constitutional Court)
<i>BVerfGG</i>	<i>Bundesverfassungsgerichtsgesetz</i> (German Act Governing the Constitutional Court)
C. Cass.	<i>Cour de Cassation</i> (Court of Cassation = French Court of Appeal)
CA	<i>In UK Context: Court of Appeal</i>
CA / CCAA	<i>In Spanish context: Comunidad Autónoma / Comunidades Autónomas</i> (Spanish Autonomous Community)
CC	<i>Conseil Constitutionnel</i> (French Constitutional Council)
CCC	(Belgium) Communist Combat Cells
CDU, CSU	<i>CDU – Christlich Demokratische Union Deutschlands</i> (German center right political party) <i>CSU – Christlich-Soziale Union in Bayern e.V.</i> (Bavarian Christian Social sister party of the CDU, acting exclusively in Bavaria)
CE	<i>[in Spanish Part:] Constitución Española</i> (Spanish Constitution) <i>[in French Part:] Conseil d’Etat</i> (Council of State)
CEDA	<i>Confederación Española de Derechas Autónomas</i>
cf.	Confer
Ch.	Chapter
CHIS	British Covert Human Intelligence Sources
CIA	Central Intelligence Agency (US-American Secret Service)
CJA (2003)	Criminal Justice Act 2003
Cm.	Command Paper (1986 to date)
CNIL	<i>Commission nationale de l’informatique et des libertés</i> (National Commission on Information and Liberty)
COE	Council of Europe
CP	<i>In the Spanish Part: Código Penal, in the French Part: Code Pénal = Criminal Code</i>
CPIA (1996)	(UK) Criminal Procedure and Investigation Act of 1996
CPP	<i>Code de Procédure Pénale</i> (French Code of Criminal Procedure)
CRISTINA	<i>Centralisation du renseignement intérieur pour la sécurité du territoire et les intérêts nationaux</i>
DEA	US Drug Enforcement Agency
DINA	<i>Dirección de Inteligencia Nacional</i> (Chilean National Directorate of Intelligence)
DKP	<i>Deutsche Kommunistische Partei</i> (German Communist Party)
DNA	Deoxyribonucleic acid
DST	<i>Direction de la surveillance du territoire</i> (French Intelligence Service)
e.g.	<i>Exempli gratia</i> (latin), meaning: for example
EC	European Community
ECHR	European Convention of Human Rights
EComHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
ed.	Edited (by) / editors
EDVIGE	<i>Exploitation documentaire et valorisation de l’information générale</i> (French database)
EE	<i>Euskadiko Eskerra</i> (Basque Nationalist Party)

List of Abbreviations

EGGVG	<i>Einführungsgesetz zum Gerichtsverfassungsgesetz</i> (German Introductory Act to the Judicature Act)
E.H.R.L.R.	European Human Rights Law Review
EOKA	<i>Ethniki Organosis Kypriou Agoniston</i> (National Organisation of Cypriot Fighters)
EPA [year]	(Northern Ireland) Emergency Provisions Act [year]
ERP	<i>Ejército Revolucionario del Pueblo</i> (Argentine People's Revolutionary Army)
et seq(q)	<i>et sequens</i> (Latin), meaning: and the following one or ones
ETA	<i>Euskadi Ta Askatasuna</i> (Basque Separatist Organisation)
etc.	<i>et cetera</i> (Latin), meaning: and other things
EU	European Union
EWHC	England and Wales High Court
FARC	<i>Fuerzas Armadas Revolucionarias de Colombia</i> (Revolutionary Armed Forces of Colombia)
FDP	<i>Freie Demokratische Partei</i> (German Free Democratic Party)
FIDH	<i>Fédération Internationale des Ligues des Droits de l'Homme</i> (International Federation of Human Rights)
FLN	<i>Front de Libération Nationale</i> (Algerian National Liberation Front)
FLNC	<i>Fronte di Liberazione Naziunale di a Corsica</i> (National Liberation Front of Corse)
FRG	Federal Republic of Germany
FSLN	<i>Frente Sandinista de Liberación Nacional</i> (Nicaraguan Sandinista forces)
G 10 Act	German Act on the restriction of Article 10 of the German Constitution, regulating the secrecy of communications (<i>G-10-Gesetz</i>)
GAL	<i>Grupos Antiterroristas de Liberación</i> (Spanish paramilitary Terrorist Liberation Groups)
GAR	<i>Grupos Antiterroristas Rurales</i> (Spanish paramilitary Rural Anti-Terrorist Groups)
Gestapo	<i>Geheime Staatspolizei</i> (German Secret Service under the NAZI regime)
GG	<i>Grundgesetz</i> ("Basic Law" = German Constitution)
GIA	<i>Groupes Islamique Armées</i> (Armed Islamic Groups)
GRAPO	<i>Grupos de Resistencia Antifascista Primero de Octubre</i> (Anti-Fascist Resistance Groups of the first of October; Spanish terrorist group of the extreme left)
GSG9	<i>Grenzschutzgruppe 9</i> (Border Guard Group 9 [German Special Police Unit])
HL	House of Lords
HRA 1998	Human Rights Act 1998
HRC	Human Rights Committee
HRC	UN Human Rights Committee
HRW	Human Rights Watch
i.e.	<i>Id est</i> (Latin), meaning: that is
IBA	Independent Broadcasting Authority
Ibid.	<i>Ibidem</i> (Latin), meaning: "the same place", used when the citation used in the previous footnote is used again
ICCPR	International Covenant on Civil and Political Rights
ID card	Identity card

