Counter-terrorist financing and its impact on the right to a fair trial: A comparative study of the U.S., U.K. and Canada

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Abstract

With the steep growth in terrorism over the past few years, it is now more essential than ever to have effective counter terrorism measures in place. One of those measures is the prevention and detection of terrorist financing. It is believed that by limiting terrorist’s access to funds, terrorist attacks can be prevented and terrorist groups can be dismantled. We have witnessed a surfeit of international and national Counter Terrorist Finance (CTF) provisions since September 2001. Notwithstanding the importance of such measures, their negative impact on the right to a fair trial is clear. Terrorist suspects have become the subjects of powerful sanctions, which designate them a terrorist and freeze their assets. This study compares the CTF approach of the U.S, U.K. and Canada and examines how their CTF measures impact upon a suspect and may potentially violate their right to a fair trial. The comparable CTF sanctions are enforced in the three case studies for a lengthy amount of time and in some instances indefinitely. Crucially, at this point no terrorist conviction or indeed charge has been laid against the suspect. The suspect is not afforded the opportunity to hear the case against them and to challenge evidence. Indeed many suspects have been the subject of a terrorist designation and asset freeze for a number of years and are never convicted or even charged with a terrorist related offence. With this in mind, this thesis argues that the punitive nature of these sanctions suggests that CTF sanctions are akin to being convicted of a criminal offence and as such they are wholly lacking in procedural protection.

On this basis, this thesis suggests that fundamental human rights such as the right to a fair trial should be permitted to apply in cases where CTF sanctions have been enforced. Currently, the CTF regime in the U.S, U.K. and Canada does not offer adequate procedural fairness and by underrating the importance of this human right, the CTF regime has been left open to legal challenges regarding its legitimacy.

The research concludes on the notion that the right to a fair trial should be enforceable. However as CTF measures are administrative sanctions, it is unlikely that the properties of the right to fair trial will be imposed. On this basis, recommendations are made for amendments to the CTF regimes in the U.S, U.K. and Canada, which offer improved procedural protection to suspects and ensure that action taken to designate and freeze assets is considered lawful.