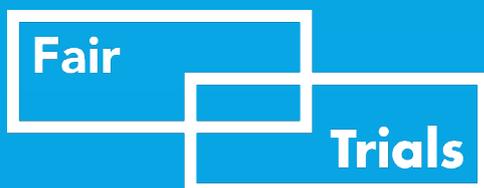


# FUNDAMENTAL FREEDOMS ON TRIAL

The human rights impact of broad  
counter-terrorism and anti-extremism laws



# About the Working Group on Counter-Terrorism, Anti-Extremism and Human Rights

The Working Group on Counter-Terrorism, Anti-Extremism and Human Rights (the '**Counter Terrorism Working Group**') is part of the Civic Solidarity Platform ('**CSP**'), which brings together civil society organisations from across the Organisation for Security and Cooperation in Europe ('**OSCE**') region. It aims to:

- Monitor the human rights impact of counter-terrorism and anti-extremism initiatives across the OSCE region and raise the alarm when human rights threats emerge;
- Facilitate the exchange of experience and expertise between CSP members with respect to the human rights impact of counter-terrorism and anti-extremism initiatives;
- Advocate to ensure human rights standards are respected and promoted within policies and initiatives to counter terrorism and violent extremism.

The Counter Terrorism Working Group is co-ordinated by Fair Trials and the SOVA Center for Information and Analysis. It was officially launched in January 2018 following a roundtable organised by Fair Trials in November 2017 in Vienna (supported by the German Ministry of Foreign Affairs). In 2018, the Working Group published the report '[Cross-border criminal justice and security: Human rights concerns in the OSCE region](#)' highlighting the impact that cross border cooperation has had on human rights in the OSCE region.

## Co-coordinators of the Counter Terrorism Working Group

**Fair Trials** is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international standards.

Fair Trials' work is premised on the belief that fair trials are one of the cornerstones of a just society: they prevent lives from being ruined by miscarriages of justice and make societies safer by contributing to transparent and reliable justice systems that maintain public trust. Although universally recognised in principle, in practice the basic human right to a fair trial is being routinely abused. Fair Trials works in partnership with NGOs, academics and defence lawyers across the globe, combining our expertise with local knowledge to develop regional projects that are able to affect real change.



**SOVA Center for Information and Analysis**<sup>1</sup> is a Moscow-based Russian non-profit organisation founded in 2002. SOVA Center focuses on monitoring and analysis in the field of nationalism and racism, relations between religious organisations, the state and secular society in Russia, and on misuse of anti-extremism policies by the authorities.



Other civil society organisations of the Working Group include the Albanian Helsinki Committee, Article 19, Deutsch-Russischer Austausch (DRA), Human Rights Center Memorial, Human Rights First, the Netherlands Helsinki Committee and the Serbian Helsinki Committee.

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<sup>1</sup> On December 30, 2016, the Ministry of Justice forcibly included SOVA Center on the list of "non-profit organizations performing the functions of a foreign agent." SOVA Center disagrees with this decision and has filed an appeal against it.

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# Introduction

1. Terrorism and violent extremism continue pose a serious threat to democracy and human rights in the OSCE region. Over the last two decades, states have had to adapt to the increasingly global nature of terrorism, as well as the challenges presented by the need to tackle terrorism in the online sphere. In addition to the threat posed by more 'traditional' terrorist groups, the rise of violent right-wing extremism has also required states to adapt the ways in which they perceive and tackle the root causes of extreme ideology. As the threat from terrorist groups and the means they use to carry out offences continues to evolve, states must be equipped with the laws to prosecute offences which pose a genuine threat to national security. In light of this, states have increasingly been required by international law to adopt legal frameworks that enable states to prosecute a range of terrorist offences.
2. However, the speed and lack of human rights oversight with which counter-terrorism and anti-extremism legislation has been introduced has had a detrimental effect on human rights across the OSCE region. Narratives on national security continue to be framed as a choice or balancing act between security and human rights, failing to recognise that there can be no security without human rights. In its 2018 report, *Cross-border criminal justice and security: Human rights concerns in the OSCE region*,<sup>2</sup> the CSP Working Group on Counter-Terrorism, Anti-Extremism and Human Rights identified the proliferation of overly broad counter-terrorism and anti-extremism legislation as one of the key challenges posed to human rights by regional security cooperation in the OSCE.
3. A lack of internationally accepted definitions of 'terrorism' and 'extremism' has left states with wide discretion over how national legislation is introduced, as well as overly broad discretion over which groups are targeted by such legislation. Whilst international law allows for the restriction of certain fundamental rights under specific circumstances, many states' laws and practices are failing to comply with their obligations under international human rights law. This has resulted in the intentional, and unintentional, abuse of counter terrorism legislation against a range of groups and individuals in countries across the OSCE region, who pose no threat to national security. Where overly broad legislation has swept these people into the criminal justice system, in many cases, justice systems are also failing to protect human rights. This effectively weaponizes the justice system against citizens, and erodes trust in democracy and the rule of law.
4. This paper identifies key gaps in international, regional and national laws in the OSCE region, which allow for the misapplication of counter-terrorism and anti-extremism legislation in violation of international human rights law. This paper does not intend to be a comprehensive overview of all the OSCE countries which have overly broad legislation, nor of the various rights, groups and individuals affected by such legislation. Instead, it aims to highlight a few key examples to demonstrate the breadth of the challenge and the importance of keeping human rights at the forefront of discussions on countering the threat of terrorism and violent extremism. Due to the membership and expertise of the Working Group, as well as the distinct challenges particular regions within the OSCE face, this paper focusses more on certain countries and regions than others.

<sup>2</sup> Available online at: [https://fairtrials.org/sites/default/files/publication\\_pdf/CSP%20WG%20spreads.pdf](https://fairtrials.org/sites/default/files/publication_pdf/CSP%20WG%20spreads.pdf)



# **Defining terrorism and extremism**

5. It is well-documented that overly broad counter-terrorism and anti-extremism laws have been applied globally over the last two decades, including in the OSCE region.<sup>3</sup> These laws have resulted in unintentional human rights abuses, and have also been used intentionally to restrict human rights.<sup>4</sup> The misapplication – whether intentional or not – of counter-terror and anti-extremism laws can at least partially be attributed to the gaps and loopholes in the international legal framework regarding the definition of ‘terrorism’ and ‘extremism’, that allow states considerable discretion to determine the context in which these laws can be applied.

## Terrorism

6. In the wake of the 9/11 terror attacks, a host of counter-terrorism measures were introduced at the international level in order to facilitate cooperation between states in the fight against terrorism. Some of these measures placed legally binding obligations on states to enact domestic legislation criminalising certain activities related to terrorism.<sup>5</sup> Although the existing international legal framework on counter-terrorism sets out obligations on states in relation to terrorism, it does not provide a comprehensive definition of the term, ‘terrorism’.<sup>6</sup> Former Secretary General of the United Nations (‘UN’), Kofi Annan, unsuccessfully attempted to get the UN General Assembly to agree on a comprehensive definition of terrorism in what was originally envisaged as a counter-terrorism convention. After nearly six years of negotiations and attempts at consensus, the UN General Assembly instead adopted the UN Global Counter-Terrorism Strategy in 2006, which does not contain a definition of terrorism.<sup>7</sup> It has been highlighted that a generally accepted definition of terrorism should be required in order for states to successfully cooperate in combatting terrorism,<sup>8</sup> yet all attempts to establish an international definition have thus far failed.
7. Rather than a comprehensive definition, terrorism is defined in international law by the prohibition of certain acts and ‘core elements’ related to terrorism

that are prohibited in international declarations, resolutions and treaties.<sup>9</sup> For example, Security Council resolution 1566 refers to terrorism as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act.”<sup>10</sup> This definition does not contain any reference to ideology or political purposes underlying terrorism, unlike the definition referred to in the UN General Assembly Resolution on Measures to eliminate international terrorism, which expressly refers to ‘political purposes’.<sup>11</sup> Nor does the International Convention for the Suppression of the Financing of Terrorism refer to this crucial aspect of terrorism, instead defining it as acts “intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.”<sup>12</sup> UN General Assembly Resolutions are not legally binding, and most binding international law seems to lack this integral aspect when defining terrorism.

8. The International Convention for the Suppression of the Financing of Terrorism also refers to a list of other treaties contained in the Annex of the Convention to define terrorist activities.<sup>13</sup> Indeed, numerous international conventions do not provide a definition of terrorism, but say that for the purposes of the convention, terrorism means any offence “within the scope of and as defined in” a range of other treaties and conventions, some of which are now over 40 years old. For example, the Council of Europe Convention (‘CoE’) on the Prevention of Terrorism lists 11 different bodies of law in its Appendix to refer to terrorist acts, 8 of which are from the 1970s and 1980s. These offences contained in international treaties have been called ‘trigger offences’<sup>14</sup> – meaning the carrying out of these offences triggers a counter-terror response under states’ international legal obligations.

<sup>3</sup> See, for example, Fair Trials, ‘[Cross-border criminal justice and security: Human rights concerns in the OSCE region](#)’ (December 2018)

<sup>4</sup> ‘[UN General Assembly Interim report of the Special Rapporteur on freedom of religion or belief](#)’ (September 2018) A/73/362 para 23; See also [E/CN.4/2006/98](#) (December 2005) para 27; [A/HRC/16/51](#) (December 2010) para 26; [A/HRC/40/52](#) (February 2019) para 34

<sup>5</sup> For example, UN Security Council Resolutions [1390](#) (January 2002), S/RES/1390 and [1617](#) (July 2005), S/RES/1617

<sup>6</sup> Office of the United Nations High Commissioner for Human Rights, ‘[Human Rights, Terrorism and Counter-terrorism](#)’, (July 2008), Fact Sheet No. 32, p.39

<sup>7</sup> United Nations Office of Counter Terrorism, ‘[UN Global Counter-Terrorism Strategy](#)’, (September 2006) A/RES/60/288

<sup>8</sup> “without a consensus of what constituted terrorism, nations could not unite against it” General Assembly Sixth Committee, ‘[Agreed Definition of Term “Terrorism” said to be needed for consensus on completing comprehensive convention against it](#)’, (October 2005), GA/L/3276

<sup>9</sup> Office of the United Nations High Commissioner for Human Rights, ‘[Human Rights, Terrorism and Counter-terrorism](#)’, (July 2008), Fact Sheet No. 32, p.5

<sup>10</sup> ‘[United Nations Security Council Resolution 1566](#)’ (October 2004)

<sup>11</sup> ‘[United Nations General Assembly Sixty-eighth session, Resolution 68/119 Measures to eliminate international terrorism](#)’, (December 2013), A/RES/68/119, p.4 para 4

<sup>12</sup> ‘[International Convention for the Suppression of the Financing of Terrorism](#)’ (December 1999), Article 2 1(b)

<sup>13</sup> *Ibid.*, Article 2 1(a)

<sup>14</sup> UN Commission on Human Rights, ‘[Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#)’, Martin Scheinin, (December 2005), E/CN.4/2006/98 paras 32-34



9. The definition of terrorism set out in these international instruments may seem relatively straightforward when considering violent terrorist acts that occur in peaceful democratic societies. However, the proliferation of counter-terrorism laws in recent years has also meant that a wide range of non-violent offences have also been criminalised under counter-terror legislation<sup>15</sup> – such as the publishing of articles or tweets that support terrorism. Furthermore, when one considers the range of complex conflicts across the globe that are characterised by opposing sides as the pursuit of national self-determination on the one hand, and separatist terrorism on the other, the reach and subjectivity of counter-terrorism laws becomes more complicated.
10. This lack of definition has led to different approaches and applications of counter-terrorism law at a national, regional and international level, depending on how terrorism is defined. Particularly at the national level, this has left states with broad discretion over what constitutes terrorism and which groups are subject to counter-terrorism laws. As the former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, noted *“Calls by the international community to combat terrorism, without defining the term, can be understood as leaving it to individual States to define what is meant by the term. This carries the potential for unintended human rights abuses and even the deliberate misuse of the term.”*<sup>16</sup> The deliberate misuse of counter terrorism legislation has been noted in several states across the OSCE region, which will be explored further throughout this report.

