



Analysis

When dissent becomes subversion

Liz Fekete

Europe's anti-terror regimen is reshaping European society and has led to a distorted and discriminatory approach to criminal justice. Those who speak out against the erosion of democratic standards and the unfair treatment of Muslims are increasingly being targeted and penalised by the state.

In December 2001, the EU broadened its definition of terrorism to include not just extreme violence committed for political ends but any action, either 'active' or 'passive' which was designed to 'seriously damage a country or international organisation.' Following the introduction of this vague definition, various European governments introduced new anti-terrorist laws, or amended existing public order, criminal or aliens legislation, with the UK government even going so far as to introduce a 'state of emergency' arguing that the UK faced a public emergency so extreme that the life of the nation was threatened. (That state of emergency is ongoing to this day). The freezing of assets of individuals, entities and charities whose names appear on Proscribed Organisations Lists; preventive forms of detention without trial, as well as house arrest and restrictive orders that limit freedom of movement; the increasing use in courts of secret evidence - and even the creation of Special Courts with state-vetted special advocates - all these elements, despite the intervention of lawyers and judges, are now present within Europe's justice systems.

Few Europeans, beyond lawyers, civil libertarians and those who directly feel the full force of national security measures, seem to realise just how far European society is being radically reshaped by national security laws. But some voices are challenging the passivity of civil society, calling on us all to open our eyes to laws and administrative measures that undermine democracy. These voices also ask us to address racism. The shadowy world of Europe's anti-terror regimen has led to a distorted and discriminatory approach to criminal justice. Could our failure to acknowledge this trend be due the fact that it is, by and large, Muslims that are caught up within this parallel justice system? But as opposition to anti-terrorist laws begins to coalesce around these themes, the danger is that the State responds through clumsy attempts to censor its critics in ways that suggest that we are moving from open societies to closed ones.

One case that exemplified the clampdown on dissent was taken up by the Comité pour la liberté d'expression et d'association in Belgium. It involved the arbitrary dismissal of Luk Vervaeke from his position as a language teacher at Saint Gilles prison in Brussels, without the right to be heard, or even to hear the accusations against him. The closing down of dissent on the grounds of national security is something that is normally associated with totalitarianism. In totalitarian systems those

who attempt to question parallel and punitive systems, or the political culture which condones torture or cruel or degrading treatment as a necessary evil in a greater war, find themselves caught up in the shadowy Kafkaesque world that they sought to expose. From exposing cases of injustice, they become another case. And in precisely this way Luk Vervaeke found himself another case, caught up with the Kafkaesque world he was doing battle with.

In fact the work of the Comité pour la liberté d'expression et d'association, which has also taken up the cases of Ali Aarrass and Nizar Trabelsi, is not unique. Throughout Europe, there is growing opposition to the erosion of democratic standards that have arisen out of the anti-terror laws. Some of this opposition comes from people in high places, and such eminent persons cannot be silenced through citing national security concerns. So that when the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, expressed concern that European governments are avoiding the judicial oversight of the courts through using administrative law and sanctions to circumvent the fundamental safeguards offered by criminal law, nobody considers barring him from his office and taking away his livelihood. And although members of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights may be sidelined, they have nothing to fear when they warn governments of the corrosive effect of open-ended departures from ordinary procedures and of the dangers of special measures, introduced to deal with a temporary crisis, becoming permanent.

