



Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights

The Deputy Director

Warsaw, 13 October 2016

Ms Nathalie Prouvez
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Dear Ms Prouvez,

I am writing to you with reference to the call for input by the Office of the High Commissioner for Human Rights (OHCHR) concerning best practices and major challenges in addressing the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms, particularly the right to life, liberty and security of person, in pursuance of paragraph 17 of UN Human Rights Council Resolution 31/30.

While apologizing for the late submission, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) is pleased to provide the following observations in an effort to support OHCHR in compiling the report on the aforementioned issue.

Considering that acts of terrorism seriously impair the enjoyment of human rights, OSCE participating States have repeatedly re-affirmed their commitment to protect the enjoyment of human rights and fundamental freedoms, especially the right to life, of everyone against terrorist acts within their jurisdiction.¹ Recognizing that states have a positive obligation to protect individuals from human rights abuses connected to acts of terrorism, OSCE commitments have also consistently re-affirmed that responses to the threat of terrorism must not unlawfully infringe upon, damage or destroy the very standards, principles and values of human rights, rule of law and pluralistic democracy.²

This is consistent with the OSCE's comprehensive concept of security, which regards the protection of human rights as an integral element of security. A lack of respect for human rights, including in measures that are employed to counter terrorism, is detrimental to increasing security as it may fuel violent extremism and radicalization that lead to terrorism (VERLT). A comprehensive approach to countering terrorism must therefore encompass a

¹ See for example, OSCE Charter on Preventing and Combating Terrorism (Porto 2002) and OSCE Ministerial Statement on Preventing and Countering Terrorism (Sofia 2004).

² OSCE Ministerial Council Decision on Combating Terrorism and the Bucharest Plan of Action for Combating Terrorism (Bucharest 2001); OSCE Charter on Preventing and Combating Terrorism (Porto 2002).

particular focus on preventing and countering VERLT, while upholding human rights and the rule of law.

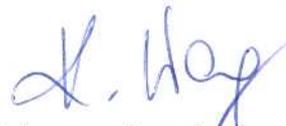
Consideration of the negative effect of terrorism on the enjoyment of human rights should therefore not be disconnected from the human rights issues arising in countering and preventing terrorism and VERLT, but reiterate the need for strict compliance with international human rights standards in all measures taken by States in this field.

On the basis of its assistance to OSCE participating States, ODIHR observes that human rights violations caused by counter terrorism measures – such as violations of the right to life and physical integrity, right to liberty and security, undue restrictions of the rights to freedom of expression, association and peaceful assembly, the right to freedom of religion or belief, the right to protection of private and family life and discrimination – remain an on-going challenge across the OSCE region as they create conditions conducive to terrorism in a number of participating States. In the tools, guidelines and publications developed in accordance with its mandate to assist participating States in the implementation of their OSCE commitments, ODIHR has explored these issues in more detail and presented a number of good practices on how human rights-based approaches have led to increased effectiveness of counter-terrorism policies and practices.³

ODIHR has summarized some of the challenges and best practices in this context already in its earlier submission to OHCHR in connection with the preparation of the UN High Commissioner's *Report on best practices and lessons learnt on how protecting and promoting human rights contributes to preventing and countering violent extremism* (A/HRC/33/29). For the reasons outlined above, these also appear to be relevant for the purpose of the forthcoming report on the negative effect of terrorism. For easy reference, a copy of ODIHR's earlier submission is enclosed.

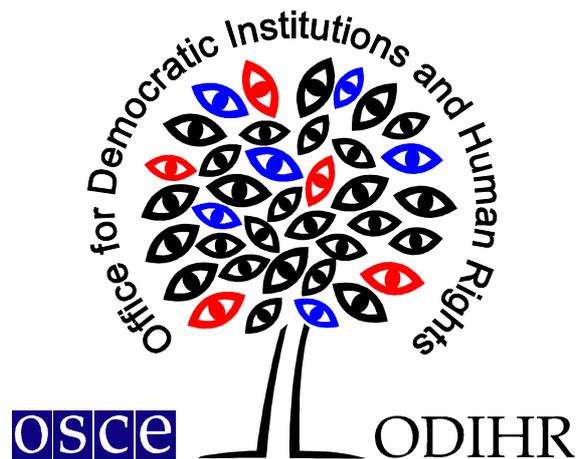
We hope that these brief observations and the issues summarized in the enclosure will be helpful for the preparation of the report of the UN High Commissioner in pursuance to paragraph 17 of Human Rights Council Resolution 31/30 of 24 March 2016.