## ‘Extremism’

11. The vagueness and subjective nature of counter-terrorism laws has been further exacerbated by the introduction of anti-extremism laws. Just as there is no internationally accepted comprehensive definition of terrorism, there is equally none for extremism.<sup>17</sup> The current Special Rapporteur on the promotion and protection of human rights and fundamental freedoms

while countering terrorism (hereafter referred to as ‘UN Special Rapporteur on Countering Terrorism’), Fionnuala Ni Aoláin, has warned that *“the core concept of extremism is context dependent, which means that its definition can easily be challenged and manipulated, and conceptually weaker than the term terrorism that has an identifiable core. Such laws are likely to criminalize legitimate expression, including controversial viewpoints and information of legitimate public interest, and restrict freedom of religion or belief.”*<sup>18</sup>

12. It is important to note that the way in which ‘extremism’ is conceptualised and legislated against varies greatly across the OSCE region. For example, in most European Union (‘EU’) countries, states may have national policies to counter extremism, but extremism is not enshrined in legislation as a separate category to terrorism. Furthermore, laws prohibiting incitement to hatred against particular groups are governed by laws against ‘hate crime’ or ‘hate speech’, which are not part of the legal framework for countering terrorism and extremism.<sup>19</sup> In contrast, in Russia and some Central Asian states, in addition to legislation that prohibits terrorism and terrorist activities, there also exists a separate category of legislation that prohibits extremist activities, organisations, materials and symbols, which often include ‘incitement to hatred’ offences.<sup>20</sup> In her most recent visit to Kazakhstan, the UN Special Rapporteur on Countering Terrorism reiterated concerns that extremism *“as a criminal legal category is irreconcilable with the principle of legal certainty and is per se incompatible with the exercise of certain fundamental human rights”*.<sup>21</sup>
13. Despite the risks posed to fundamental rights, several OSCE states have separate criminal or administrative categories of extremist offences. Within these laws, extremism is defined through a list of extremist acts. In Russia, for example, the Federal law on combatting extremist activities does not provide a conceptual definition of extremism. Instead, extremism is defined through a list of activities that are deemed to be extremist in and of themselves, with no reference to any separate or international definitions.<sup>22</sup>

<sup>15</sup> For example, [UN Security Council Resolution 2178](#) calls on Member States “to act cooperatively when taking national measures to prevent terrorists from exploiting technology, communications and resources to incite support for terrorist acts” which meant that many states subsequently enacted specific counter terror legislation for online offences. (September 2014), S/RES/2178, para 11

<sup>16</sup> UN Commission on Human Rights, [‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’](#), Martin Scheinin, (December 2005), E/CN.4/2006/98 para 27

<sup>17</sup> UN General Assembly, [‘Interim report of the Special Rapporteur on freedom of religion or belief’](#), (September 2018), A/73/362 para 23

<sup>18</sup> UN Human Rights Council, [‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders’](#), (February 2019), A/HRC/40/52 p.11 para 35

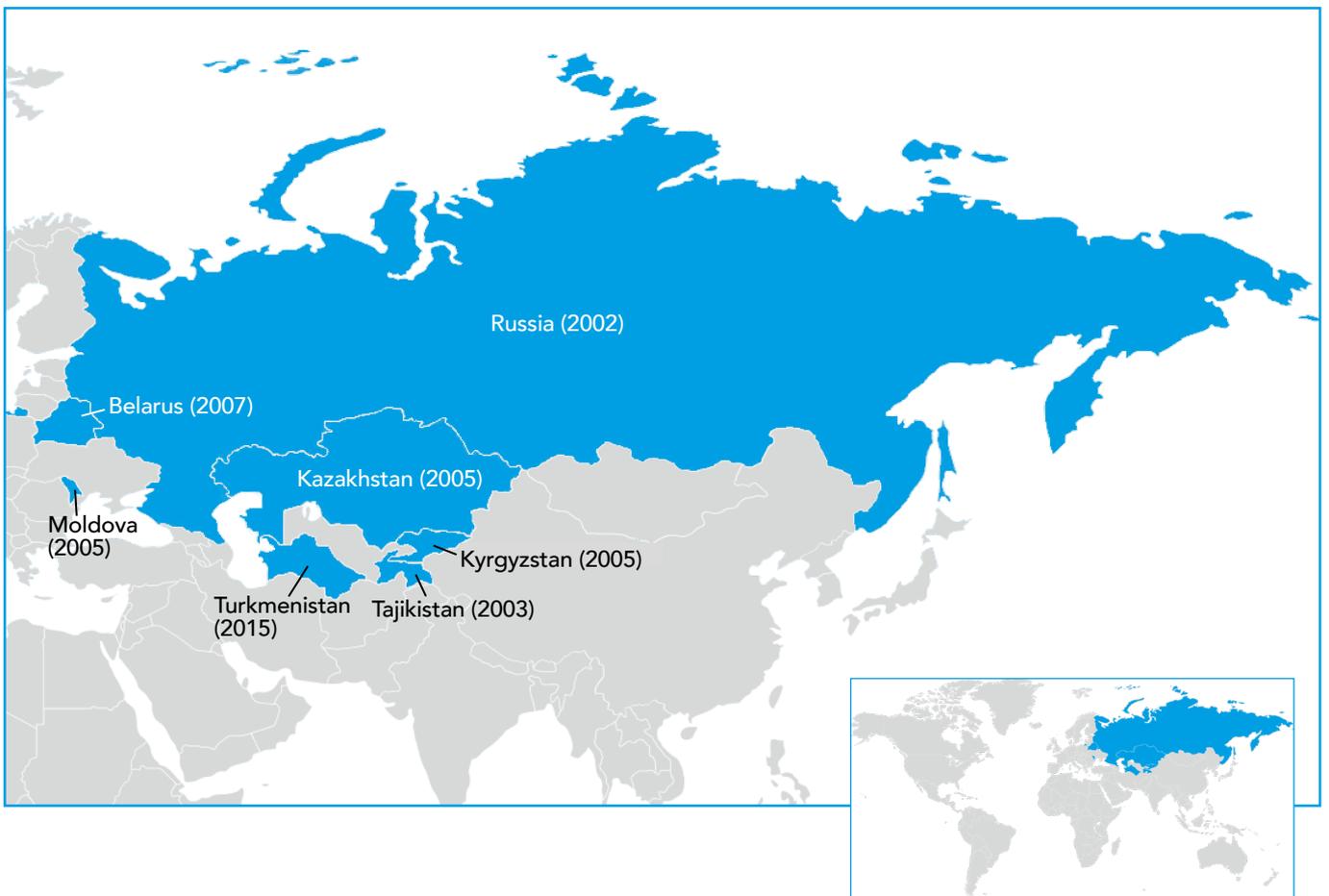
<sup>19</sup> For instance, [Council Framework Decision 2008/913/JHA](#) (November 2008) obliges member states to criminalise certain forms of expressions of racism, xenophobia and hatred. Council of the European Union: Council Framework Decision 2008/913/JHA Decision of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

<sup>20</sup> Article 19 and SOVA Center for Information and Analysis, ‘Rights In Extremis: Russia’s Anti-Extremism Practices in International Perspective’, (2019)

<sup>21</sup> UN OHCHR, [‘Preliminary Findings of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to Kazakhstan’](#), (May 2019)

<sup>22</sup> Article 19 and SOVA Centre for Information and Analysis, ‘Rights In Extremis: Russia’s Anti-Extremism Practices in International Perspective’, (2019)

## Proliferation of anti-extremism laws





14. The Russian form of anti-extremism legislation has seemingly spread from Russia across a swathe of the OSCE region. The proliferation of anti-extremism laws can perhaps be seen as a result of participation in cross-border cooperation mechanisms in particular regions such as the Shanghai Cooperation Organisation ('SCO'), the Collective Security Treaty Organisation, the Commonwealth of Independent States ('CIS'), and the OSCE itself. Russia first adopted the law "On Combating Extremist Activity" in 2002, and the law is regularly subject to modifications, but the definition of extremism contained in the law was significantly amended in 2006 and 2007.<sup>23</sup> Since its adoption in 2002, anti-extremism laws have proliferated significantly across post-Soviet states.
15. The Russian example also demonstrates another concerning trend in the broad application of anti-extremism laws – the shift in discourse from 'violent extremism' to simply 'extremism'. Although much of the language used in policy making and at the international level refers to countering or preventing violent extremism (often referred to as 'CVE' or 'PVE'), this language has not always been reflected in national legislation of OSCE states, which in some cases goes much further by simply referring to 'extremism'. The United Nations High Commissioner for Human Rights and regional bodies have criticised laws that criminalise 'extremism' for their targeting of non-violent conduct and their use of broad and imprecise definitions.<sup>24</sup> As the UN Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, has highlighted "*radical or extreme views, in and of themselves, are not a threat to society if they are unconnected to violence or other unlawful acts*" and are protected by international human rights law.<sup>25</sup> There is no empirical evidence to suggest a predictable link or linear progression from 'extremist' views to the carrying out of violent acts, yet states often conflate extremism with violence.<sup>26</sup>
16. This is an important distinction. Given the existing definitions of terrorism that are contained in international instruments, a core element of terrorism is violence or threat of violence, whereas extremism can be more generally defined as the holding of extreme political or religious views. In recognition of this, several OSCE states specifically define the term 'violent extremism' in national policies, such as Norway and Sweden,<sup>27</sup> but as the Russian example above demonstrates, not all OSCE states take this approach. Even in Western Europe, both the UK and Denmark define 'extremism' in national policies rather than 'violent extremism'.<sup>28</sup>
17. The UK provides an example of how the broad concept of extremism is seemingly impossible to translate into legislation without negatively impacting human rights. In the UK's PREVENT strategy, which is a pre-criminal intervention designed to identify those at risk of being drawn into terrorism, extremism is defined in part as "vocal or active opposition to fundamental British values."<sup>29</sup> The vagueness of what constitutes 'British values' and more generally 'extremism' has meant that the UK's attempts to introduce anti-extremism legislation under counter-extremism bills were abandoned in both 2015 and 2016, after it was said to be 'too difficult' to introduce legislation which would not criminalise legitimate political and religious activity, because the UK's definition of extremism is "broad and ill-defined".<sup>30</sup> The former independent reviewer of terrorism legislation, Lord Anderson, stated that "*coercive state powers should not be applied to 'extremism', but only to specific types of violent, abusive and anti-social conduct.*"<sup>31</sup>
18. Although the international legal framework requires states to criminalise certain activities, it is clear that the lack of internationally accepted definitions of terrorism and extremism, and the resulting discretion left to states in enacting these obligations in domestic legislation, poses a serious threat to human rights. Broad brush approaches to defining terrorism and extremism have meant that in many states across the OSCE, the activities of peaceful religious groups, journalists, human rights defenders and civil society organisations have been swept up in the catch-all definition, or total lack of definition of these terms, provided for in national legislation.
19. The subsequent sections of this paper analyse the impact that broad or ill-defined legislation has had on fundamental rights, and the real-life consequences this has had for people living across the OSCE region.

<sup>23</sup> Ibid

<sup>24</sup> United Nations High Commissioner for Human Rights, '[Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism](#)' (July 2016), A/HRC/33/29, paras. 18 and 61

<sup>25</sup> UN General Assembly, '[Interim report of the Special Rapporteur on freedom of religion or belief](#)', (September 2018), A/73/362 para 25

<sup>26</sup> Ibid para 26; UN Human Rights Council, '[Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#)', (April 2016), A/HRC/31/65 para 15

<sup>27</sup> See Norwegian Ministry of Justice and Public Security, 'Action Plan Against Radicalisation and Violent Extremism' (August 2014); and Government of Sweden, 'Action Plan to Safeguard Democracy against Violence-Promoting Extremism, government communication', (December 2011/12:44), point 3.2

<sup>28</sup> Government of the United Kingdom, 'Counter-Extremism Strategy' (October 2015, London), para. 1 and the Prevent strategy, (June 2011, London), annex A.; Government of Denmark, Prevention of Radicalisation and Extremism Action Plan (September 2014, Copenhagen)

<sup>29</sup> HM Government, '[Revised Prevent Duty Guidance: for England and Wales](#)', (July 2015, London), p.2

<sup>30</sup> Hayley Dixon, '[Extremism definition fails Clarkson test: Government gave up on laws to fight ideology because it's 'too difficult'](#)', The Telegraph, (April 2019)

<sup>31</sup> Scottish Legal News, '[UK government abandons attempts to define 'extremism' in law](#)', (April 2019)

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# **Restriction of rights**



## Freedom of expression

20. Counter-terror and anti-extremism laws have had a profound effect on freedom of expression. Over the past twenty years, increasing numbers of countries have introduced legislation to prohibit terrorist or extremist speech. However, the overreaching scope of these laws, combined with the lack of internationally accepted definitions of terrorism and extremism have resulted in the abuse of these laws to crack down on dissent and suppress legitimate and peaceful expressions of opinions.
21. According to former UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, *“the right to freedom of opinion and expression is as much a fundamental right on its own accord as it is an ‘enabler’ of other rights”*.<sup>32</sup> The right to freedom of expression is enshrined in a host of international and regional human rights treaties,<sup>33</sup> and this right also extends to the online sphere.<sup>34</sup> However, it is well recognised that under international law, the right may be subject to certain restrictions, including for the protection of national security.<sup>35</sup> The International Covenant on Civil and Political Rights (‘ICCPR’) also requires states to prohibit expression that constitutes advocacy of national, racial or religious hatred that incites discrimination, hostility or violence.<sup>36</sup> Restrictions must be necessary and proportionate, pursue one of the specific purposes set out in international law, and be provided for by law ‘which is sufficiently clear and precise’.<sup>37</sup> It has been recognised by the European Court of Human Rights (‘ECtHR’) and the UN Human Rights Committee that freedom of expression is nevertheless broad in its scope, encompassing ideas that are deeply offensive, shocking and disturbing.<sup>38</sup> Despite this, under the ever-expanding obligations on states to criminalise certain activities or speech related to terrorism, states have been emboldened to enact sweeping laws under the guise of protecting national security, that are not necessary or proportionate, criminalising speech unconnected with violence or with no intent to incite violence.
22. The former UN Special Rapporteur on Countering Terrorism, Ben Emmerson, highlighted that *“simply holding or peacefully expressing views that are considered ‘extreme’ under any definition should never be criminalised, unless they are associated with violence or criminal activity.”*<sup>39</sup> Yet despite the wealth of international guidance that exists on the legal requirements necessary to restrict freedom of expression, states across the OSCE have enacted counter-terrorism and anti-extremism legislation that disproportionately restricts this right and criminalises non-violent behaviour. Regional mechanisms that facilitate cross-border cooperation have tended to exacerbate the issue of far-reaching legislation, or at best have done little to counteract it with human rights protections. International and regional laws and treaties that require the criminalisation of certain behaviours without adequate safeguards, or that encourage a broad interpretation of already vague terms, have contributed to a proliferation of counter-terror or anti-extremism legislation across the OSCE that fails to protect human rights, including freedom of expression.
23. Over the last two decades, states across the globe have enacted legislation to criminalise the dissemination of messages that provoke or incite a terrorist offence. International law recognises that states need to have the powers to act against the operation of terrorist groups – both on and offline – who act to recruit and incite terrorist attacks. However, not all states have limited the application of these laws to target speech that poses a serious and real risk to public security. These laws are often subject to overly broad interpretations, and in states where counter terrorism laws are already misused to persecute political opposition, human rights defenders and journalists, this type of legislation can pose serious risks to freedom of expression.

