

Combating Terrorism and the Rule of Law

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I. Introduction

- 7 April 2015 a man was arrested at Zurich Airport.
- He was about to board a plane to Istanbul.
- Suspicion: Join the Islamic State.



I. Introduction

- Conviction: Violation Islamic State Act.
- 18 months imprisonment (suspended).



I. Introduction

- Preparation, Internet-searches
- «Terrorist attack»
- «Al-Qaida»
- «Islamic State»
- Flight to Istanbul



Overview

- I. Introduction
- II. Fighting terrorism in Switzerland today
 - a. Substantive Criminal Law
 - b. Procedural Law
 - c. Intelligence Act
- III. Fighting terrorism in Switzerland tomorrow
- IV. Conclusion

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II. Terrorism in Switzerland ?

- 1970s: Terror years
- 21 February 1970: Swissair plane 330 to Tel Aviv crashed.
- A bomb had exploded on board.
- 39 passengers, 9 crew members killed.
- The Popular Front for the Liberation of Palestine claimed responsibility.



PFLP - Popular Front for the Liberation of Palestine;
George Habash

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Substantive Criminal Law

- Preparatory Acts
(Art. 260^{bis})
- Criminal Organisation
(Art. 260^{ter})
- Financing Terrorism
(Art. 260^{quinquies})
- Unconstitutional
Organisations
(Art. 275^{ter})
- Confiscation (Art. 72)
- Al-Qaida/IS-Act



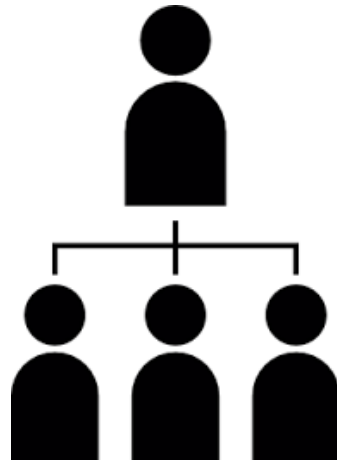
Substantive Criminal Law

Common features:

- Not aimed at terrorist act itself (Murder, etc.)
- Extension criminal law
- Intervention *before* attack occurs.
- Aimed at terrorists *and* supporters



Criminal vs. terrorist organisations



Criminal
Organisation



Network

Substantive Criminal Law

Convictions 2016:

- Preparatory Acts: 14
- Crim. Organisation: 13
- Financing Terrorism: 0
- Unconstitutional Organisations: 0



Substantive Criminal Law

Purpose of substantive
criminal law measures?

Stepping stone for:

- Procedural measures
- International legal assistance.



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Procedural Law

Ordinary measures:

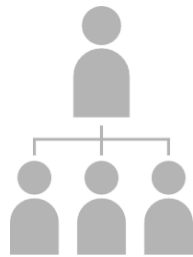
- Detention on remand
- Search of premises
- Seizure of assets



Covert Surveillance:

- Observation
- Wiretapping
- Undercover Investigation
- Government Malware

«Early Intervention»



Terrorist

«Early Intervention»

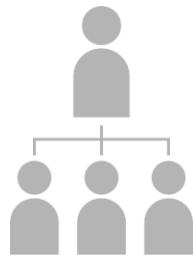


Suspicion



Prevention
(Policing)

Repression
(Criminal Law/Procedure)



Terrorist



«Early Intervention»

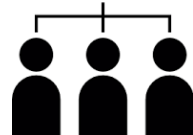


Suspicion



Prevention
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Repression
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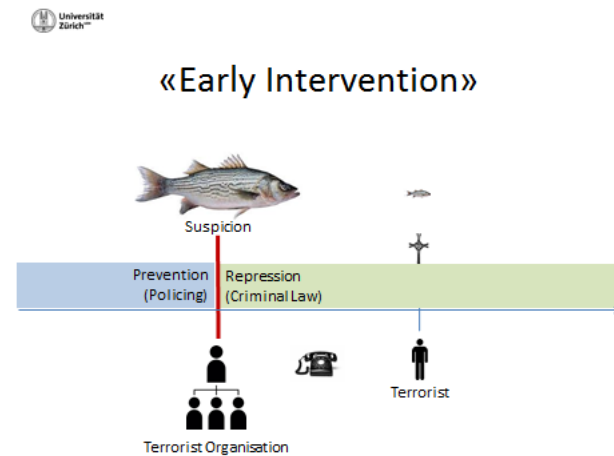
Terrorist Organisation



Terrorist

«Early Intervention»

- Substantive Criminal Law as a stepping stone for early procedural measures.
- Pro: Early intervention
- Con: Uncontrollable widening of criminal law.



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Intelligence Act

- Information Gathering
- Threat assessment
- Independent of criminal investigation
- Sources: domestic and foreign agencies



Markus Seiler
Head of Swiss Intelligence Agency

Intelligence Act

Intelligence Service Act:
1st September 2017:

- Monitor phones & mail accounts
- Systems for tracking people
- Wiretapping private rooms
- Governmental malware



Intelligence Act

- Intelligence Service does not give away its sources
- Tipping-off to prosecutors
- Initial evidence cannot be challenged in court (ECHR 6 III d).



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III. Terrorism in Switzerland tomorrow

Several new acts in preparation:

- Doubling of sentences for criminal organisations
- Jihad Travelling as a separate offence



Federal Parliament, Bern

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IV. Conclusion

1. Don't trade freedom for safety.
2. Prevention through substantive criminal law.
3. Nothing to hide – nothing to fear?



Federal Parliament, Bern

I. Introduction

Nothing to hide?



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