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**Terrorism and anti-terror legislation - the terrorised legislator? A comparison of counter-terrorism legislation and its implications on human rights in the legal systems of the United Kingdom, Spain, Germany, and France**

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# Terrorism and Anti-Terror Legislation – the Terrorised Legislator?

A Comparison of Counter-Terrorism Legislation and its Implications  
on Human Rights in the Legal Systems of the United Kingdom, Spain,  
Germany, and France

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Cover: Francisco Goya, *The Sleep of Reason Produces Monsters* (*El sueño de la razón produce monstruos*), plate 43 of the Caprichos series, etched between 1797-99.

## **Preface**

This thesis was carried out between September 2005 and October 2008 at the Department for Criminal Law and Criminology, Law Faculty, University of Leiden, under the bi-national supervision of Hans Nijboer (University of Leiden) and Hans-Heiner Kühne (University of Trier, Germany). The study was partially funded by the German Academic Exchange Service.

The idea to write a comparative study on anti-terror legislation emerged shortly after the attacks of September 11th. The subsequent legislative activity in Germany was amazing in many ways and made me very curious of what happened in other countries. Thus in 2002 I planned to make this my doctoral subject should I ever really decide to engage in a PhD. After my clerkship at the International Criminal Court in The Hague, I had become addicted to the international air of the Netherlands and therefore decided that this would be the best place to write a comparative legal study in English language. Also, the Netherlands seemed suitable as a “neutral” territory to study from an objective external perspective the legislation of the United Kingdom, Spain, Germany and France. To this end, Leiden University has proven to be an excellent place with great research facilities in an open, disciplined, and relaxed environment.

The dissertation consists of three parts: a historical overview on selected terrorist movements in the world, an examination of human-rights sensitive anti-terror laws adopted in the United Kingdom, Spain, Germany and France within the last forty years, and a final comparison and analysis of the findings of the previous part.

I hope legal practitioners will find the present study useful, and I also hope it will be taken into account by legislators before passing new counter-terror legislation.

Anna Oehmichen

Berlin, 5 May 2009

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*Für meine Eltern*

***"The Court, being aware of the danger such a law poses of undermining or even destroying democracy on the ground of defending it, affirms that the Contracting States may not, in the name of the struggle against terrorism, adopt whatever measures they deem appropriate."*<sup>1</sup>**

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<sup>1</sup> ECtHR, *Klass and others v FRG*, Judgment of 6 September 1978 (application no. 5029/71).