### 1. Incitement, ‘glorification’ and ‘apology’ for terrorism

<sup>32</sup> UN Human Rights Council, ‘[Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue](#)’, (May 2011), A/HRC/17/27

<sup>33</sup> For example: Article 19, UN General Assembly, [Universal Declaration of Human Rights](#), 10 December 1948; Article 19, UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966 (ratified December 1976); Article 10, Council of Europe, [European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14](#), 4 November 1950; Article 13, Organization of American States (OAS), [American Convention on Human Rights – ‘Pact of San Jose’](#), Costa Rica, 22 November 1969

<sup>34</sup> UN Human Rights Council, A/HRC/RES/26/13 (June 2014) and A/HRC/RES/32/13 (July 2016); General Assembly, A/RES/68/167 (December 2013); [Report of the Special Rapporteur on freedom of opinion and expression](#), (May 2016), A/HRC/32/38, para 6.

<sup>35</sup> Article 19 (b), ICCPR

<sup>36</sup> Article 20(2) of the ICCPR

<sup>37</sup> Human Rights Committee, [General Comment No 34, CCPR/C/GC/34](#), (September 2011), para 22; [‘Refah Partisi \(The Welfare Party\) and Others v. Turkey, 13 February 2003’](#), Application Nos. 41340/98, 41342/98, 41343/98 and 41344/98, European Court of Human Rights, para. 50-85; [‘The Sunday Times v. United Kingdom, 26 April 1979’](#), Application No. 6538/74, ECtHR, para. 45

<sup>38</sup> UN Human Rights Committee, [General Comment No 34, CCPR/C/GC/34](#), (September 2011), para 11; [Handyside v The United Kingdom](#), Application No 5493/72, ECtHR, judgment of 7 December 1976 at para 49

<sup>39</sup> UN Human Rights Council, [‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’](#), (April 2016), A/HRC/31/65 para 38

24. In 2005, the UN Security Council called for the prohibition of incitement to terrorism in its resolution 1624.<sup>40</sup> In 2014, it went further in its Resolution 2178, which requires states to criminalise, amongst other things, various activities linked to the preparation of terrorist acts.<sup>41</sup> The former UN Special Rapporteur on Countering Terrorism, Martin Scheinin, provided guidance on how best to word criminal laws on incitement in order to protect human rights:

*“It is an offence to intentionally and unlawfully distribute or otherwise make available a message to the public with the intent to incite the commission of a terrorist offence, where such conduct, whether or not expressly advocating terrorist offences, causes a danger that one or more such offences may be committed.”<sup>42</sup>*

The above ‘best practice’ wording from the former UN Special Rapporteur is almost identical to that contained in the Council of Europe Convention for the Prevention of Terrorism.<sup>43</sup>

#### a. ‘Glorification’

25. Several OSCE participating states have laws that prohibit the ‘glorification’ of terrorism. Despite the Convention for the Prevention of Terrorism already containing an article prohibiting the provocation or incitement of a terrorist offence, in 2017, the EU enacted Directive 2017/541 on combating terrorism,<sup>44</sup> which went further than the existing offence contained in the Convention. The Directive specifically states that provocation to commit a terrorist offence includes the ‘glorification and justification’ of terrorism, and requires Member States to make such activity a criminal offence.<sup>45</sup>
26. Scheinin warned against the use of counter-terrorism legislation that included this very term. He stated that offences regarding incitement to commit a terrorist offence “*must be prescribed by law in precise language, including by avoiding reference to vague terms such as ‘glorifying’ or ‘promoting’ terrorism.*”<sup>46</sup>

This view has also been taken in the joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information.<sup>47</sup>

27. Although the EU Directive also states that there must be intent to advocate or incite a terrorist offence from the messages disseminated, several human rights organisations have raised concerns that “*such a low threshold is likely to lead to abuse.*”<sup>48</sup> This is, in part, because the Directive “*repeats the EU’s already overly broad definition of ‘terrorism.’*”<sup>49</sup> In addition to affecting freedom of expression, broad definitions in the Directive have also come under criticism for permitting states “*to criminalise, as terrorism, public protests or other peaceful acts that they deem ‘seriously destabilize the fundamental political, constitutional, economic or social structures of a country or an international organization.’*”<sup>50</sup>
28. Prior to the Directive, several EU Member States already had laws that prohibited the praising, glorification or apology for terrorist acts, some of which define the glorification of terrorism more broadly than in the Directive. Whereas the Directive states that there should be an element of intent, some Member States (explored further below) effectively criminalise opinions – unpalatable though they may be – even though they do not call for violence or have violent intent.
29. In Spain, the Criminal Code was amended in 2015 to broaden the scope of Article 578 on the ‘glorification of terrorism’.<sup>51</sup> Since then, artists, rappers, vegan activists and even puppeteers have fallen victim both to Spain’s broad definition of terrorism, and the crime of ‘glorifying’ it.<sup>52</sup> Critiques of this law include judges, who have raised concerns that Spain’s laws are too vague on terrorism.<sup>53</sup>

<sup>40</sup> UN Security Council Resolution 1624, (September 2005), S/RES/1624 paragraph 1 (a)

<sup>41</sup> UN Security Council Resolution 2178, (September 2014), S/RES/2178

<sup>42</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin- Ten areas of best practices in countering terrorism’, (December 2010), A/HRC/16/51 p.8 Practice 8.

<sup>43</sup> Ibid. para 30

<sup>44</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

<sup>45</sup> Ibid. Preamble para 10 and Article 5

<sup>46</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin- Ten areas of best practices in countering terrorism’, (December 2010), A/HRC/16/51, A/HRC/16/51 para 31

<sup>47</sup> Joint Declaration on Freedom of Expression and Responses to conflict situations, (May 2015), para 3. (b)

<sup>48</sup> Human Rights Watch ‘EU Counterterrorism Directive Seriously Flawed’, (November 2016)

<sup>49</sup> European Network Against Racism, ‘European Union Directive on Counterterrorism is Seriously Flawed’, (November 2016)

<sup>50</sup> Ibid.

<sup>51</sup> Article 578. 1 of the Spanish Penal Code criminalises “the glorification or justification of the crimes [of terrorism] listed in Articles 572 to 577 [of the Penal Code], or of those who have participated in their execution, or the performance of acts that entail discredit, contempt or humiliation of the victims of terrorist crimes or their relatives”

<sup>52</sup> Amnesty International ‘Tweet.... If you dare: How Counter terrorism laws restrict freedom of expression in Spain’, (March 2018)

<sup>53</sup> Guy Hedgecoe, ‘Spanish Democracy Goes on Trial’, The New Republic, (February 2019)



## Valtònyc

Since the amendments made to the law in 2015, at least 17 musicians have faced criminal charges under Spain's overly broad counter-terrorism laws.<sup>54</sup> In February 2018, the Spanish Supreme Court upheld the conviction and sentence of the rapper Jose Miguel Arenas Beltrán, known as Valtònyc, to three years and six months' imprisonment for offences of insulting the monarchy, glorification of terrorism and humiliating victims of terrorism, and threats.<sup>55</sup> The charges related to song lyrics which referred to Euskadi Ta Askatasuna ('ETA'), The First of October Anti-Fascist Resistance Groups ('GRAPO'), and the murder of members of the government and royal family.

Valtònyc was expected to surrender himself to the authorities voluntarily in May 2018 but he fled to Belgium. Spain issued international and European arrest warrants and attempted to have him extradited from Belgium. However, on 17 September 2018, the Belgian Tribunal of Ghent rejected the extradition request finding that Valtònyc's lyrics could not be considered as incitement to terrorism under Belgian law. The Public Prosecutor of Ghent appealed this sentence, arguing that extradition should be granted. The appeal is still pending.<sup>56</sup>

30. The Spanish law goes significantly further than the EU Directive, which requires intent to advocate or incite a terrorist offence. In January 2017, the Supreme Court ruled that people could be found guilty of violating Article 578, even if there was no intent to actually glorify terrorism or humiliate victims of terrorism.<sup>57</sup> Furthermore, the EU Directive clearly envisages an offence of incitement, which would include speech that glorifies terrorist acts, whereas Spanish legislation has a separate offence of incitement to terrorism.<sup>58</sup>
31. As reported by Amnesty International, most prosecutions under Article 578 involve disbanded or non-active domestic armed groups.<sup>59</sup> This is

because international terrorist groups – which have carried out domestic terrorist attacks in the recent past, and do pose a threat to national security – are prosecuted under more serious charges.<sup>60</sup> This clearly demonstrates that authorities are equipped with other sufficient legislation to prosecute cases which genuinely pose a threat to national security, rendering prosecutions under Article 578 arbitrary as well as overly broad.

## b. 'Apology' for terrorism

32. In 2014, France amended the Criminal Code to include the offence of 'apology for terrorism',<sup>61</sup> and has since brought thousands of cases under the new law, many of them involving minors.<sup>62</sup> Many of these cases do not involve direct incitement to violence, and tend to involve 'drunken interactions with the police or provocative – and sometimes unpalatable – statements in school courtyards or on social media.'<sup>63</sup>

## Vegan activist

In March 2018, a conviction for 'apology for terrorism' was handed down to a vegan woman for a Facebook post after the terror attacks in a French supermarket in Trèbes, which the court deemed to have condoned terrorism. She had written regarding one of the victims who was a butcher: *"So then, you are shocked that a murderer is killed by a terrorist,"* wrote the animal rights activist. *"Not me. I've got zero compassion for him, there's justice in it."*<sup>64</sup> She was handed a seven-month suspended prison term for the post.

The Council of Europe Commissioner for Human Rights highlighted the case, stating the risks of legislation that uses a 'catch-all label', that criminalises speech that is simply 'non-consensual, shocking or politically embarrassing' rather than actually violent or inciting violence.<sup>65</sup>

<sup>54</sup> El Nacional, '[Todos los casos de censura de la libertad de expresión en España](#)', (October 2018)

<sup>55</sup> Tribunal Supremo Sala de lo Penal, '[Judgment No. 79/2018](#)', 15 February 2018

<sup>56</sup> Article 19 and European Centre for Press and Media Freedom, '[Submission to the Universal Periodic Review of Spain](#)', (July 2019), p.6

<sup>57</sup> '[Cesar Strawberry](#)', Spanish Supreme Court, Case Number STC 4/2017, 18 January 2017

<sup>58</sup> Articles 579 and 589 of the [Spanish Penal Code](#) prohibit incitement to terrorist offences

<sup>59</sup> Amnesty International '[Tweet.... If you dare: How Counter terrorism laws restrict freedom of expression in Spain](#)', (March 2018), p.15

<sup>60</sup> Ibid.

