

# **CoE PA RECOMMENDATION 1713 (2005)**

*Parliamentary Assembly of the Council of Europe*

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### Democratic Oversight of the Security Sector in Member States

1. The Parliamentary Assembly notes that in recent years, as a result of the rise in terrorism and crime, European societies have felt an increasing need for security.
2. The bodies and forces responsible for ensuring our security have a variety of roles and tasks. At domestic level, it is their job to preserve law and order, protect the security of the State, persons and property, safeguard democratic institutions and procedures and ensure the peaceful coexistence of different sections of the community.
3. At external level, in addition to its national defence commitments, the security sector must be co-ordinated through international bilateral or multilateral framework agreements. Security forces may be involved in concerted or joint action under collective defence arrangements and/or international peacekeeping missions intended to prevent or settle conflicts, or assist with post-conflict reconstruction.
4. Some of today's security threats, such as international organised crime, international terrorism and arms proliferation, increasingly affect both internal and external security and therefore require responses by the services of the security sector, preferably co-ordinated and overseen at European level. Each of these tasks must be reflected in the assignments and duties of the various components of a country's security system.
5. It is essential to strike the right balance between our concept of freedom and our need for security. This raises the question, however, of the extent to which guarantees of security in a society may entail restrictions on fundamental freedoms.
6. Government measures must be both lawful and legitimate. Consequently, some form of democratic supervision is required, the essence of which must be carried out by parliament. The judiciary, in turn, plays a crucial role because it can punish any misuse of exceptional measures in which there may be a risk of human rights violations. International organisations also play an increasing role in guiding policies and harmonising rules.
7. Democratic supervision makes use of a series of specific tools intended to ensure the political accountability and transparency of the security sector. These instruments include constitutional principles, legal rules and institutional and logistical provisions, as well as more general activities aimed at fostering good relations

Assembly debate on 23 June 2005 (23rd Sitting) (see [Doc. 10567](#), report of the Political Affairs Committee, rapporteur: Mr de Puig). *Text adopted by the Assembly* on 23 June 2005 (23rd Sitting). Available at: <http://assembly.coe.int/Documents/AdoptedText/ta05/EREC1713.htm>

between the various parts of the security sector on the one hand, and the political powers (the executive, legislative and judiciary) and representatives of civil society (NGOs, the media, political parties, etc.) on the other.

8. The Council of Europe is concerned about certain practices that have been adopted, particularly in the fight against terrorism, such as the indefinite imprisonment of foreign nationals on no precise charge and without access to an independent tribunal, degrading treatment during interrogations, the interception of private communications without subsequently informing those concerned, extradition to countries likely to apply the death penalty or the use of torture, and detention and assaults on the grounds of political or religious activism, which are contrary to the European Convention on Human Rights (ETS No. 5) and the protocols thereto, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and the Framework Decision of the Council of the European Union.
9. The need for security often leads governments to adopt exceptional measures. These must be truly exceptional as no state has the right to disregard the principle of the rule of law, even in extreme situations. At all events, there must be statutory guarantees preventing any misuse of exceptional measures.
10. The Parliamentary Assembly of the Council of Europe, conscious of the fact that the proper functioning of democracy and respect for human rights are the Council of Europe's main concern, recommends that the Committee of Ministers prepare and adopt guidelines for governments setting out the political rules, standards and practical approaches required to apply the principle of democratic supervision of the security sector in member states, drawing on the following principles.

#### **i. Intelligence services**

- a. The functioning of these services must be based on clear and appropriate legislation supervised by the courts.
- b. Each parliament should have an appropriately functioning specialised committee. Supervision of the intelligence services' "remits" and budgets is a minimum prerequisite.
- c. Conditions for the use of exceptional measures by these services must be laid down by the law in precise limits of time.
- d. Under no circumstances should the intelligence services be politicised as they must be able to report to policy makers in an objective, impartial and professional manner. Any restrictions imposed on the civil and political rights of security personnel must be prescribed by the law.