List of Abbreviations

IICD	Independent International Commission on Decommissioning (in the context of the Northern Ireland Peace Process)
IMSI-Catcher	Device for forcing the transmission of the <i>International Mobile Subscriber Identity</i> (IMSI) and intercepting GSM mobile phone cells
J. A. I.	<i>Justice et Affaires Intérieures</i>
JIT	Joint investigation teams
JORF / JO	<i>Journal Officiel de la République Française</i> (Official Bulletin of the French Republic)
JZ	<i>Juristenzeitung</i> (German legal journal)
KAS	<i>Koordinadora Abertzale Sozialista</i> (Basque, meaning: Patriot Socialist Coordinator; Basque political party, considered as the political wing of ETA)
KKK	Ku-KLux-Klan
KronzG	<i>Kronzeugengesetz</i> (German Leniency Act)
LC	Law Commission
LECrIm	<i>Ley de Enjuiciamiento Criminal</i> (Spanish Code of Criminal Prosecution)
LO	<i>Ley Orgánica</i> (Spanish statutory law)
Loc. cit.	<i>loco citato</i> (latin), meaning “in the place cited”
LOGP	Ley Orgánica General Penitenciaria (Spanish General Penitentiary Law)
LOTIC	<i>Ley Orgánica 2/1979, de 3 de octubre, del Tribunal Constitucional</i> (Spanish Organic Law regulating the Constitutional Court)
LRA	Lord’s Resistance Army
M-19	<i>Movimiento 19 de Abril – M-19</i> (a guerilla movement named after 19 April 1970, the day on which allegedly fraudulent presidential elections took place in which the National Popular Alliance (ANAPO) of former military dictator Gustavo Rojas Pinilla was denied an electoral victory)
MAD	<i>Militärischer Abschirmdienst</i> (German Military Counterintelligence Service)
MADG	<i>Gesetz über den Militärischen Abschirmdienst</i> (German Military Counterintelligence Service Act)
MAS	<i>Muerte a Secuestradores</i> (“Death to Kidnappers”, Columbian Anti-Leftist Death Squad)
MIPT	Memorial Institute for the Prevention of Terrorism
MK	<i>Umkhonto we Sizwe</i> (the Spear of the Nation, military wing of the African National Congress)
MP	Member of Parliament (in the UK)
MUKUB	<i>Makhtab Ul Khedamat Ul Mujahidin Ul Arab</i> (Office of the Services of Arabian God fighters)
NATO	North Atlantic Treaty Organization
NAZI	<i>Nationalsozialistisch</i> (adjective for National Socialism under Hitler)
NI	Northern Ireland
NJCM	Nederlands Juristen Comité voor de Mensenrechten (Dutch Lawyer’s Committee for Human Rights)
NJW	<i>Neue Juristische Wochenschrift</i> [German Legal Journal]
NKVD	<i>Narodniy komissariat vnutrennikh del</i> (Russian), i.e. the People’s Commissariat for Internal Affairs. It was the leading secret police organization of the Soviet Union during the Stalinist era.