<sup>61</sup> [Article 421-2-5](#) of the French Criminal Procedure Code prohibits "Direct provocation of acts of terrorism or apology for such acts"

<sup>62</sup> Amnesty International, '[Dangerously Disproportionate: The Ever-Expanding nation security state in Europe](#)' (January 2017)

<sup>63</sup> Nadim Houry '[France's Creeping Terrorism Laws Restricting Free Speech](#)', Human Rights Watch, (May 2018)

<sup>64</sup> Deutsche Welle, '[French vegan handed suspended sentence for pro-terror Facebook post](#)' (2018)

<sup>65</sup> Council of Europe Commissioner for Human Rights, Human Rights Comments, '[Misuse of anti-terror legislation threatens freedom of expression](#)', (March 2018)

33. After her 2018 visit to France, the Special Rapporteur on Countering Terrorism, Fionnuala Ni Aoláin, also raised concerns over the crime of ‘apology for terrorism’, stating that *“the extent to which this crime captures a broad and indiscriminate range of expression and actors evidences an undue restriction on the freedom of expression as protected by international human rights law in France.”*<sup>66</sup>
34. As Human Rights Watch has noted, the right to hold controversial or even offensive comments is a key aspect of freedom of expression – if people were only allowed to express views that were majoritarian, the right would be stripped of its essence.<sup>67</sup> The laws of some EU Member States clearly go further than the Directive, which states that there should be an element of intent, to merely criminalising opinions, even though they do not call for violence or have violent intent.
35. All EU Member States were required to ensure that local laws comply with the Counter-Terrorism Directive by September 2018. A similar ‘apology for terrorism’ law to the one in France has been proposed in Belgium,<sup>68</sup> and a ‘glorification of terrorism’ law was proposed in the Netherlands, but was ultimately rejected.<sup>69</sup> In the Netherlands, after the law was proposed, the Cabinet affirmed that existing legal instruments were available to effectively combat incitement to terrorism.<sup>70</sup> It remains to be seen how EU States ensure compliance with the Directive, and whether or not wide-reaching laws such as ‘glorification’ or ‘apology for terrorism’ will proliferate across the region.
37. These broad provisions are regularly abused by the government to target journalists, human rights activists, academics and even elected politicians from opposition parties.<sup>74</sup>

### Selahattin Demirtas

In September 2018, the former leader of the third-biggest group in Turkey’s Parliament, the Peoples’ Democratic Party (‘HDP’), was convicted of ‘terrorist propaganda’ and sentenced to almost 5 years in prison. He was accused of terrorist propaganda for making a speech in 2013 in which he demanded greater cultural and political rights for Turkey’s estimated 16 million ethnic Kurds.<sup>75</sup>

The ECtHR has stated that his prolonged pre-trial detention *“had pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate.”*<sup>76</sup> Despite the ECtHR and multiple EU officials calling for his release, as of August 2019, he remains in prison facing further terrorism charges which could amount to a 142-year prison sentence.<sup>77</sup>

### c. ‘Terrorist propaganda’

36. These vaguely worded laws are by no means confined to the EU. In Turkey, the law against ‘terrorist propaganda’<sup>71</sup> contains definitions of terrorism and propaganda so broad that it covers the expression of views in support of government opposition, reforms to government policy or a change in government.<sup>72</sup> In addition, the former Council of Europe Commissioner for Human Rights, Nils Muižnieks, has noted with concern that:

<sup>66</sup> UN OHCHR, ‘[Preliminary findings of the visit: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to France](#)’, (May 2018)

<sup>67</sup> Nadim Houry ‘[France’s Creeping Terrorism Laws Restricting Free Speech](#)’, Human Rights Watch, (May 2018)

<sup>68</sup> Amnesty International, ‘[Dangerously Disproportionate: The Ever-Expanding nation security state in Europe](#)’ (January 2017) p.39 section 4.1

<sup>69</sup> *Ibid.* p.40 Section 4.3

<sup>70</sup> *Ibid.*

<sup>71</sup> “Any person who disseminates propaganda in favour of a terrorist organisation by justifying, praising or encouraging the use of methods constituting coercion, violence or threats shall be liable to a term of imprisonment of one to five years.” [Article 7\(2\) of law no. 3713 on Counter-Terrorism](#)

<sup>72</sup> Article 19, ‘[Turkey: Charges against filmmakers violate right to free expression](#)’, (May 2018)

<sup>73</sup> Council of Europe Commissioner for Human Rights, ‘[Memorandum on freedom of expression and media freedom in Turkey](#)’ (February 2017) CommDH(2017)5, para 8

<sup>74</sup> *Ibid.* para 65

<sup>75</sup> Ayla Jean Yackley, ‘[Turkey sentences Kurdish political leader to jail on terror charges](#)’, Financial Times, (September 2018)

<sup>76</sup> BBC News, ‘[Turkey must free Selahattin Demirtas, European rights court says](#)’ (November 2018)

<sup>77</sup> Reuters, ‘[Turkish court keeps Kurdish politician Demirtas in jail despite ECHR](#)’ (November 2018)



38. National security and the need for rapid responses to counter terrorism should not be a shield for states who disproportionately restrict human rights to hide behind. As counter-terrorism laws continue to be introduced in light of ever advancing technologies and terrorists' ability to adapt these technologies for their own ends, such as the use of social media to target individuals for recruitment, it is important that human rights are not disregarded in the name of pushing through legislation as quickly as possible. Laws that restrict free speech must be necessary and proportionate, as well as provided for by law 'which is sufficiently clear and precise'.<sup>78</sup> The vague terms used in some of the laws across the OSCE such as 'apology', 'glorification' or 'propaganda', coupled with the lack of definition of terrorism, leaves these provisions open to abuse and is not in compliance with international law.

## 2. Hate speech and extremism

39. The way that extremism is conceptualised varies across the OSCE region, with Russia and Central Asian countries taking a different legal approach to most Western European countries. Many states in the SCO region have 'extremism' legislation that covers terrorism, extremism and separatism. This regional trend may be due to regional sharing of laws and practices – for example, the 2001 Shanghai Convention on Combating Terrorism, Separatism and Extremism not only conflates terrorism and extremism with 'separatism', which has clear implications for national self-determination movements, but it also specifically says that these terms may be interpreted broadly.<sup>79</sup> In practice, states appear to have indeed interpreted these terms broadly, arguably beyond what is set out in the Convention. Whilst the 2001 Shanghai Convention specifically defines terrorism, extremism and separatism as acts related to violence, several SCO States do not link these offences to violence in national legislation.

40. Moreover, the SCO negotiated a new Convention on Countering Extremism in 2017, which Russia ratified in July 2019.<sup>80</sup> Worryingly, the Convention's definition of extremism is no longer strictly associated with

violence. Extremism is instead defined as "*ideology and practices aimed at resolving political, social, racial, ethnic and religious conflicts by means of violent and other unconstitutional actions.*"<sup>81</sup> The Convention also includes a list of 'extremist acts' which has much in common with the Russian definition of extremist activity. In 2017, India and Pakistan also became members of the SCO (although they have not signed the Convention), meaning that almost 44% of the world's population reside in an SCO Member State, and may be subject to its regional policies and laws.<sup>82</sup>

41. The Convention stipulates for close cooperation between Member States in the fields of extradition, transfer of convicts, freezing and confiscations of funds and joint investigative operations. Extremely concerning is that the Convention stipulates that "*the parties shall take the necessary measures to prevent the granting of refugee status and documents confirming it to persons involved in crimes covered by the present Convention.*"<sup>83</sup> The broad and abusive approach to the application of anti-extremism laws in Russia and Central Asia (explored further below) to target political opponents, journalists, human rights defenders and religious groups through anti-extremism laws, may now be further exacerbated by restricting the ability of people subject to abusive laws to claim asylum or refugee status throughout the entire region.

42. In Russia, as well as Kazakhstan and Kyrgyzstan, anti-extremism laws include 'incitement to hatred'.<sup>84</sup> The majority of convictions for 'extremism' in Russia were handed down under this provision before its partial decriminalisation in 2018.<sup>85</sup> Often, prosecutions are for xenophobic propaganda, and the vast majority are for sharing of content online.<sup>86</sup> However, the overly broad phrasing of this provision has also been misused to target a range of actors, including religious groups and political opposition activists. The law covers hatred towards 'a person or a group of persons' who are affiliated to a social group. This has been interpreted to cover State officials or law enforcement, despite specific instructions from the Supreme Court that dovetail with the ECtHR jurisprudence in setting a higher threshold for criminalising speech targeting authorities compared to ordinary individuals.<sup>87</sup>

<sup>78</sup> OSCE, '[International Standards and Comparative Approaches on Freedom of Expression and Blocking of Terrorist or Extremist Content Online](#)', OSCE Representative on Freedom of the Media on the request of the Russian Federation, (January 2018), para 18

<sup>79</sup> Regional Treaties, Agreements, [Declarations](#) and Related, Shanghai Convention on Combating Terrorism, Separatism and Extremism, 15 June 2001, Article 1.2

<sup>80</sup> The Convention has been signed by Russia, China, Kazakhstan, Kyrgyzstan, Uzbekistan and Tajikistan. As of July 2019, the Convention had been ratified by China, Russia, Uzbekistan, Kyrgyzstan

<sup>81</sup> Convention of the Shanghai Cooperation Organization on Countering Extremism, 9 June 2017, Article 2(2)

<sup>82</sup> UN Chronicle, [The Role of the Shanghai Cooperation Organization in Counteracting Threats to Peace and Security](#), Vol. LIV No. 3 (October 2017)

<sup>83</sup> Convention of the Shanghai Cooperation Organization on Countering Extremism, 9 June 2017, Article 21

<sup>84</sup> Article 282, [Criminal Code of the Russian Federation](#); See also the definition of extremism in [Federal Law No. 114-FZ of 25 June 2002 on Combating Extremist Activity](#)

<sup>85</sup> Article 19 and SOVA Center for Information and Analysis, 'Rights In Extremis: Russia's Anti-Extremism Practices in International Perspective', (2019)

<sup>86</sup> Ibid

<sup>87</sup> [Resolution 11 of the plenary meeting of the Supreme Court of the Russian Federation 'Concerning judicial practice in criminal cases regarding crimes of extremism'](#), adopted on 28 June 2011 by the Supreme Court of the Russian Federation

### Magomed Khazbiev

In November, the Magassky District Court of Ingushetia sentenced the opposition activist Magomed Khazbiev to two years and 11 months of imprisonment in a settlement colony and a fine of 50 thousand rubles, having convicted him of several charges, including inciting hatred against Head of the Republic of Ingushetia, Yunus-Bek Evkurov, as well as against “representatives of the judicial system, law enforcement agencies, the government, and the authorities of the Republic of Ingushetia as a whole”.

The charge was related to an interview by Khazbiev, in which he criticized the Republic’s authorities and called for their replacement. SOVA have stated that this part of the verdict (relating to the incitement of hatred charge) was inappropriate, since a call for changing the government, as long as it doesn’t involve any calls for unlawful actions, belongs to the sphere of public debate, not criminal law enforcement.<sup>88</sup>

44. In some cases, the broad reach of these laws has led to the application of extremism laws that seems arbitrary. In Kyrgyzstan, prosecutions under Article 299 of the Criminal Code, “Incitement to ethnic, racial, religious or interregional hatred” have been criticised for being applied both arbitrarily and seemingly at random. It has been highlighted that “Kyrgyz legislation is still unable to distinguish between two types of online content: negative and illegal.”<sup>93</sup> This also holds true for prosecutions in Russia and Kazakhstan under equivalent legislation.

### Temirbek Bolotbek

Bishkek University lecturer, Temirbek Bolotbek, faced up to seven years in prison for ‘incitement to ethnic, racial, religious or interregional hatred’ for posting a comment under a post on Soviet architecture on Facebook. Bolotbek commented: “You call these stinky, boring and backwards Soviet buildings ‘architecture’? Those who regard those typical housing blocks as ‘architecture’ have no idea what architecture is. All you lovers of Soviet relics, why don’t you go to Russia, to somewhere in Siberia – where there’s plenty of this boring, poor and slave-like shit!”<sup>94</sup>

Kyrgyz law enforcement deemed Bolotbek’s comments extremist, even though they targeted no particular ethnic, racial or religious group of people. He was acquitted at trial on 6 May 2019, and the prosecutor’s office filed an appeal against the acquittal to the Bishkek city court on 18 May 2019.<sup>95</sup>

43. Several Central Asian states also use hate speech or ‘incitement to hatred’ laws under anti-extremism laws. In Kazakhstan, Article 1 of the Law on Countering Extremism describes three types of extremism: political, national and religious.<sup>89</sup> The law has been called ‘vague and confusing’ due to its blurring of the concept of ‘extremism’ with hate speech and separatist speech, with all such speech being considered as ‘extremist’ under the law.<sup>90</sup> In some cases, the law has been used against political activists.<sup>91</sup> In particular, one political opposition party in Kazakhstan, the Democratic Choice of Kazakhstan (DCK) has been designated as an extremist organisation, and as such, all activities related to promoting or belonging to the party are criminalised.<sup>92</sup>

<sup>88</sup> SOVA Center for Information and Analysis, ‘Misuse of Anti-Extremism in February 2019’

<sup>89</sup> Central Asia Program, ‘Countering Extremism vs. Freedom of Online Expression: The Case of Kazakhstan’, CAP Fellows Paper 201, (January 2018), p.2

<sup>90</sup> Ibid. p.1

<sup>91</sup> Ibid.