- e. The Committee of Ministers of the Council of Europe is called upon to adopt a European code of intelligence ethics (in the same fashion as the European Code of Police Ethics, which was adopted by the Council of Europe).
- f. The delicate balance between confidentiality and accountability can be managed to a certain extent through the principle of deferred transparency, that is, by de-classifying confidential material after a period of time prescribed by law.
- g. Lastly, parliament must be kept regularly informed about changes which could affect the general intelligence policy.

## **ii. Police**

- a. In each state a specific legal framework for the functioning and supervision of a democratic police force must be set up. The credibility of the police will depend on its professionalism and the extent to which it operates in accordance with democratic rules and the utmost respect for human rights.
- b. Given their different mandate and competences, it is important that legislation distinguishes between security and intelligence services on the one hand, and law enforcement agencies on the other.
- c. The police must remain neutral and not be subject to any political influence. Transparency is also important if the public is to have confidence in the police and co-operate with them.
- d. Police officers must be given training covering humanitarian principles, constitutional safeguards and standards deriving from codes of ethics laid down by international organisations such as the United Nations, the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE).
- e. Legislation in this area must take account of developments in modern technologies and cybercrime and be updated regularly.
- f. Police action against crime must show due regard for the principle of proportionality, particularly during public demonstrations where there is a significant risk of matters getting out of hand.

## **iii. Border management**

- a. As a result of the rise in crime and terrorism, this sector must be subject to heightened democratic supervision and enhanced international co-operation. Clear legislation is needed in this respect to prevent corruption, discrimination and excessive use of force.
- b. The principle of the free movement of persons must not be subject to unwarranted restrictions. However, our borders must be protected from economic

crime, trafficking in human beings, drug trafficking and arms smuggling. Where state authorities consider that there is a threat to law and order and security and consequently apply the border protection clause, such measures should not be applied excessively or to groups or individuals whose presence is undesirable for ideological or political reasons only.

- c. Border security must be provided by a centralised, hierarchical system with clearly defined rules. Training and working and living conditions for border guards must be organised in such a way as to protect them from the pressures of organised crime and corruption.

#### **iv. Defence**

- a. National security is the armed forces' main duty. This essential function must not be diluted by assigning the armed forces auxiliary tasks, save in exceptional circumstances.
- b. The increasing importance attached to international co-operation and peace-keeping missions abroad must not be allowed to have an adverse effect on the role of parliament in the decision-making process. Democratic legitimacy must take precedence over confidentiality.
- c. At European level, it is essential to avoid any step backwards in relation to the democratic achievements of the Western European Union Assembly by introducing a system of collective consultation between national parliaments on security and defence issues.
- d. In this connection, national parliaments should continue to have an interparliamentary body to which the relevant European executive body would report and with which it would hold regular institutional discussions on all aspects of European security and defence.
- e. Deployments of troops abroad should be in accordance with the United Nations Charter, international law and international humanitarian law. The conduct of the troops should be subject to the jurisdiction of the International Criminal Court in The Hague.

#### **v. National security and democracy**

- a. In general, due regard must be had to the hierarchy of values in a democratic society when deciding on national security policies. It is essential that this sector, which traditionally lacks transparency, be overseen by democratic institutions and subject to democratic procedures.
- b. Exceptional measures in any field must be supervised by parliaments and must not seriously hamper the exercise of fundamental constitutional rights.

- c. Member states should ensure that there is a reasonable number of women in the various security sectors at all levels, including ministries of defence and national delegations in international security bodies.
- d. Freedom of the press and the audiovisual media must be preserved in law and in practice, and restrictions imposed in cases of absolute necessity must not entail any infringement of the international principles of fundamental rights.
- e. Private companies dealing with intelligence and security affairs should be regulated by law, and specific oversight systems should be put in place, preferably at European level. Such regulations should include provisions on parliamentary oversight, monitoring mechanisms, licensing provisions and means to establish minimal requirements for the functioning of those private companies.