



# ELDH European Association of Lawyers for Democracy & World Human Rights

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IN 16 COUNTRIES

EJDM Europäische Vereinigung von Juristinnen & Juristen für Demokratie und Menschenrechte in der Welt  
EJDH Asociación Europea de los Juristas por la Democracia y los Derechos Humanos en el Mundo  
EJDH Association Européenne des Juristes pour la Démocratie & les Droits de l'Homme  
EGDU Associazione Europea delle Giuriste e dei Giuristi per la Democrazia e i diritti dell'Uomo nel Mondo

Equality Social Rights Democracy Privacy  
No Racism Peace No War Civil Rights  
Self-Determination of Peoples No Torture  
Human Rights Rights of Migrants

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## ELDH: For the abolition of the UN and EU Terrorist Lists

For more than 10 years terrorist lists have been established first by the United Nations afterwards by the European Union and also by some states under the proclaimed objective of combatting the financing of terrorism. In 2010 the anti terrorism coordinator of the European Union, Gilles des Kerchove, acknowledged that the listing is carried out rather for political reasons (for example to assist relations with countries like Colombia, Israel, Philippines and Turkey) than for the freezing of funds and other financial resources used for terrorism.

There are almost 400 individuals and over 90 organizations on the lists, of which some have been convicted and most of them are only suspected of supporting terrorism. The sanctions imposed on them comprise the freezing of funds and other financial resources, and the denial of the right to enter a country. In the past those concerned learned for the first time about the listing when sanctions were imposed on them.

One of the first terrorist lists was the Al-Qaida and Taliban list, which was established by the UN Security Council Sanctions Committee pursuant to UNSC resolution 1267. This list is updated regularly and was adopted by the EU. In June 2011 it was split into two separate lists.

After the assaults of 11<sup>th</sup> September 2001 the UN Security Council by its resolution 1373 exercised its mandatory powers and ordered governments to adopt the measures set out in the resolution, and to deliver the necessary information for the updating of the UN terrorist list. Based on this demand the EU established its own terrorist list, together with a sanctions directive. Among the listed were Basque individuals and organizations, the Colombian FARC, Hamas, the Kurdish PKK and so called successor organizations, the Philippine NPLA, the Tamil Tigers and the Iranian Peoples Mujahedin (PMOI).

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From the beginning it was doubted whether the terrorists lists would comply with the rule of law, in particular for the following reasons.

- The reasons for the listing very often have their origin in information gathered by different secret services, and are not revealed to the persons affected.
- The notion and definition of terrorism is of such a general nature, that it also includes liberation movements and independence movements, which may be listed simply on the demand of the governments that oppress and fight against such movements.
- There is no procedure that would allow the listed individuals and organizations to defend themselves against the listing and its consequences, in accordance with the rule of law.
- The duration of the procedure for delisting after an unlawful listing takes an unreasonably long time.
- Listed individuals suffer severe economic and social consequences. For many years they are prevented from leaving their country of residence. More than that, the listing has far reaching consequences concerning their refugee status, their right of residence, and their right of citizenship.
- Even when a decision of the UN SC Al-Qaida and Taliban Sanctions Committee, or a court decision results in delisting, the victims of unlawful listing are not compensated for the heavy losses they may have suffered over the years.

Over the years, many Non Governmental Organizations have very sharply criticised the terrorist lists and the listing procedure.

Also the Court of Justice of the European Union has in several decisions declared a listing unlawful, in particular due to the violation of the principle of a fair trial and the right to be heard by a competent, independent and impartial tribunal.

Dick Marty, a Swiss parliamentarian in the Parliamentary Assembly of the Council of Europe and former chairman of the Legal Affairs and Human Rights Committee of the Council of Europe has described the listing regime as a “civil death penalty”, due to the economic consequences and restrictions of the freedom of movement.

Also the UN Special Rapporteur on human rights and counter-terrorism, Martin Scheinin, is of the opinion that the challenge to legality posed by the listing regime is no longer tolerable, and that a permanent global terrorist list goes beyond the powers of the UN Security Council because the requirements of Art. 39 UN Charter do not exist any more (in his Foreword to the report “Blacklisted: Targeted sanctions, preemptive security and fundamental rights”, ECCHR, 2010).

In 2006 the Norwegian Government decided to withdraw all support from the EU terror list regime implementing Resolution 1373, in order not to endanger its role in a number of important peace negotiations. In 2010 the Swiss Parliament prompted the Swiss Government to opt-out of the implementation of the UNSC resolution 1267.

As a consequence of the sharp criticism by NGOs, some Governments and by the European Court of Justice, both the UN and the EU have introduced certain improvements in the procedure of the listing and a possible delisting. The UN has established an ombudsperson.

The EU supplies – only afterwards - the listed persons or organization at least with some general information about the reasons for listing.

However, the severe concerns mentioned above concerning the UN and EU terrorist lists EU and the listing procedure have not disappeared as the result of these amendments. The main defects of the lists and the procedure have not been abolished.

Therefore ELDH is convinced that only the complete abolition of the terrorist lists of the UN and the EU will answer the above mentioned concerns.

ELDH demands of all Member states of the EU to abolish the EU Terrorist Lists, to stop any implementation of the UN listing regime, to advocate within the UN for the abolition of the UN Terrorist List.

As Governments alone can verify whether the activities of individual or organizations are illegal, governments must on the basis of the rule of law take the necessary action to safeguard the integrity of national administrative and criminal law.