<sup>92</sup> Igor Savchenko, Lyudmyla Kozlovska, Andriy Osavoliyik, ‘Report: The persecution of the DCK activists in Kazakhstan’, (April 2018)

<sup>93</sup> Elnura Alkanova, ‘How social media users in Kyrgyzstan are turned into “extremists”’, Open Democracy, (July 2018)

<sup>94</sup> Ibid

<sup>95</sup> Radio Free Europe Radio Liberty, ‘The prosecutor’s office appealed the verdict to the teacher KSUST Temir Bolotbek’, (May 2019)



45. It is difficult to see the link between comments on Soviet architecture and the threat of violent extremism. Bolotbek's case demonstrates the danger that broad definitions of extremism – especially when linked to 'incitement to hatred' – can pose to freedom of expression as well as a range of other human rights, including the right to liberty for those prosecuted. These prosecutions are clearly not in line with international standards on 'incitement to hatred' offences. The Rabat Plan of Action provides a six-part threshold test for incitement to hatred offences that should be taken into account by courts when assessing criminal cases, which includes the likelihood that a crime would be committed through the incitement.<sup>96</sup>
46. The impact of these overly broad laws on human rights is exacerbated by cross border cooperation on terrorism and extremism, which has led to the sharing of laws and policies that have a negative impact on human rights.<sup>97</sup> The Kyrgyz legislation is largely a replica of a similar provision in the Russian Criminal Code, although unlike the Russian offence, Kyrgyz legislation does not provide for the possibility of penalties in the forms of fines or forced labour in lieu of a custodial sentence.<sup>98</sup>
47. One exception to the 'European approach' of not having a separate category of anti-extremism legislation is Slovakia, where the Criminal Code uses the term 'extremist crimes'. Extremist crimes include incitement to hatred as well as the production, distribution, and even the storage of 'extremist materials', amongst other offences.<sup>99</sup>
48. In addition to criminalising certain types of speech, international law has required states to criminalise certain preparatory acts related to terrorism, including receiving communications and information that are deemed to be 'online terrorist training'.<sup>100</sup> This further impacts the right to freedom of expression – as the right also encompasses the freedom to seek, receive and impart information and ideas of all kinds, through any media and regardless of frontiers.<sup>101</sup>
49. The EU Directive on Combating Terrorism was introduced in 2017 in part due to the international legal obligations set out by UN Security Council Resolution 2178.<sup>102</sup> The Directive addresses the issue of criminalising the viewing of terrorism-related content online. The Preamble to the Directive states that self-study, through the internet or otherwise, should be considered as receiving training for terrorism "when resulting from active conduct and done with the intent to commit or contribute to the commission of a terrorist offence".<sup>103</sup> This intent can be inferred from "the type of materials and the frequency of reference".<sup>104</sup> The Directive leaves the frequency of reference and type of materials (factors that indicate intent) to the discretion of Member States, meaning that information-seeking is left open to overly broad and severe criminalisation.
50. In 2018, the UK's proposed Counter-Terrorism and Border Security Act caused alarm amongst the media and civil society organisations for its sweeping criminalisation of activities which many feared constituted 'thought crime'.<sup>105</sup> Originally, the Bill criminalised the viewing of terrorist content online three or more times, which was criticised by the UN Special Rapporteur on the Right to Privacy as 'arbitrary'.<sup>106</sup> Yet after revision, the law now criminalises viewing online terrorist content just once with a potential 15-year prison sentence.<sup>107</sup> The Joint Committee on Human Rights stated that the provision "is a breach of the right to receive information and risks criminalising legitimate research and curiosity".<sup>108</sup> Despite this, the new law came into effect under the Counter-Terrorism and Border Security Act in April 2019.<sup>109</sup>

### 3. Access to information

<sup>96</sup> UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred, (January 2013), A/HRC/22/17/Add.4, pgs. 10-12

<sup>97</sup> Fair Trials, "Cross-border criminal justice and security: Human rights concerns in the OSCE region" (December 2018)

<sup>98</sup> Elnura Alkanova, "How social media users in Kyrgyzstan are turned into "extremists"", Open Democracy, (July 2018)

<sup>99</sup> Criminal Code of Slovakia Article 424, Art. 422a, Art. 422b, Art. 422c; For more information, see SOVA Center for Information and Analysis, "Criminal Law on Hate Crime. Incitement to Hatred and Hate Speech in OSCE Participating States", (May 2016)

<sup>100</sup> See for example, UN Security Council Resolution 2178, (September 2014), S/RES/2178

<sup>101</sup> Article 19, Universal Declaration of Human Rights (December 1948); Article 19, International Covenant on Civil and Political Rights (December 1976)

<sup>102</sup> European Parliament, Legislative Train, "Review of the Framework Decision on Terrorism", (June 2019)

<sup>103</sup> Recital 11, Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism

<sup>104</sup> Ibid

<sup>105</sup> Lizzie Dearden 'UK government straying towards 'thought crime' by criminalising viewing terrorist material, UN inspector says' The Independent, (June 2018)

<sup>106</sup> Ibid.

<sup>107</sup> See [Government amendment 2](#), House of Commons, NOTICES OF AMENDMENTS given up to and including Wednesday 5 September 2018, CONSIDERATION OF BILL (REPORT STAGE), COUNTER-TERRORISM AND BORDER SECURITY BILL; Counter-Terrorism and Border Security Act 2019 c.3, PART 1, CHAPTER 1, Section 3

<sup>108</sup> Joint Committee on Human Rights, [10 clauses Government must change in Counter-Terrorism and Border Security Bill](#), (October 2018)

<sup>109</sup> [Counter-Terrorism and Border Security Act 2019](#) (c. 3), (April 2019, London)

51. Similar legislation in France has twice been declared unconstitutional for unjustifiably restricting freedom of communication. In June 2016, France adopted a law criminalising the ‘regular consultation’ of online materials inciting terrorism without a legitimate reason, making it punishable by up to two years in prison and a €30,000 fine.<sup>110</sup> When declaring it unconstitutional, the Constitutional Court *“underlined that merely looking at websites or holding a certain heinous ideology does not justify loss of liberty”*.<sup>111</sup>

## Freedom of religion

52. Restrictions on rights such as freedom of expression or association can have a direct impact on other rights, including the right to freedom of religion or belief. In 2018, the UN Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, highlighted that *“The ‘war on terrorism’ since the beginning of the twenty-first century has been marked by extraordinary national security measures which have resulted in myriad violations and abuses of fundamental human rights and principles, including the right to freedom of religion or belief.”*<sup>112</sup>
53. Under the ICCPR,<sup>113</sup> unlike the right to freedom of expression, ‘national security’ is not a ground for restriction of the right to freedom of religion.<sup>114</sup> OSCE states have repeatedly committed to freedom of religion as a fundamental right,<sup>115</sup> yet despite this, the fight against terrorism has increasingly been used as a justification for human-rights violations in the area of freedom of religion across the OSCE region.<sup>116</sup>
54. The UN Special Rapporteur, Ahmed Shaheed, has expressed concern that within the Countering Violent Extremism narrative, States continue to adopt legislation and policies that profile certain religious groups (which are deemed by the state concerned, as inclined towards ‘radicalisation’, ‘extremism’, or criminality) on the basis of stereotypes.<sup>117</sup>

### The US ‘Muslim Ban’

In January 2017, the President of the USA signed Executive Order 13769 titled ‘Protecting the Nation from Foreign Terrorist Entry into the United States’, that banned foreign nationals from seven predominantly Muslim countries from visiting the country for ninety days, suspended entry to the country for all Syrian refugees indefinitely, and prohibited any other refugees from coming into the country for 120 days. The ban, and a later version of it, were challenged at several different levels in the US courts. In June 2018, a third version of the ban, Presidential Proclamation 9645, which prohibited travel from six predominantly Muslim countries, but also included North Koreans and certain Venezuelan government officials, was upheld by the US Supreme Court.<sup>118</sup>

The ban was widely viewed as an attempt to deliver on the President’s campaign promise of a *“total and complete shutdown of Muslims entering the United States”*.<sup>119</sup> Despite being allowed by the US Supreme Court, many experts feel that the Proclamation violates rights under the US Constitution as well as the ICCPR for discriminating on the grounds of race, religion and national origin, and for its effects on families.<sup>120</sup>

55. The right to simply hold an opinion and the freedom to have or adopt a religion or belief of one’s choice cannot be subject to any restriction.<sup>121</sup> Despite this, some countries have imposed severe restrictions on private religious life, and believers are prosecuted under a variety of broad or vaguely defined legal provisions, none of which involve violence or the threat of violent extremism.

<sup>110</sup> Article 421-2-5-2 of the [French Penal Code](#)

<sup>111</sup> Human Rights Watch, [‘French Legislators Rebuked for Seeking to Criminalize Online Browsing’](#), (December 2017); See also Decision number 2017-682 QPC of the 15th December 2017 (NOR: CSCX1735443S) of the Constitutional Court which declared Article 421-2-5-2 of the penal code unconstitutional

<sup>112</sup> UN General Assembly, [Interim report of the Special Rapporteur on freedom of religion or belief](#), (September 2018), A/73/362 p.3 para 3

<sup>113</sup> Article 18, ICCPR

<sup>114</sup> UN General Assembly, [Interim report of the Special Rapporteur on freedom of religion or belief](#), (September 2018), A/73/362, 119 pgs.4-5 para 8

<sup>115</sup> See a summary of some of these commitments at US Helsinki Commission, [‘Religious Freedom Commitments Within the OSCE’](#) (September 2009)

<sup>116</sup> ODIHR, [‘ODIHR Panel of Experts on Freedom of Religion or Belief’](#), (September 2017), p.1; UN General Assembly, Interim report of the Special Rapporteur on freedom of religion or belief, (September 2018), A/73/362 p.3 para 3

<sup>117</sup> UN General Assembly, [Interim report of the Special Rapporteur on freedom of religion or belief](#), (September 2018), A/73/362, p.7 para 19

<sup>118</sup> For a full timeline of challenges, see ACLU Washington, [Timeline of the Muslim Ban](#).

<sup>119</sup> Jenna Johnson, [‘Trump calls for ‘total and complete shutdown of Muslims entering the United States’](#), Washington Post, (January 2015)

<sup>120</sup> Center for Constitutional Rights, [The Muslim Ban: Discriminatory Impacts and Lack of Accountability](#), (January 2019)

<sup>121</sup> UN General Assembly, [Interim report of the Special Rapporteur on freedom of religion or belief](#), (September 2018), A/73/362, p.9 para 26



56. In Uzbekistan, Article 184 (2) of the Code of Administrative Offences bans the illegal manufacture, storage, import or distribution of materials and religious content, and article 184 (3) prohibits the production, storage or distribution of materials propagating 'religious enmity', which, if committed repeatedly, entails criminal liability.<sup>122</sup> These provisions have reportedly been used to carry out raids on private homes and social gatherings, where in some cases even legally obtained religious literature has been confiscated.<sup>123</sup>
57. A recurring theme across Russia and Central Asia is the targeting of religious organisations through extremism legislation that makes it possible to prohibit the promotion of a particular religion or ideas as superior to others, leaving wide discretion to the state over which religions are targeted through the legislation. Russian law criminalises "propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion".<sup>124</sup> In Kyrgyzstan, Article 1 of the Law on Countering Extremist Activity gives a vastly broad definition of extremist activities, including any actions directed to "propaganda of exclusiveness, superiority or inferiority of citizens on account of their religious orientation, social, race, national, religious or language origin", amongst a host of other, equally vaguely-worded activities.<sup>125</sup> Given that several religions regard their believers as exceptional or as 'chosen people', this law could be interpreted to apply to almost any religion.
58. The Venice Commission has criticised this kind of legislation. Speaking about the law in Russia, it stated that "to proclaim as extremist any religious teaching or proselytising activity aimed at proving that a certain worldview is a superior explanation of the universe, may affect the freedom of conscience or religion of many persons and could easily be abused in an effort to suppress a certain church thereby affecting not only the freedom of conscience or religion but also the freedom of association."<sup>126</sup> This is in line with the standards contained in the Camden Principles, which state that "the promotion, by different communities, of a positive sense of group identity does not constitute hate speech".<sup>127</sup>
59. Despite international criticism of the Russian law, the new SCO Convention on Countering Extremism not only provides for the same offence, but also goes a step further than the Russian legislation by including 'political' affiliation as one of the potential extremist affiliations. The Convention therefore defines "promoting exclusiveness, superiority or inferiority of a person on the basis of their political, social, racial, ethnic and religious affiliation"<sup>128</sup> as an extremist act. If all SCO countries adopt legislation with this 'extremist' offence, it will have serious human rights implications across the SCO and a large part of the OSCE region.
60. On 17 July 2017, Russia's Supreme Court upheld its earlier decision to liquidate the Jehovah's Witness Administrative Centre and 395 local Jehovah's Witness branches for being 'extremist'.<sup>129</sup> Since the ban, Russian authorities have filed criminal extremism charges against more than 200 Jehovah's Witnesses.<sup>130</sup> The breakaway region of South Ossetia in Georgia decided to follow suit and also enact a ban on the organisation.<sup>131</sup> Turkmenistan and Tajikistan had already banned the organisation (although not on extremism grounds), and other Central Asian countries have persecuted members of the organisation using extremism or counterterrorism grounds, but have not banned the group outright.

