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The European Commission
Wetstraat 200
1049 Brussels
Belgium

6/08/2009

Complaint with respect to infringements of Community Law

Dear Madam, Sir,

We have the honor of introducing ourselves as legal counsels for Mr. Eyal Katorza, a European citizen of French nationality currently residing in 43 David Elazar Street, Sderot 87043, Israel.

1. Our client wishes to lodge a complaint with the European Commission through the Secretariat-General of the Commission for the following infringements of Community Law :
 - a. Article 3.2 of the European Treaty provides that the European Union shall *offer its citizens an area of freedom, security and justice* without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
 - b. Article 3 5 of the same treaty states that in its relations with the wider world, the European Union shall uphold and promote its values and *interests and contribute to the protection of its citizens*. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
2. These rights are worked out in detail in article 20 of the Treaty establishing the European Union and in article 46 of the **Charter of Fundamental Rights of the European Union** stating that EVERY citizen of the European Union shall, in the

territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

3. It thus becomes clear that the European Union owes its Citizens protection and security whether they reside in the European Union or abroad in a third state.
4. More specifically the European Union needs to protect its citizens against terrorism, as is confirmed by a note of 12 December 2005 from the Counter-Terrorism Coordinator to the European Council on the Implementation of the Action Plan to Combat Terrorism :
 - a. "To prevent and combat terrorism is one of the most important responsibilities of the Member States and of the European Union. In March 2004 the European Council adopted a Declaration on combating terrorism, setting out priority actions for the European Union. The Heads of State or Government also pledged that the Member States would act jointly in a spirit of solidarity if one of them is the victim of a terrorist attack. In June 2004 the European Council adopted a detailed Action Plan against terrorism.
In the fight against terrorism and other forms of major crime frequent and effective use is being made of the European Arrest Warrant. Information exchange and cross-border cooperation between national authorities charged with internal security have increased, with Europol, Eurojust, the Situation Centre and (outside the EU framework) the Counter-Terrorist Group playing an important role. Acting on the best practices identified in the EU peer review several Member States have strengthened their domestic arrangements in the fight against terrorism.
Important legal instruments such as the third Money Laundering Directive¹ and the Directive on Enhancing Port Security² have been adopted, and discussions on other instruments are at an advanced stage. The Commission issued several new proposals, including on information exchange and protection of personal data. The Peer Evaluation exercise has been completed. A strategy against radicalisation and recruitment into terrorism has been presented to the Council. FRONTEX, the European Borders Agency, became operational. EUROPOL and EUROJUST have stepped up their support to national law enforcement authorities.
On the external side, efforts have intensified to deliver technical assistance to priority countries, close cooperation has been maintained with the UN and dialogue with key partners has continued. Building on four special sessions in Coreper and a similar session at the informal meeting of JHA Ministers in Newcastle, a proposal for an EU Counter-Terrorism Strategy has been presented to the Council.
5. Following examination of the Commission communication on "improving the civil protection mechanism", the Council adopted conclusions on improving the European Civil Protection Capabilities, which aim at reinforcing the Union's rapid reaction capacity to respond to all types of disasters inside or outside the EU, including terrorism.
6. The EU continued to promote the key role of the UN in the fight against terrorism. It supported strong language in the UN World Summit on Counter-Terrorism and

continues to work for the adoption of the draft Comprehensive Convention on international terrorism both in New York and in dialogue with its partners. All EU Member States signed the Convention for the Suppression of Acts of Nuclear Terrorism in September. The EU welcomed the adoption of UNSC Resolution 1624 and is committed to address further the issue of incitement into terrorism.