The voices of other less privileged critics of the anti-terrorist laws - ordinary citizens like you and me - can be more easily dismissed. Dissent can be reclassified as subversion and civil society actors derided as Islamo-gauchistes or terrorist sympathisers. Nevertheless, opposition to anti-terrorist laws is growing as can be seen by a number of campaigns, most notably in the UK, Belgium and Sweden. In the UK the Special Immigration Appeals Court (SIAC) with its special advocates (lawyers prohibited from communicating with those they represent) has become the model for other States, such as Denmark and Norway, to follow. Here, the Coalition Against Secret Evidence (CASE) has been formed to campaign for an end to the use of secret evidence and special advocates in UK courts. Alongside groups like CagePrisoners, which has challenged the UK government's complicity in the torture of UK citizens and residents held at Guantanamo Bay, and subsequently in Pakistan, CASE is concerned that the growing use of secret evidence is linked to the UK government's increasing willingness to place people in administrative detention (on the basis of torture evidence), and eventually deport them (on the basis of worthless diplomatic assurances) to countries where they risk torture and/or the death penalty. And CASE, as well as the civil liberties organisation JUSTICE, has documented the expanding use of secret evidence to show that it is now used in a wide range of cases including deportation hearings, control order proceedings, parole board cases, asset-freezing applications and even at inquests and employment tribunals.

Civil society groups in the UK are not the only ones concerned at the increased use of secret evidence, or the special prison regimes that are growing up where terrorist suspects are not afforded the same rights as other prisoners. The European Centre for Constitutional and Human Rights (ECCHR) is concerned that through administrative measures hundreds of individuals, and some charities (particularly those fighting for Palestinian causes) are blacklisted (which includes having all your assets frozen) as supporters of terrorism. The decisions are impossible to challenge other than through a lengthy journey to the European Court of Human Rights. In Sweden, the Somali community have campaigned since 2001 to lift the UN Security Council banning order against Barakat Enterprise (part of the 'Hawala' banking system used by the Somali diaspora to transfer remittances back internationally) and the freezing of assets of the so-called 'Somali Three', Abdulaziz

Ali, Abdirisak Aden and Garad Jama. And in September 2008, the European Court of Justice, in a landmark ruling, annulled European Council regulations freezing the assets of the Al Barakaat banking network. The court ruled that the freezing of funds of suspected terrorists could only be justified if affected parties are able to challenge the validity of the freezing order and the reasons for it. In relation to the Somali Three, the European Court of Justice concluded that 'the rights of the defence, in particular the right to be heard, and the right to effective judicial review of those rights' had not been respected.

All these strands, then, are woven into a patchwork of opposition to anti-terrorist laws that erode due process. But opposition in the UK also involves the simple act of establishing human contact with Muslim men and their families who have never been formally accused of terrorism but find themselves subject to a control order (a form of house arrest that restricts a suspect's freedom of movement, freedom of association and ability to access financial services). Muslim men subjected to a control order, as well as their wives and their children, literally find themselves overnight friendless in a hostile world, as few individuals want to be associated with the family of a man suspected, though never formally accused, of terrorism. But increasingly, women from the charity Helping Households Under Great Distress (HHUGS) are refusing to accept the State's attempts to impose a cordone-sanitaire around such men and their families. And documentary film-makers Fred Grace and Gemma Atkinson, also attempted to break the cordon sanitaire. Their company, Fat Rat Films, was threatened with contempt of court proceedings after it made a film, broadcast on the flagship BBC TV news programme Newsnight, about the Jordanian, Hussain Saleh Hussain Alsamamara who is subject to control order style bail conditions. The civil rights organisation Liberty took up the case, stating that the 'war on terror has been synonymous with sweeping up the innocent with the guilty and undermining the values that democrats hold dear' adding that filmmakers should not be penalised simply for doing their job in a free society. The threat of legal proceedings against the film-makers was eventually withdrawn.