<sup>122</sup> UN Human Rights Council, 'Report of the Special Rapporteur on freedom of religion or belief on his mission to Uzbekistan', (February 2018), A/HRC/37/49/Add.2, para 77

<sup>123</sup> Ibid para 79; World Watch Monitor, 'Uzbek Protestants detained and their religious materials confiscated despite being legal', (November 2018)

<sup>124</sup> The Federal Law 'On Combating Extremist Activity', Article 1 para. 1 point 4

<sup>125</sup> Article 19, 'Kyrgyzstan: Law on Countering Extremist Activity Legal Analysis', (December 2015) p.9

<sup>126</sup> European Commission for Democracy through law (Venice Commission) 'Opinion on the federal law on combating extremist activity of the Russian Federation', Opinion no. 660 / 2011, CDL-AD(2012)016, p.10 para 38

<sup>127</sup> Article 19, 'The Camden Principles on Freedom of Expression and Equality', (April 2009) Principle 12 Incitement to Hatred

<sup>128</sup> Convention of the Shanghai Cooperation Organization on Countering Extremism, (September 2017), Article 2(3)

<sup>129</sup> Forum 18, 'Russia: Jehovah's Witnesses now banned', (July 2017)

<sup>130</sup> Ibid.

<sup>131</sup> Eurasianet, 'South Ossetia Joins Russia in Ban on Jehovah's Witnesses', (October 2017)

### Teymur Akhmedov

In Kazakhstan, 61-year-old Jehovah's Witness, Teymur Akhmedov, received a presidential pardon in 2018 after serving a year in prison on extremism charges of 'inciting religious discord' and advocating 'superiority . . . on grounds of [his] religion' under Article 174 (2) of Kazakhstan's Criminal Code. He was convicted after conversations with members of Kazakhstan's secret police, the National Security Committee ('KNB'), who were posing as people interested in the religion. As the result of a UN Human Rights Committee decision on interim measures and other requests from international bodies, Akhmedov applied for a presidential pardon, and was granted it and released from prison. Although the case demonstrates the persecution that members of peaceful religions face under extremism laws, Kazakhstan's willingness to reassess the case in light of international condemnation is a positive outcome when compared to Russia's refusal to listen to the international community on the persecution of Jehovah's Witnesses and lack of compliance with international human rights law.

61. In addition to listing designated groups as extremist, some states also have centralised lists of materials deemed to be terrorist or extremist. In Kyrgyzstan, legislation that was in force for the last six years allowed for criminal prosecution for being found in possession of extremist material, even with no intent to disseminate it. Possessing extremist material was criminalised under Article 299-2 of the Criminal Code, the country's most widely applied charge against terrorism and extremism suspects.<sup>132</sup> Human Rights Watch has stated that the central flaw in the legislation was its overbroad definition of extremism, as it relies on separately defined extremist activities for its definition, which range from acts of terrorism to 'affronts to national dignity', 'hooliganism', and 'vandalism'.<sup>133</sup> The provision also criminalised the storage of materials, regardless of whether the suspect intended to distribute it, or used or intended to use it to commit or incite violence. The law that was originally enacted in 2009 contained the intent to distribute or produce extremist materials, but was amended in 2013 to remove the intent to distribute, as a response to Government concerns over the pan-Islamist group Hizb ut-Tahrir and other groups.<sup>134</sup> In response to international criticism over the amendment of the law and subsequent prosecutions, the Government approved amendments to reinsert the intent to disseminate into the law in 2016,<sup>135</sup> and this came into force under the new Criminal Code enacted in January 2019.<sup>136</sup>
62. When enacted in 2009, Article 299-2 was modelled on a provision in the 2002 Russian counter-extremism law that was subsequently adopted in some form in Kyrgyzstan, Belarus, Kazakhstan, Moldova, Tajikistan, and Uzbekistan.<sup>137</sup> Central Asian states participate in several regional security cooperation mechanisms,<sup>138</sup> but the region does not have a regional human rights mechanism or monitoring body, unlike Europe and the Americas. The sharing of these types of laws across the region through security cooperation, without any counterbalancing mechanism or legislation for human rights safeguards, remains a key challenge for ensuring that security cooperation does not disproportionately impact on human rights.
63. States face complex legal, ethical and practical problems in the fight against extremism. Whilst the beliefs of some groups are 'extreme' in that they oppose fundamental values such as democracy, the rule of law and gender equality, simply possessing extreme religious beliefs that do not advocate violence – and therefore don't threaten the security of the state – is nevertheless allowed under international law. This is perhaps why several states in the OSCE choose to tackle 'extremism' through the use of pre-criminal interventions such as educational programs, as opposed to legislating against extremism through criminal or administrative measures.
64. It has long been recognised that counter-terrorism measures that stigmatise and isolate whole communities have the power to fuel resentment towards the state and even bolster support for terrorist movements.<sup>139</sup> Faith in the state and its ability to provide meaningful opportunities and rights to citizens are essential to countering extremist narratives. Civil society can play a crucial role in helping states to create and implement counter-terrorism and anti-extremism measures that are necessary and proportionate in accordance with human rights law, and that build trust in the state.

<sup>132</sup> Human Rights Watch, "["We Live in Constant Fear" Possession of Extremist Material in Kyrgyzstan](#)", (September 2018), p. 1

<sup>133</sup> *Ibid.* p. 2

<sup>134</sup> *Ibid.* p. 22

<sup>135</sup> *Ibid.* p. 23

<sup>136</sup> Article 315, [Criminal Code of Kyrgyzstan](#)

<sup>137</sup> Human Rights Watch, "["We Live in Constant Fear" Possession of Extremist Material in Kyrgyzstan](#)", (September 2018), p. 21 fn. 58

<sup>138</sup> Examples of regional security cooperation mechanisms include the Commonwealth of Independent States, the Shanghai Cooperation Organisation, the Collective Security Treaty Organisation

<sup>139</sup> European Network of International Human Rights Institutions, '[Background note: Protecting Human Rights while countering terrorism: The role of national Human Rights Institutions](#)', (May 2016), p. 7 para. 12

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# **Wider impact of rights restrictions**

## Freedom of the media

65. Globally, counter-terrorism and anti-extremism laws and their restriction of free speech have had a chilling effect on journalism. Former UN Special Rapporteur, Frank La Rue, raised serious concerns that states are using the pretexts of counter-terrorism and national security “to unduly control and censor the media and to evade transparency or to silence criticism of public policies.”<sup>140</sup> The ability of a fair and independent media industry to operate is integral to an open and democratic society that respects fundamental rights – particularly freedom of expression. Restrictions on freedom of expression due to terrorism or national security concerns may affect the media – both organisations and individuals – in myriad repressive ways.
66. The former Council of Europe Commissioner for Human Rights published a memorandum on freedom of expression and media freedom in Turkey, in which he noted that the ‘deterioration’ of these freedoms was such that it represented an ‘existential threat’ to democracy in Turkey.<sup>141</sup> The memorandum stated that, although some positive steps that had previously been taken by Turkey regarding Council of Europe recommendations, these positive developments had been reversed in recent years, following a hardening of the authorities’ stance towards media freedom and freedom of expression after the failed coup attempt of 2016.<sup>142</sup> It was reported that in 2017 alone, 300 journalists had been arrested and detained in Turkey on the grounds that their publications had contained apologist sentiments about terrorism and other similar ‘verbal act offences’, or for ‘membership’ of armed organisations and ‘assisting a terrorist group’.<sup>143</sup>

### Cumhuriyet journalists

In 2018, 13 journalists from *Cumhuriyet* newspaper – one of Turkey’s oldest independent newspapers – were convicted on terrorism charges. The group were accused of being affiliated with terrorist organisations including the Kurdistan Workers’ Party (‘PKK’), the leftist Revolutionary People’s Liberation Party/Front and the cleric Fethullah Gülen.<sup>144</sup>

Evidence presented in some of the cases included articles published, which criticised Government measures in the aftermath of the coup. The former CoE Human Rights Commissioner stated that much of the evidence was ‘purely journalistic’, and also noted the ‘incongruity’ of the charges of “making propaganda for both FETÖ [the Gülenist Terror Group] and PKK at the same time, organisations which have consistently opposed one another, as well as the lack of material evidence establishing any link whatsoever between the suspects and these organisations.”<sup>145</sup>

67. In 2018, the Committee to Protect Journalists found that Turkey was the biggest jailer of journalists for the third consecutive year.<sup>146</sup> As of July 2018, at least 57 journalists and media workers had been charged with crimes of ‘propaganda for a terrorist organisation’ or ‘publishing terrorist organisation’s statements’.<sup>147</sup> In addition to directly affecting those who have been accused of criminal offences and their colleagues, judicial harassment of journalists has a wider chilling effect on journalism and freedom of speech as a whole, creating a climate of fear which threatens to stifle fundamental rights.

<sup>140</sup> UN General Assembly Human Rights Council Twentieth session, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’, Frank La Rue, (June 2012) A/HRC/20/17 p.14 Para 80

<sup>141</sup> Council of Europe Commissioner for Human Rights, ‘Memorandum on freedom of expression and media freedom in Turkey’ (February 2017) CommDH(2017)5, para 123

<sup>142</sup> *Ibid* para 20

<sup>143</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders’, (February 2019), A/HRC/40/52 p.13 para. 47

<sup>144</sup> Time Magazine, ‘A Court in Turkey Has Convicted 13 Journalists on Terrorism Charges’, (April 2018)

<sup>145</sup> Council of Europe Commissioner for Human Rights, ‘Memorandum on freedom of expression and media freedom in Turkey’ (February 2017) CommDH(2017)5 pgs. 16-17 paras 86-87

<sup>146</sup> ABC News, ‘For 3rd straight year, Turkey jailed more journalists than any other country: Report’, (December 2018)

<sup>147</sup> Reporters Without Borders, ‘Spate of trials in Turkey on “terrorist propaganda” charges’, (September 2018)



68. In Azerbaijan, freedom of the press is routinely and systematically violated.<sup>148</sup> In 2019, it was rated 166<sup>th</sup> out of 180 countries in the World Press Freedom Index.<sup>149</sup> Azerbaijan adopted the law 'on combating religious extremism' in 2015, which contains a broad provision prohibiting 'incitement of national, racial, social or religious hatred and enmity.'<sup>150</sup> Although the law on combating religious extremism differs to extremism legislation in Russia and Central Asia, this particular provision contains similar wording to some of the 'incitement to hatred' extremist offences in Central Asia and Russia.<sup>151</sup> As in other countries with broadly worded anti-extremism laws, media freedoms have been threatened through the use of 'incitement to hatred' laws in Azerbaijan.
69. In Russia, anti-extremism laws have been used to target the press. The ECtHR has communicated several dozen cases to the Russian Government regarding the application of 'extremism' legislation, some of which involve journalists, and which remain pending before the Court.<sup>154</sup>

### Faiq Amirov

The financial director of the leading Azerbaijani opposition daily Azadlig, Faiq Amirov, was also an adviser to the head of the opposition Popular Front Party. He was arrested in 2016 and charged with "inciting religious hatred" and "violating the rights of citizens under the pretext of conducting religious rites."<sup>152</sup> The authorities claimed that Amirov was an 'imam' in the movement led by Fethullah Gülen, the US-based Turkish cleric, after authorities allegedly discovered books about the Gülen Movement's philosophy in the trunk of Amirov's car, even though the books were not banned in Azerbaijan.

Reporters without Borders stated that Government arrests of journalists on the pretext of combatting the Gülen Movement, which were stepped up before the constitutional referendum held in September 2016, were "inspired by the witch hunt launched in Turkey after the 15 July coup attempt."<sup>153</sup> Amirov was convicted of inciting religious hatred, as well as other charges, in 2017. The case represents a disturbing mix of repressive legislation and tactics seemingly borrowed from other states across the OSCE region.

### Stanislav Dmitriyevskiy

Dmitriyevskiy was a human rights activist and editor-in-chief of *Pravo-Zashchita*, a monthly newspaper. In 2004, he published two articles, which presented statements by two separatist Chechen leaders who blamed the Russian authorities for the conflict in the Chechen Republic and harshly criticised them.<sup>155</sup> Dmitriyevskiy was charged with 'incitement to hatred or enmity' for publishing the articles, convicted and given a suspended prison sentence of two years with four years' probation.