Yours sincerely,



Katarzyna Jarosiewicz-Wargan
First Deputy Director

³ See for example, the ODIHR Manual *Countering Terrorism, Protecting Human Rights* (2007) available at <http://www.osce.org/odihr/29103>; the following joint publications of ODIHR and the OSCE Secretariat Transnational Threats Department: *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: a Community-Policing approach* (March 2014) available at: <http://www.osce.org/secretariat/111438>; *Human Rights in Counter-Terrorism Investigations: A Practical Manual for Law Enforcement Officers* (November 2013) available at <http://www.osce.org/odihr/108930>; *Youth Engagement to Counter Violent Extremism and Radicalization that Lead to Terrorism: Report on Findings and Recommendations from an OSCE Secretariat - OSCE ODIHR Expert Roundtable* (July 2013) available at <http://www.osce.org/atu/103352>; and *Women and Terrorist Radicalization: Final Report* (February 2013) available at: <http://www.osce.org/secretariat/99919>.



OSCE Office for Democratic Institutions and Human Rights (ODIHR)

ODIHR CONTRIBUTION TO OHCHR COMPILATION REPORT ON “BEST PRACTICES AND LESSONS LEARNED ON HOW PROTECTING AND PROMOTING HUMAN RIGHTS CONTRIBUTE TO PREVENTING AND COUNTERING VIOLENT EXTREMISM” (A/HRC/RES/30/15)

Warsaw, March 2016

OSCE HUMAN DIMENSION COMMITMENTS ON COUNTERING TERRORISM AND PREVENTING VIOLENT EXTREMISM AND RADICALIZATION THAT LEAD TO TERRORISM (VERLT)

The OSCE considers that efforts to counter security threats should be undertaken in all three OSCE dimensions of security: the politico-military dimension, the economic and environmental dimension and the human dimension. The OSCE regards the protection of human rights as an integral element of security. Such comprehensive and cross-dimensional approach provides the OSCE participating States with a comparative advantage to address security threats effectively, by linking the respect for human rights with their duty to ensure the security of individuals within their jurisdiction.

The OSCE human dimension commitments are reflective of international human rights law and provide a framework to develop and implement effective human rights-compliant counter-terrorism strategies. Thus, while recognizing that states have legitimate and urgent reasons to prevent and counter terrorism, the OSCE Bucharest Plan for Combating Terrorism (2001) and the OSCE Charter on Preventing and Combating Terrorism (2002) affirmed that responses to the threat of terrorism must not unlawfully infringe upon, damage or destroy the very standards, principles and values of human rights, rule of law and pluralistic democracy.¹

The OSCE participating States have repeatedly reaffirmed the utmost importance of the human dimension in preventing and countering terrorism as well as VERLT. They have pledged in their commitments to take measures to prevent and combat terrorism in compliance with all obligations under international law, including human rights law.² In the 2012 OSCE Consolidated Framework for the Fight against Terrorism,³ they have identified (i) “the promotion and protection of human rights and fundamental freedoms while countering terrorism” as well as (ii) “countering VERLT, following a multidimensional approach” as two of the strategic focus areas for OSCE counter-terrorism activities.

Moreover, the OSCE participating States:

- Have firmly affirmed that the struggle against terrorism is not a war against religions or peoples⁴ and that anti-terrorist action is not aimed against any religion, nation or people.⁵ They underlined the need to adopt a comprehensive approach to prevent and counter terrorism, which includes addressing the factors that may engender terrorism.⁶

¹ See for example, [OSCE Bucharest Ministerial Declaration](#), MC.DOC/1/01, 4 December 2001, para. 3; [OSCE Ministerial Decision No. 1 on Combating Terrorism](#), MC(9).DEC/1, 4 December 2001 and [OSCE Charter on Preventing and Combating Terrorism](#), MC(10).JOUR/2, 7 December 2002, para. 6-7.

² See for example, the [OSCE Bucharest Plan of Action for Combating Terrorism](#), MC.DOC/5/14, 4 December 2001 and the [OSCE Consolidated Framework for the Fight Against Terrorism](#), PC.DEC/1063, 7 December 2012.

³ *Ibid.*, OSCE Permanent Council Decision 1063/2012, note 2.

⁴ OSCE Bucharest Ministerial Declaration, *op. cit.*, note 1, para.3, “We reiterate that the struggle against terrorism is not a war against religions or peoples (...)”.

⁵ OSCE Charter on Preventing and Combating Terrorism, *op. cit.*, note 1, para.2, “The OSCE participating States (...) firmly reject identification of terrorism with any nationality or religion and reaffirm that action against terrorism is not aimed against any religion, nation or people”.

⁶ OSCE Charter on Preventing and Combating Terrorism, *op. cit.*, note 1, para. 20, “The OSCE participating States (...) are convinced of the need to address conditions that may foster and sustain terrorism, in particular by fully respecting democracy and the rule of law, by allowing all citizens to participate fully in political life, by preventing discrimination and encouraging intercultural and inter-religious dialogue in their societies, by engaging civil society in finding common political settlement for conflicts, by promoting human rights and tolerance and by combating poverty; (...)”.