List of Abbreviations

No.	Number
<i>NVwZ</i>	Neue Zeitschrift für Verwaltungsrecht (German Journal for Administrative Law)
OJ	Official Journal of the European Union
<i>Ord. Réf.</i>	<i>Ordre de Référence</i>
ÖTV	<i>Gewerkschaft öffentliche Dienste, Transport und Verkehr</i> (German Trade Union for Public Services, Transport and Traffic)
p. / pp.	Page / pages
PACE (1984)	Police and Criminal Evidence Act 1984
PFLP	Popular Front for the Liberation of Palestine
PIRA / IRA	(Provisional) Republican Army
PKK	<i>Partiya Karkerên Kurdistan</i> (Kurdistan Workers' Party)
PLA	Palestine Liberation Army
PLF	Popular Liberation Forces
PLO	Palestine Liberation Organisation
PNV	<i>Partido Nacional Vasco</i> or National Basque Party
POAC	Proscribed Organisation Appeal Commission
PP	<i>Partido Popular</i> (Spanish conservative party)
PSOE	<i>Partido Socialista Obrero Español</i> (Spanish Socialist Worker's Party)
PTA [year]	Prevention of Terrorism (Temporary Provisions) Act [year]
R [in case citations in the UK]	<i>Regina</i> (Latin, referring to the Queen)
RAF	<i>Rote Armee Fraktion</i> (German terrorist group called Red Army Faction)
<i>Rev. Sc. Crim.</i>	<i>Revue de Science Criminelle et Droit Pénal Comparé</i>
<i>RG</i>	<i>renseignements généraux</i> (French Intelligence Service)
RIPA (2000)	Regulation of Investigatory Powers Act 2000
RP	<i>Reglamento Penitenciario</i> (Spanish Prison Rules)
RUC	Royal Ulster Constabulary
S. / ss.	Section / sections
S.A.S.	Special Air Service
SA	<i>Sturmabteilung</i> (German paramilitary Organisation)
Sch.	Schedule [of a legislative Act]
<i>SCLAT</i>	<i>Service central de lutte anti-terroriste</i> (Anti-Terrorism Fight Central Service = Division of the Paris Prosecution Service specialised on Counter-Terrorism)
SIAC	Special Immigration Appeal Commission (UK)
SIS	Schengen Information System
S.L.	<i>Sociedad Limitada</i> (Limited Company)
SOCA	Serious Organised Crime Agency (UK)
SOCPA (2005)	Serious Organised Crime and Police Act 2005
SS	<i>Schutzstaffel</i> (German paramilitary organisation created to protect the Party of the National Socialists (NAZI))
STC	<i>Sentencia del Tribunal Constitucional</i> (Judgment of the Spanish Constitutional Court)
<i>StGB</i>	<i>Strafgesetzbuch</i> (German Criminal Code)
<i>stop</i>	<i>Strafprozessordnung</i> (German Code of Criminal Procedure)
STS	<i>Sentencia del Tribunal Supremo</i> (Judgment of the Spanish Supreme Court)
<i>StVollzG</i>	<i>Strafvollzugsgesetz</i> (German Penitentiary Act)

List of Abbreviations

TA 2000 / 2006	Terrorist Act 2000 / 2006
The 1988 Order	Criminal Evidence (Northern Ireland) Order 1988
<i>TKG</i>	<i>Telekommunikationsgesetz</i> (German Act on Telecommunications)
TwH	<i>Takfir wa-l-Hijra</i> (Fanatic Muslim Organisation)
UDA	Ulster Defence Association
UK	United Kingdom (comprising England, Wales, Scotland, and Northern Ireland)
UMP party	<i>Union pour un Mouvement Populaire</i> (Union for a Popular Party = French centre-right party)
UNED	<i>Universidad Nacional de Educación a Distancia</i> (Spanish National University for Education on Distance)
UN	United Nations
UNSW Law Journal	University of New South Wales Law Journal
US	United States
USSR	Union of Soviet Socialist Republics (a constitutionally socialist state in Eurasia existing from 1922 to 1991)
UVF	Ulster Volunteer Force
V	Versus
<i>VereinsG</i>	<i>Vereinsgesetz</i> (German Act Governing Private Associations)
Vol.	Volume
WODC	<i>Wetenschappelijk onderzoeks- en documentatiecentrum</i> (Dutch Research and Documentation Centre)
YMCA	Young Men's Christian Association

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PART 1

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CHAPTER 1

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