The ECtHR found that Russia had violated Article 10 of the ECHR (freedom of expression), on the basis that the views expressed in the articles published by Dmitriyevskiy could not be read as an incitement to violence, or inciting hatred or intolerance liable to result in violence. Furthermore, the court found that his conviction and the severe sanction imposed on him "were capable of producing a deterring effect on the exercise of journalistic freedom of expression in Russia and dissuading the press from openly discussing matters of public concern."<sup>156</sup>

<sup>148</sup> Freedom House, [Freedom of the Press 2017 country report Azerbaijan](#), (December 2017)

<sup>149</sup> Reporters Without Borders, [2019 World Press Freedom Index](#), (2019)

<sup>150</sup> Council of Europe, Partnership for Good Governance, [Analysis of Azerbaijani Legislation on Freedom of Expression](#), (November 2017) 2.5

<sup>151</sup> Article 283 of the [Criminal Code of Azerbaijan](#)

<sup>152</sup> Reporters Without Borders, ["Turkey-style pretext used to arrest critic in Azerbaijan"](#), (August 2016)

<sup>153</sup> *Ibid*

<sup>154</sup> Article 19 and SOVA Center for Information and Analysis, 'Rights In Extremis: Russia's Anti-Extremism Practices in International Perspective', (2019)

<sup>155</sup> European Court of Human Rights, ["Criminal conviction of editor for publication of statements by Chechen leaders was unjustified"](#), press release, ECHR 295 (October 2017) p.1

<sup>156</sup> *Ibid* p.4

## Stifling academia and historical debate

70. In addition to restricting the media, overly broad counter-terrorism laws have impacted academics and historical debate. For example, some laws that fall under Russian anti-extremism legislation threaten historical debate and discussion, such as the ‘Rehabilitation of Nazism’ law, and the administrative law prohibiting the display of prohibited symbols.<sup>157</sup> Given the recent rise of anti-Semitism and far-right ideology, there is a clear need for states to be able to challenge propaganda associated with Nazism. However, in Russia, criminal and administrative ‘extremism’ laws have been used to challenge historical debate, including criticism of the USSR’s role in World War II, as well as the sharing of historical photos or images.<sup>158</sup>
71. The Free Historical Society – an NGO that unites more than 150 professional historians in Russia – has criticised the provisions under the rehabilitation of Nazism law as too broad, and have stated that historians now have a reason to fear the search for historical truth.<sup>161</sup> The Society noted that the law also includes “*expressing disrespect for society about the days of military glory and memorable dates of Russia related to the defense of the Fatherland,*” as well as the “*deseccration of the symbols of military glory of Russia, committed publicly*”, both of which cover centuries of historical events.
72. Russia is not the only OSCE country that prohibits certain interpretations of history. In 2018, Poland caused outrage when it enacted a new criminal offence of accusing the Polish state of being complicit or responsible for Nazi war crimes, with a potential prison sentence of up to three years.<sup>162</sup> After widespread criticism that the provision was a denial of historical truth and could prevent research, the offence was amended to a civil rather than criminal offence.<sup>163</sup> It should be noted that the offence was not dealt with under ‘extremism’ legislation, as highlighted earlier in this report, most EU countries do not have ‘anti-extremism’ legislation.
73. In Russia, in addition to the ‘rehabilitation of Nazism’, the administrative offence of “*propaganda or public demonstration of Nazi paraphernalia or symbols, or paraphernalia or symbols of extremist organisations, or other paraphernalia or symbols, propaganda or public demonstration of which is banned by federal laws*”<sup>164</sup> has been applied without taking into account the aim or context of the sharing of these symbols.
74. Germany also prohibits the display of Nazi symbols under its criminal code.<sup>165</sup> However, the law has an exemption for the displaying of symbols for educational, scientific, journalistic or artistic merit,<sup>166</sup> something which is clearly lacking in Russian legislation. Promisingly, an amendment providing similar exemptions has currently passed the first reading in the State Duma in Russia.<sup>167</sup> However, the exemptions in German legislation do not guarantee ordinary people from prosecution for displaying Nazi symbols, even if they do not intend the display of symbols as advocacy of Nazism.<sup>168</sup>

### Vladimir Luzgin

In 2016, Vladimir Luzgin was convicted of ‘rehabilitation of Nazism’ and fined 200,000 rubles for sharing an article on the Russian social networking site VKontakte.

The court convicted Luzgin for language in the repost, which stated that the Soviet Union and Germany “*actively collaborated*” and “*attacked Poland together, unleashing World War II*”, referring to the Molotov-Ribbentrop Pact between Germany and the Soviet Union.<sup>159</sup> The post did not defend or glorify Nazism, but Luzgin was prosecuted under the part of the law that criminalises disseminating “*intentionally false information about the Soviet Union’s activities during World War II.*”<sup>160</sup> Luzgin has since fled Russia and has taken his case to the ECtHR.

<sup>157</sup> Article 354.1 of the Russian Criminal Code and Article 20.3 Part 1 of the Russian Code of Administrative Offences respectively

<sup>158</sup> Article 19 and SOVA Center for Information and Analysis, ‘Rights In Extremis: Russia’s Anti-Extremism Practices in International Perspective’, (2019)

<sup>159</sup> Radio Free Europe Radio Liberty, ‘[Czechs Deny Asylum To Russian Convicted For Saying U.S.S.R. Collaborated With Nazis](#)’, (May 2018)

<sup>160</sup> *Ibid*

<sup>161</sup> POLIT.RU, ‘[Address by members of the Free Historical Society to the President, the Federation Council and the State Duma](#)’, (August 2014) (Available only in Russian)

<sup>162</sup> Article 55(a) amending The Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation Act of 18 December 1998; BBC News, ‘[Poland Holocaust law: Government U-turn on jail threat](#)’, (June 2018)

<sup>163</sup> *Ibid*.

<sup>164</sup> Article 20.3 of the Russian Code of Administrative Offences

<sup>165</sup> Deutsche Welle, ‘[Germany’s confusing rules on swastikas and Nazi symbols](#)’, (August 2018)

<sup>166</sup> *Ibid*.

<sup>167</sup> SOVA Center for Information and analysis, [Misuse of Anti-Extremism in June 2019](#), (July 2019)

<sup>168</sup> See [Nix v. Germany](#), ECtHR, Application number. 35285/16, 13 March 2018



### Polina Petrusева

In 2015, Russian journalist Polina Petrusева was convicted and fined under this offence for posting a historic photo online of her building's courtyard during the Nazi occupation, which featured Nazi soldiers and a large Nazi flag with a swastika. The post did not glorify or praise Nazism, and Petrusева has said that her grandfather survived Nazi concentration camps as a child.<sup>169</sup>

75. In 2017, over 1,600 people in Russia were convicted under this provision. As an administrative offence, most of the penalties given out are small fines, but some people have been placed under arrest for up to 15 days.<sup>170</sup> Without the necessary exemptions, these laws raise serious implications for journalists, archivists, museum curators and historians who could be caught up by a broader interpretation of the law.<sup>171</sup> In fact, in response to the law, one museum in Eastern Russia has gone so far as to place stickers on all the swastikas featured in the museum's exhibition of Soviet World War II posters in order to avoid being criminalised.<sup>172</sup>

### Civil society

76. Since 2001, civil society space has been shrinking globally.<sup>173</sup> In 2019, the Special Rapporteur on Countering Terrorism released a report on the impact of measures to address terrorism and violent extremism on civic space, the rights of civil society actors and human rights defenders.<sup>174</sup> The report highlighted that the significant level of misuse of counter-terrorism legislation against civil society indicated that civil society actors were being deliberately targeted by states, rather than simply being caught up in the broad powers of counter-terror legislation, and that misuse of legislation is hardwired into state actions globally.<sup>175</sup>

77. The essential role that civil society can play in countering the threat of terrorism and violent extremism has been recognised by numerous international experts and international commitments made by states. Despite this, the security narrative has continued to be framed as a choice or balancing act between security and human rights, failing to recognise that there can be no security without human rights.
78. Several measures have been enacted at the international level to prevent the financing of terrorism.<sup>176</sup> UN Security Council resolution 1617 built on previous Council resolutions to prevent terrorist financing and support for terrorism. The UN Special Rapporteur on countering terrorism noted that the addition of 'otherwise supporting acts or activities of' terrorist organisations in the resolution, "*broadened the notion, opening the door to definitions of [material] support to terrorism and terrorist acts under domestic law that have at times led to sanctioning or even criminalizing the activities of civil society organizations*".<sup>177</sup>
79. Whilst targeted measures to prevent international financing of terrorism are clearly necessary, the lack of definition of terrorism and discretion left to states in implementing these measures has in some cases led to a restriction of civil society activities and financing. In Hungary, legislation was passed in 2017 requiring organisations that receive more than a certain amount of money from abroad to be placed on a special list or face closure.<sup>178</sup> In the general reasoning behind introducing the Bill, the Government cited "*the challenges caused by financial transactions of non-transparent sources regarding money laundering and terrorism*".<sup>179</sup> Although CSOs registered on the list are not listed as terrorist organisations, the Bill clearly uses the pretext of national security and combatting terrorism in order to clamp down on NGOs who are critical of the Government.
80. The Counter-Terrorism Working Group's 2018 report outlined the impact that the Financial Action Task Force's ('FATF') Recommendation 8 – which identified

<sup>169</sup> Radio Free Europe Radio Liberty, '[Russia's Anti-Swastika Crusade Hits Toy Stores, Bookstores, And Museums](#)', (April 2015)

<sup>170</sup> Article 19 and SOVA Center for Information and Analysis, 'Rights In Extremis: Russia's Anti-Extremism Practices in International Perspective', (2019)

<sup>171</sup> The Moscow Times, '[Russia Steps Up War on Nazi Imagery](#)', (May 2015)

<sup>172</sup> Radio Free Europe Radio Liberty, '[Russia's Anti-Swastika Crusade Hits Toy Stores, Bookstores, And Museums](#)', (April 2015)

<sup>173</sup> UN Human Rights Council, '[Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders](#)', (February 2019), A/HRC/40/52, p.3 para.1

<sup>174</sup> Ibid.

<sup>175</sup> Ibid. para 4

<sup>176</sup> In particular, UN Security Council Resolutions [1267](#) (October 1999), S/RES/126; [1390](#) (January 2002) S/RES/1390 and [1617](#) (July 2005), S/RES/1617

<sup>177</sup> UN General Assembly, '[Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#)', (September 2018), A/73/361, para.19 p.10

<sup>178</sup> Centre for Strategic and International Studies, '[Liberty or Security: Do Civil Society Restrictions Limit Terrorism?](#)', (June 2018)

<sup>179</sup> Ibid. p.6

CSOs as ‘vulnerable to terrorist financing’ – had on states justifying the restriction of civil society.<sup>180</sup> Several OSCE countries have passed laws that restrict NGO activities and access to funding, specifically in response to their obligations to enact legislation under FATF recommendations, including Azerbaijan, Kyrgyzstan and Turkey.<sup>181</sup> Despite the theory sometimes put forward that the restriction of civil society is necessary in order to fight terrorism, a report published in 2018 found that restricting civil society had no impact on reducing terrorism.<sup>182</sup>

81. In addition to overly broad laws which restrict the ability of NGOs to operate, there are also instances where overly broad counter-terrorism and anti-extremism laws are used to persecute individual members of civil society groups. In Turkey, since the failed coup attempt in 2016, over 100,000 people have faced criminal proceedings, several of whom work for NGOs and CSOs.<sup>183</sup> The persecution of civil society actors creates a climate of fear, in which civil society workers risk their freedom simply by doing their job.

### Taner Kılıç

In June 2017, the Honorary Chair of Amnesty Turkey, Taner Kılıç, was arrested on charges of ‘membership of a terrorist organisation’ and spent 432 days in pre-trial detention before being released on bail.<sup>184</sup>

Shortly after he was arrested, 10 other human rights activists were also arrested, including Amnesty International’s Turkey director, İdil Eser, also on charges of being a member of a terrorist organisation. Although the so-called ‘Istanbul 10’ were released on bail after several months in detention, all still face prosecution under the charges, which Amnesty have said are fabricated.<sup>185</sup>

### Azimjon Askarov

Askarov, a contributor to independent news websites and director of the local human rights group *Vozdukh* (Air), was convicted in September 2010 in Kyrgyzstan on charges that included incitement to ethnic hatred and complicity in the murder of a police officer.<sup>186</sup> Askarov is an ethnic Uzbek and had been documenting human rights violations in his hometown of Bazar-Korgon for years.

The Kyrgyz authorities have been accused of violating numerous fair trial rights in Askarov’s case, including the use of torture and ill-treatment and fabricated evidence. In 2016, the UN Human Rights Committee called for his immediate release and for his conviction to be quashed.<sup>187</sup> Kyrgyzstan’s Supreme Court ordered a retrial in July 2016, but it ended in early 2017 with his sentence upheld. He remains in prison facing a life sentence.<sup>188</sup>

82. As the preceding sections of this report have demonstrated, broad counter-terrorism, anti-extremism and ‘national security’ legislation can effectively allow governments a monopoly over which media outlets, religious organisations and CSOs are allowed to exist based on the government’s own interests. In addition to creating a climate of fear that may dissuade civil society from continuing to operate, the misapplication of these laws may sometimes be used as a reprisal for exposing human rights violations.