7. The EU also continued to support the role of the UN CTED and to work closely with it on the ground. At the invitation of CTED, the EU sent a representative to join a CTED assessment mission to Algeria, following successful participation in other missions to Morocco, Kenya and Albania earlier this year. The EU also built on information and experience gained through participation in CTED assessment missions in order to develop further its own assistance programmes....
8. There has been good progress in this field. The Third Money Laundering Directive and the Regulation on Controls on Cash Entering or Leaving the Union will both enter into force on 15 December 2005. The Commission issued a draft Regulation on wire transfers in July and agreement on this now appears close. Much work has been done on a Code of Conduct for Non Profit Organizations/ charities. The Commission has engaged in an extensive public consultation and issued a Communication on the subject on 29 November 2005. Meanwhile, the UK Presidency, working closely with the Commission, proposed a set of principles which should guide implementation of regulations at national level. A workshop was held under the UK Presidency to highlight best practice in financial investigation. On asset freezing, the UK also organized a workshop in November 2005, which helped lay the groundwork for improving national asset freezing regimes to complement EU action.
9. However, much work remains to be done. Legislation which has been adopted needs to be fully implemented by all Member States. Financial investigation as a part of all terrorist investigations needs to be strengthened at the national level. Financial intelligence units (FIUs) must be more closely integrated in national co-ordination structures and the exchange of information between FIUs needs to be expanded, including through the FIU.NET. The independent scrutiny of Member States actions in relation to the Nine FATF Special Recommendations on terrorist financing is a high priority and the Commission is urged to push this forward without delay.
10. The Council of the European Union confirms this in a communication of 30 November 2005 about THE EUROPEAN UNION and the COUNTER-TERRORISM STRATEGY :
"The European Union's strategic commitment: To combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice.

"Terrorism is a threat to all States and to all peoples. It poses a serious threat to our security, to the values of our democratic societies and to the rights and freedoms of our citizens, especially through the indiscriminate targeting of innocent people. Terrorism is criminal and unjustifiable under any circumstances."

Across the four pillars of the European Union's strategy a horizontal feature is the EU's role in the world. As set out in the European Security Strategy, through its external action the European Union takes on a responsibility for contributing to global security

and building a safer world. Acting through and in conjunction with the United Nations and other international or regional organisations, the EU will work to build the international consensus and promote international standards for countering terrorism. The EU will promote efforts in the UN to develop a global strategy for combating terrorism. Continuing to make counter-terrorism a high priority in dialogue with key partner countries, including the USA, will also be a core part of the European approach.

Protection is a key part of our Counter Terrorism Strategy. We must strengthen the defences of key targets, by reducing their vulnerability to attack, and also by reducing the resulting impact of an attack.

We will further strengthen and implement our commitments to disrupt terrorist activity and pursue terrorists across borders. Our objectives are to impede terrorists' planning, disrupt their networks and the activities of recruiters to terrorism, cut off terrorists' funding and access to attack materials, and bring them to justice, while continuing to respect human rights and international law.

As agreed in the Hague Programme, when preserving national security, Member States will also focus on the security of the Union as a whole. The Union will support the efforts of Member States to disrupt terrorists by encouraging the exchange of information and intelligence between them, providing common analyses of the threat, and strengthening operational co-operation in law enforcement.

At national level the competent authorities need to have the necessary tools to collect and analyse intelligence and to pursue and investigate terrorists, requiring Member States to update their policy response and legislative provisions where necessary. In this respect our common aim is to follow up and take full account of the recommendations identified during the EU's peer evaluation process. Member States will report back on how they have improved their national capabilities and machinery in light of these recommendations.

Developing a common understanding of the threat is fundamental to developing common policies to respond to it. The Joint Situation Centre's assessments, based on the contributions of national security and intelligence agencies and Europol, should continue to inform decisions across the range of the EU's policies.

Creating a hostile operating environment for terrorists also means tackling terrorist financing. The EU has already put in place provisions for freezing terrorist assets. The next stage is to implement the EU-wide legislation concerning money laundering and cash transfers, and to agree steps to impede money (wire) transfers by terrorists. In addition, tackling the misuse of the non-profit sector remains a priority. We must also ensure that financial investigation is an integral part of all terrorism investigations. These measures and others which build on the Financial Action Task Force's recommendations, form part of the EU's comprehensive strategy for combating terrorist financing. A review of the EU's performance against terrorist financing is currently being conducted to ensure our approach is kept up to date.

• Tackle terrorist financing, including by implementing agreed legislation, working to prevent the abuse of the non-profit sector, and reviewing the EU's overall performance in this area;

We cannot reduce the risk of terrorist attacks to zero. We have to be able to deal with attacks when they occur, recognising that attacks can have effects across EU borders. The response to an incident will often be similar whether that event is natural, technological or man-made, hence the response systems in place to manage the consequences of natural disasters may also be used to alleviate the effects on citizens in the aftermath of a terrorist attack. Our response to any such events should make full use of the existing structures, including the Civil Protection Mechanism, which the EU has developed to respond to other major European and international crises, and be co-ordinated with the action of other international organisations involved.