I suspect that Luk Vervaeet, and others, are being penalised in much the same way as the British State sought (unsuccessfully in this case) to penalise Fred and Gemma. What cannot be tolerated by the authorities - and what is increasingly demonised as an act of subversion - is a spirit of inquiry, or a sense of human solidarity, that leads members of civil society to break the cordon sanitaire that surrounds Muslims and reject the war on terror classifications of 'us and them', 'civilised and barbarian'. We know that some individuals have been placed under intense surveillance, and had their private lives invaded, because they have spoken up for the dehumanised and excluded. This includes Anni Lanz, a migrants' rights activist in Switzerland who in September 2008 asked to be allowed to see the personal dossier that had been compiled on her activities by the Intelligence and Prevention Service (SAP). (Switzerland, like Belgium, creates a personal file on all those who work in public service.) When the dossier was finally released in June 2009, Anni Lanz found that several pages had been deleted. The State justified this on the grounds that as certain facts were no longer deemed relevant they had been erased. From the information she received in June 2009 she was able to ascertain that the Swiss foreigners police had requested SAP to monitor her activities on the grounds that her support for Algerian refugees may have brought her into contact with 'persons possibly involved in extremist radical Islamist groups'. Another individual who found himself subject to intensive State scrutiny was Dr. Rolf Gössner, the vice president of the International Human Rights League in Germany and a deputy member of the Bremen state court of justice. Dr. Gössner, a lawyer, lecturer and parliamentary advisor, has taken the German State to court for unconstitutional activities after he discovered that he had been placed under intensive surveillance by the Federal

Office for the Protection of the Constitution (OPC). The state justifies its monitoring of Dr. Gössner, which dates back at least till 1970, on the grounds of his contact, as a 'prominent jurist' with 'extremist left-wing organisations'. Following legal action, Dr. Gössner has now won access to some information in the personal dossier the ODC compiled against him which reveals that a large number of government agencies, other offices and individuals had provided information on Dr. Gössner's activities, including lectures, to the OPC. As Dr. Gössner concludes 'In personal files and in written documents, the OPC, from its selective and ideologically motivated perspective, created a picture of my life that was torn from its contemporary context... It wasn't what I wrote or said that was decisive for the OPC, but the political milieu in which it took place, imputing to me a sort of 'guilt by association'.

Luk Vervae't's case demonstrates yet another way in which the parallel world of national security is fortifying the State's sense of its privilege and power. In this day and age, where fair treatment at work has been established as a right of all workers, the Belgian state's decision to deprive Luk Vervae't of his livelihood makes a mockery of employment protection law. But in a landmark judgment issued on 27 January 2010, the Brussels Appeal Court ruled that Vervae't's right to fair treatment could not be overridden by 'reasons of State'. Reversing the decision of the lower court, the judges said that rights which were 'indispensable for the exercise of his livelihood' included the right to be told the reasons for the decision to bar him, and the right to a hearing to answer the allegations. The court affirmed that Vervae't's conduct in performing his teaching duties had been irreproachable, and that the decision of the Ministry of Justice to deny him access to prisons was arbitrary and unreasoned. 'The rule of law does not stop at the prison gates', it said. But despite such strong words, the legal battle drags on – taking unexpected twists and turns – and still with no end in sight.

When we first reported on Luk Vervae't's case, the IRR's European research team argued that it seemed as though those who campaign against anti-terror laws and racism could find themselves hounded out of public service, in much the same way as Communists were dismissed in the US in the McCarthyite period, as well as in Germany under the Berufsverbot decree which banned Communists from employment in government service. With the Islam Scare replacing the Red Scare nothing has happened since that has led us to change our minds.

Coda

At the end of June 2011, and after a two year battle through the courts, the Belgian Constitutional Court revoked the work ban against Luk Vervae't, evoking a 1965 royal decree which required authorities to give 'serious reasons' justifying the imposition of any administrative measure. The judgment emphasised that dissident opinions were not enough to justify denying a citizen his right to exercise his livelihood in a prison.

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A version of this article first appeared in French in *L'Affaire Luk Vervae't: ecits sur un interdit professionnel*, a special edition of the journal *Contradictions*. In addition to providing background material on prison conditions and key anti-terrorist cases in Belgium, it has contributions from, amongst others, lawyers Dounia Alamat and Christophe Marchand, Green Party deputy, Zoë Genot, Dr Sabine Schiffer, Eric Hulsens and Raymond Dombrecht. To order a copy (outside Belgium 16

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