<sup>180</sup> See Section 7, ‘Preventing the Financing of Terrorism’ of Fair Trials, ‘[Cross-border criminal justice and security: Human rights concerns in the OSCE region](#)’ (2018)

<sup>181</sup> Charity and Security Network, ‘[How the FATF Is Used to Justify Laws That Harm Civil Society, Freedom of Association and Expression](#)’, (December 2013)

<sup>182</sup> Jeong-Woo Koo and Amanda Murdie, ‘[Smear Campaigns or Counterterrorism Tools: Do NGO Restrictions Limit Terrorism?](#)’, (April 2018), p.15

<sup>183</sup> Amnesty International, ‘[We need to talk about Turkey](#)’, (July 2018)

<sup>184</sup> Amnesty International, ‘[Taner Kılıç released after 432 days in jail](#)’ (July 2018)

<sup>185</sup> *Ibid.*

<sup>186</sup> Committee to protect journalists, [Azimjon Askarov](#), (June 2010)

<sup>187</sup> UN OHCHR, ‘[Release Azimjon Askarov and quash his conviction, UN human rights experts urge Kyrgyzstan](#)’, (April 2016)

<sup>188</sup> Committee to protect journalists, [Azimjon Askarov](#), (June 2010)



## Criminal justice

83. According to CIVICUS: World Alliance for Citizen Participation, civic space is narrowed, oppressed, obstructed or closed in over half of all OSCE countries.<sup>189</sup> It is closed in Azerbaijan, Turkmenistan and Uzbekistan.<sup>190</sup> As the UN Special Rapporteur on countering terrorism noted in her 2019 report:
- “Civic space is directly affected when overly broad definitions of terrorism and counter-terrorism are used to arrest, detain and prosecute peaceful members of civil society organizations. Similarly, the closure of such organizations, the impossibility to obtain registration or access funding, and an overload of bureaucratic requests, all limit civic space... The result is a weakened civil space infrastructure and limited engagement in sites of most need.”*<sup>191</sup>
84. She also noted that although there has been an increase in commitment and references to human rights in Security Council resolutions and by the Counter-Terrorism Committee, there has been an increase in opacity in reporting to the Counter-Terrorism Committee and what, if any, meaningful processes exist to limit and monitor state abuse of counter-terrorism and anti-extremism laws sometimes enacted through legally binding Security Council resolutions.<sup>192</sup> Nevertheless, she noted the opportunities presented by the commitment to create a civil society unit within the Office of Counter-Terrorism.
85. We echo the recommendations made in the Special Rapporteur’s report, which highlight that definitions of terrorism and violent extremism in national laws must not be overly broad and vague, and must be sufficiently narrow to ensure that civil society is not criminalised for exercising fundamental freedoms. It particularly noted that legitimate freedom of expression or thought should never be criminalised. The recommendations also outlined the need for more meaningful and inclusive engagement of the UN Counter-Terrorism structure with civil society actors.<sup>193</sup>
86. Overly broad counter-terrorism and anti-extremism laws have had a profound effect on the fairness of criminal justice systems across the OSCE. Laws that are non-compliant with international law and allow states the discretion to target government critics through prosecution, effectively weaponize the criminal justice system against society. The broad scope of these laws can leave courts powerless to protect the human rights of those subjected to prosecution. This abuse of the criminal justice system erodes democracy and the rule of law, as well as public trust in the criminal justice system and its ability to deliver justice.
87. The growth of international responses to terrorism has been accompanied by violations of the most fundamental rights, including due process rights. The Working Group’s 2018 report highlighted that, since the so-called ‘war on terror’ began, human rights such as the prohibition on torture, the prohibition of non-refoulement in extradition proceedings, and crucial fair trial rights such as access to a lawyer and the right to notify a third party of arrest, were being violated or restricted by the laws and practices of states under the auspices of counter-terrorism.<sup>194</sup> In some instances, states have actually stepped outside of the already limited legal rights framework in the criminal justice system, and committed human rights violations through extra-judicial procedures, such as abductions and extraordinary rendition.<sup>195</sup>
88. States have also stepped outside the legal framework of the ordinary criminal justice system (and its due process protections) by using alternative legal measures – such as administrative measures – which mean that suspects are not afforded the same rights as they would be under ordinary criminal law. In France, after the state of emergency was declared over in October 2017, a new law was passed on strengthening internal security and the fight against terrorism<sup>196</sup> (‘SILT’), which retained some of the powers the state had under the state of emergency to subject people to administrative measures (hereafter ‘control measures’).<sup>197</sup>
89. Under SILT, it is the administrative authorities and not the judiciary who remain the primary state actors in charge of the implementation of control measures. For many of the measures under SILT (some of which have a severe impact on human rights), judicial review is

<sup>189</sup> CIVICUS MONITOR Tracking Civic Space, [Countries](#), (2018)

<sup>190</sup> Ibid.

<sup>191</sup> UN Human Rights Council, [‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders’](#), (February 2019), A/HRC/40/52, p.17 para 60

<sup>192</sup> Ibid. paras 67–68

<sup>193</sup> Ibid. paras 73 and 75 (a) and (b). For the full list of recommendations and conclusions see pgs. 19-21

<sup>194</sup> Fair Trials, [‘Cross-border criminal justice and security: Human rights concerns in the OSCE region’](#) (December 2018)

<sup>195</sup> Ibid. See pages 9-14

<sup>196</sup> Loi n° 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme

<sup>197</sup> UN OHCHR, [‘Preliminary findings of the visit: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to France’](#), (May 2018)

retrospective, preventing the judiciary from stopping disproportionate control measures before they are applied.<sup>198</sup> The UN Special Rapporteur on Countering Terrorism has raised concerns that the administrative measures have diminished the meaningful exercise of attorney–client privilege through the use of exceptional powers in counter-terrorism cases. She raised further concerns that the use of secret ‘notes blanches’ – private notes provided by the security and administrative services – as the evidential basis for control measures which erode the presumption of innocence and effectively reverse the burden of proof.<sup>199</sup>

90. The UN Special Rapporteur on Countering Terrorism further noted the risk that some of these extraordinary powers will be applied in other contexts outside of terrorism, such as public demonstrations.<sup>200</sup> Amnesty International has noted that the high degree of discretion accorded to the state in the issuing of control orders coupled with weak safeguards “can create the conditions for arbitrary and discriminatory issuing of such control orders.”<sup>201</sup>
91. Another notable instance of the use of state of emergency powers in the OSCE is Turkey. After the failed coup attempt in 2016, the Government declared a national emergency, meaning that the Government could rule by decree with little scrutiny or checks on its power.<sup>202</sup> When the state of emergency ended in 2018, Turkey enacted new counter-terrorism legislation that effectively made many of the state of emergency powers permanent.<sup>203</sup> Under the guise of ‘national security’, these extraordinary powers have been used to erode judicial independence and the rule of law. Under these extraordinary powers, Turkey has dismissed more than 4,000 judges and prosecutors – over a quarter of all judges and prosecutors in the country.<sup>204</sup>
92. The independence of the judiciary and the criminal justice system as a whole has a direct impact on those accused of crimes under overly broad counter-terrorism and anti-extremism legislation. Lack of independence means that criminal justice actors cannot be relied upon to prevent the wrongful use of these laws, and in some instances, are effectively helping governments to restrict human rights and
- create a climate of fear by failing to uphold the standards required by international law. In a report by the former Council of Europe Commissioner for Human Rights on free expression and media freedom in Turkey, he noted that the independence of the judiciary is crucial for protecting freedom of expression and the media, noting “the lack of restraint by prosecutors in bringing charges in cases clearly covered by freedom of expression, the excessive use of detentions on remand and defective reasoning in courts’ detention decisions which create a distinct chilling effect, as well as a failure to strike the right balance between freedom of expression and the offences relating to terrorism.”<sup>205</sup>
93. When noting the overly broad and non-compliant nature of counter-terrorism laws in Turkey with human rights, the Commissioner raised concerns that “the way these laws are interpreted and applied by Turkish prosecutors and courts is an equally, if not more, serious problem when it comes to the compatibility of the Turkish legal framework with international standards.”<sup>206</sup>
94. Where governments occasionally go too far in enacting legislation that is disproportionate with human rights, it is the function of the judiciary to protect society. Where the judiciary itself is compromised, this crucial protection is lost.
95. As has been highlighted by the UN Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán, “a lack of trust in the judiciary is lethal for democracy and development and encourages the perpetuation of corruption.”<sup>207</sup> It is essential that in the fight against terrorism, states ensure that their criminal justice systems are not tainted by human rights abuses, and that the judiciary is empowered to protect the rights of individuals suspected of terrorist crimes, and to declare legislation disproportionate with international human rights law. Lack of trust in the justice system will ultimately lead to a lack of trust in the state and its ability to deliver justice. If citizens feel that the state and its institutions are corrupt, this can feed into disillusionment and resentment towards the state, that in turn can fuel extremist ideas. It is only through strong institutions that respect human rights and the rule of law that states can effectively fight the threat of terrorism and extremism.

<sup>198</sup> Amnesty International, ‘[Punished without trial: The use of administrative control measures in the context of counter-terrorism in France](#)’, (November 2018), p.10

<sup>199</sup> UN OHCHR, ‘[Preliminary findings of the visit: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to France](#)’, (May 2018)

<sup>200</sup> *Ibid.*

<sup>201</sup> Amnesty International, ‘[Punished without trial: The use of administrative control measures in the context of counter-terrorism in France](#)’, (November 2018), p.10

<sup>202</sup> Fair Trials, ‘[Fair Trials joins with other human rights organisations to condemn the ‘permanent’ state of emergency laws in Turkey](#)’, (August 2018)

<sup>203</sup> *Ibid.*

<sup>204</sup> Financial Times, ‘[Turkey says purge of judiciary over after sacking 4,000](#)’, (March 2017)

<sup>205</sup> Council of Europe Commissioner for Human Rights, ‘[Memorandum on freedom of expression and media freedom in Turkey](#)’ (February 2017) CommDH(2017)5 p.9 para

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<sup>206</sup> *Ibid.* para 45

<sup>207</sup> UN Human Rights Council, ‘[Report of the Special Rapporteur on the independence of judges and lawyers](#)’, (June 2017), A/HRC/35/31, p.8 para 44

A large, stylized number '5' is centered in the background. It is composed of several overlapping shapes: a dark blue rectangle at the top, a lighter blue rectangle below it, and a large, semi-transparent blue circle at the bottom. The word 'Recommendations' is written in white, bold, sans-serif font across the middle of the '5'.

# Recommendations

The proliferation of overly broad counter-terrorism and anti-extremism legislation across the OSCE region is having a detrimental effect on fundamental human rights, democracy, and the rule of law. The lack of internationally accepted definitions of terrorism and extremism has resulted in the adoption of legislation that disproportionately restricts human rights in violation of international human rights law, and has resulted in the intentional and unintentional misapplication of these laws to individuals and groups that pose no threat to national security. These issues are further exacerbated by the regional sharing of laws and practices that threaten human rights.

**We recommend that:**

1. All OSCE participating states should review their legislation to ensure that it complies with states' international human rights obligations. In particular:
  - a. Where national law or policy contains definitions of terrorism and extremism, definitions should be amended to ensure they are compliant with international standards, and should be explicitly linked to the use or threat of violence;
  - b. Legislation that restricts the freedom of expression should comply with the three-part test prescribed by international law (restrictions must be necessary and proportionate, pursue one of the specific purposes set out in international law, and be provided for by law 'which is sufficiently clear and precise');
  - c. Legislation regarding 'incitement' or praising of terrorist acts should be amended to ensure that only the threat, use, call for, or other explicit support of violence should be criminalised;
  - d. Legislation prohibiting 'incitement to hatred' should be brought in line with international standards, including the standards contained in the Rabat Plan of Action; and
  - e. Laws prohibiting the promotion of the 'superiority' of a group, as currently set out in some states' legislation, are not legally coherent and should be abolished.

2. Some states in the OSCE region are deliberately and systematically violating the human rights of their citizens. States are using the guise of 'national security' concerns to advance repressive government regimes and erode democracy and the rule of law.

States should make respect for fundamental human rights a prerequisite for security cooperation. The OSCE also needs to take a more proactive role in holding states to account for human rights violations committed in the name of protecting national security.

3. National governments and the OSCE should engage in constructive dialogue with civil society on law and policy issues related to counter-terrorism and anti-extremism measures, and these measures should never be used as a guise to crack down on civil society. Civil society are well-placed to advise on key human rights issues posed by law and policy, as well as how counter-terrorism frameworks can protect both human rights and national security.
4. Criminal justice actors, and in particular the judiciary, can and should be playing an essential role in upholding human rights standards where they are threatened by legislation or state actions. Criminal justice actors, including judges and prosecutors, should be empowered to protect human rights, to ensure cases are dropped where appropriate, and where possible, to nullify legislation or set binding legal precedents that ensure national human rights protections.

The OSCE should play a crucial role in recommending and ensuring that judiciaries in the OSCE region receive regular training in upholding human rights standards in the context of counter-terrorism and anti-extremism laws. States should actively engage with the OSCE's Office for Democratic Institutions and Human Rights and OSCE Special Representatives to ensure that laws and practices uphold human rights in the context of countering terrorism and extremism.

The Civic Solidarity Platform Working Group on  
Counter-Terrorism, Anti-Extremism and Human Rights

Fair  
Trials