In the event of an incident with cross border effects there will be a need for rapid sharing of operational and policy information, media co-ordination and mutual operational support, drawing on all available means, including military resources. The ability of the EU to take consistent or collective action will also be essential to an effective and efficient response. The development of EU crisis co-ordination arrangements, supported by the necessary operational procedures, will help ensure the coherence of the EU response to terrorist attacks.

The solidarity, assistance and compensation of the victims of terrorism and their families, constitutes an integral part of the response to terrorism at national and European level. Member States should ensure that appropriate compensation is available to victims. Through sharing of best practice on national arrangements, and the development of contact between national victims' associations, the European Commission will enable the EU to take steps to enhance the support offered to those who most suffer from terrorist attacks.

Internationally, there is a need to provide assistance to EU citizens in third countries and to protect and assist our military and civilian assets on EU crisis management operations. We should also ensure that our work on disaster response is closely co-ordinated with related work in international organisations and in particular the United Nations. Finally, the technical assistance provided by the EU to priority third countries will need to factor in assistance on managing the consequences of terrorist attacks.

The European Commission confirms that the fight against terrorism also includes depriving terrorists of their resources and doing so in a global action :

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL...

Stepping up the fight against terrorism-

Depriving terrorists of financial resources:

"Efforts have to be maintained, strengthened to deprive terrorists of financial resources. By now, EC legislation is in place, but increasingly there is a need to address broader non-legislative actions, such as transparency measures, to ensure that EU Member States have the tools to fight terrorist financing. The Commission is continuing to work with Member States to improve ways of freezing and confiscating terrorist assets and crime related proceeds, as well as to establish common minimum

training standards for financial investigators, and is promoting efficient cooperation among Financial Intelligence Units at EU level.”

In a Joint Declaration of the European Parliament, Council and Commission at the occasion of the European Day of victims of terrorism, 11 March 2006 On the occasion of the second European Day of victims of terrorism, held on 11 March 2006, the European Parliament, the Council of the European Union and the European Commission:

“- Express their deepest solidarity with all victims of terrorist attacks in Europe and elsewhere in the world, with their families and loved ones. Europe stands united on this day of remembrance. We shall continue to preserve and honour the memory of the dead. We shall maintain and reinforce our support for those injured in their bodies or minds. Their memory inspires us in our quest for justice.”

- "Exhort all citizens and their representatives to make this European day of victims of terrorism a day of remembrance and also a day of civic and democratic debate on securing freedom. Those who try to strike at our societies through terror strive in vain. Our countries, our citizens and our Union are bound by common values, principles and freedoms; democracy, human rights, the rule of law and solidarity. No act of terror will be allowed to undermine them."

- "Recall that terrorism strikes victims all around the globe and that the human suffering caused by terrorism knows no boundaries. From the USA to the Middle East, from Asia to Europe, there is a single pain, a single resolve, a single combat. Every human being on this planet is today a potential victim because international terrorism spares no one, whatever one's age, gender, culture, beliefs or nationality. Just as the rejection of terrorism is universal, so must be our global action to defeat it."

The EU continued to promote the key role of the UN in the fight against terrorism. In this respect it is important to refer to the **International Convention for the Suppression of the Financing of Terrorism** which recalls General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds.

Despite all these intentions and declarations, the actual facts show a serious lack of action against terror and terrorism.

The Member States as well as the European Union itself publicly state that they are aware of the fact that fighting the financing of terrorism is one of the key issues. One of the main purposes of the elaborate regulations that European Citizens are subjected to in regard with the fight against money-laundering, is to prevent the funding of terrorism. Yet the EU and its

member States provide money to organisations and persons in a region where terrorism is a daily problem without screening who the funding goes to. It is clear that European aid is getting into the hands of persons and organisations who actually finance and perpetrate terrorism.

The petitioner is a French citizen who is currently residing in Sderot, Israël. **Sderot** is a Western Negev city in the Southern District of Israel. According to the Israel Central Bureau of Statistics (CBS), at the end of 2006 the city had a total population of 19,300. The city has been an ongoing target of Qassam rocket attacks from the Gaza Strip. In March 2008, the mayor said the population had declined by 10%-15% as families left the city in desperation (aid organizations say the figure is closer to 25%). Many of the families that remain cannot afford to move out or are unable to sell their homes.

Sderot, located less than a mile from the Gaza Strip, has borne the brunt of Palestinian rocket attacks since 2000. These attacks have killed 13 residents, wounded hundreds, caused millions of dollars in damage, and disrupted daily life as well as the local economy. Nearly all residents have been traumatized by the frequent sound of air-raid sirens and explosions of incoming projectiles. All local schools have been fortified. From mid-June 2007 to mid-February 2008, 771 rockets and 857 mortar bombs were fired at Sderot and the western Negev, an average of three or four each per day. Studies done in recent years show that the continued rocket fire and the large number of traumatized victims have led to post traumatic stress disorder among many of Sderot's residents (close to 30%).

Although Human Rights Organisations have condemned these attacks--- "Attacking civilian areas with indiscriminate weapons violates the core humanitarian principle of civilian immunity,"--- Joe Stork, director of Human Rights Watch's Middle East and North Africa division... " Hamas leaders have an obligation to stop such indiscriminate attacks immediately."--- the European Union and its Member States have failed to act.

Many eloquent declarations and noble principles are set forth such as article 3.5 of the Treaty, the note of 12 December 2005 from the Counter-Terrorism Coordinator to the European Council on the Implementation of the Action Plan to Combat Terrorism, communication of 30 November 2005 about THE EUROPEAN UNION and the COUNTER-TERRORISM STRATEGY, Declaration of the European Parliament, Council and Commission at the occasion of the European Day of victims of terrorism, 11 March 2006, etc. but the fact of the matter remains that there is not nearly enough action on the part of the EU and its Member States to match these promising words.

The petitioner has been personally harmed by the lack of action on the part of the EU and Its member states. He lost his job at the company he worked for- "Job Solutions from the Heart Inc.", which supplies manpower to factories. The agency closed its branch in Sderot due to the Qassam rockets and was thus left unemployed. The petitioners' sister suffers from muscular dystrophy and is confined to a wheel chair. Since the Qassam rockets, the companies which supply nursing workers no longer work in the area, and therefore his sister has no nurse and is suffering from hardships in basic functioning. In addition, for 32 years his mother owned a store in the commercial center in Sderot. In 2007 the store was damaged by shards and a shock wave caused by a Qassam rocket. During the two months the family spent on repairing the store, there was no income. Half a year later, at the beginning of 2008, the store was hit again - this time a direct hit by a Qassam rocket. At a certain stage the store was forced

to close permanently, as the family didn't have the strength or means to repair the store once more.

Therefore, in order to end the infringement of European law it is imperative that all Member States and the EU itself will:

1. Stop the transfer of European money to Hamas and/or to any other organizations that are defined by the Israeli government as terrorist organisations;

2. Create transparency regarding all funding transferred to the Palestinian and Israeli organisations in the concerned region (publishing notices in Israel in all of the official languages of the EU, in order to notice Israeli-European citizens), including sums given to Palestinian and Israeli associations who concern themselves with matters regarding the peace process in the area.

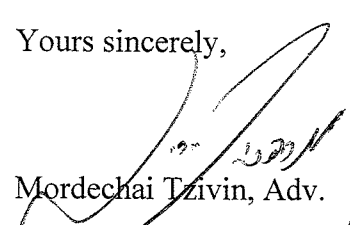
3. Prevent the entrance of persons that are defined by the government of Israel as terrorists and their leaders to the territory of the EU.

4. Prevent the misuse of European funds by non-profit organisations which receive European funds and use these funds to finance terrorism. ,

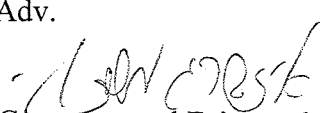
5. Protect European citizens living In Israel or any other third state against terrorism and its consequences in the most effective way and by any means possible under international and European law, such as reparations for lost job income, reparations for physical and psychological damages, reparations for property damages, monies for reinforced buildings against missiles or any other military projectiles etc.

6. Undertake any and all necessary action to achieve peace and security for all its citizens whether they reside within the EU or in a third country.

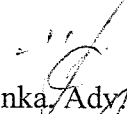
Yours sincerely,



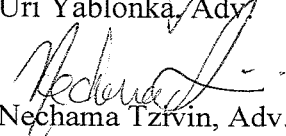
Mordechai Tzivin, Adv.



The Movement for Governmental Fairness by the Chairman Mordechai Eisenberg, Adv.



Uri Yablonka, Adv.



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