- Have recognized the crucial role played by civil society in anti-terrorism efforts and identified that genuine partnerships between civil society and governments are key to effectively prevent and combat terrorism. The OSCE participating States consequently committed themselves to enhance their co-operation with civil society.⁷
- Have committed themselves to solidarity with victims of terrorism by exploring the possibility of introducing and enhancing appropriate measures, subject to domestic legislation, for support, including financial support, to victims of terrorism and their families.⁸
- Have pledged to respect their obligations under international human rights law, international refugee law and international humanitarian law in any measure aimed at countering the phenomenon of foreign terrorist fighters.⁹

In 2015, the OSCE participating States adopted the first Ministerial Council Declaration on preventing and countering VERLT¹⁰ in which they reiterated their commitments to take measures to counter terrorism and foreign terrorist fighters in compliance with their obligations under international law, including international human rights law, international refugee law and international humanitarian law. In particular, the Declaration calls upon the participating States:

“[...]

3. To adopt measures as may be necessary and appropriate and in accordance with their obligations under international law, including with respect to human rights and fundamental freedoms, to prohibit by law incitement to commit a terrorist act or acts, and to prevent such conduct;

[...]

5. To consider, as appropriate, developing and updating national counter-terrorism strategies and action plans, including specific policies and measures to prevent and counter violent extremism and radicalization that lead to terrorism, in furtherance of OSCE commitments and in compliance with their obligations under international law, including human rights law;

[...]

8. To encourage political leaders and public figures, including civil society and religious leaders to contribute to preventing and countering violent extremism and radicalization that lead to terrorism, by speaking out strongly and promptly against violent extremism and radicalization that lead to terrorism;

9. To further promote public-private partnerships in countering terrorism, where appropriate, among public authorities, the private sector, civil society, members of, or representatives of religious communities, and the media, in line with, inter alia, Ministerial Council Decision No. 10/08, in order to counter incitement to terrorism and violent extremism and radicalization that lead to terrorism;

[...]

⁷ See for example, [OSCE Ministerial Council Decision 10/08 on Further Promoting the OSCE’s Action in Countering Terrorism](#), MC.DEC/10/08, 5 December 2008, para. 4, “participating States are encouraged to continue to exchange ideas and national best practices about their strategies and measures to counter violent extremism and radicalization that lead to terrorism as well as to enhance their co-operation with media, the business community, industry and civil society”.

⁸ OSCE Permanent Council Decision No. 618, [Solidarity with victims of terrorism](#), PC.DEC/618, 1 July 2004.

⁹ OSCE Ministerial Council Declaration on “[The OSCE Role in Countering the Phenomenon of Foreign Terrorist Fighters in the Context of the Implementation of UN Security Council Resolutions 2170 \(2014\) and 2178 \(2014\)](#)”, 5 December 2014, MC.DOC/5/14.

¹⁰ OSCE Ministerial Council Declaration on [Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism](#), 4 December 2015, MC.DOC/4/15.

11. *To consider developing community policing approaches to preventing terrorism and countering violent extremism and radicalization that lead to terrorism, including at the local level, in accordance with national legislation and international law;*
12. *To encourage open and transparent intercultural, interfaith and interreligious dialogue and co-operation to contribute to, inter alia, enhancing tolerance, mutual respect and understanding, at the local, national, regional and international levels;*
13. *To take into account a gender perspective¹ in their efforts to counter terrorism and to prevent and counter violent extremism and radicalization that lead to terrorism, with a focus on women’s empowerment and the participation of women as well as men in these efforts;*
14. *To engage and empower youth, in preventing and countering violent extremism and radicalization that lead to terrorism [...]*”

The OSCE Ministerial Declaration calls upon the organization’s executive structures to “strengthen the role of civil society, women, youth and religious leaders” in efforts to prevent and counter VERLT.

MAIN HUMAN RIGHTS ISSUES ARISING IN THE PREVENTION OF VERLT IN THE OSCE REGION

The human rights and fundamental freedoms particularly at risk in preventing terrorism and countering VERLT are further explored in the ODIHR manual on [Countering Terrorism, Protecting Human Rights](#)¹¹ and the joint OSCE Secretariat Transnational Threats Department/ODIHR Guidebook on [Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: a Community-Policing approach](#)¹². The below text highlights some of the human rights issues of particular relevance in the OSCE region, based on ODIHR assistance to OSCE participating States in this field:

- **Human rights violations as conditions conducive to terrorism**

Violations of human rights – including when caused by counter-terrorism measures – such as violations of the right to life and physical integrity, right to liberty and security, freedom of expression, freedoms of association and of peaceful assembly, freedom of thought, conscience, religion or belief, the right to the protection of private and family life, can deepen alienation, isolation and exclusion and lead individuals on the path to violent radicalization. By protecting human rights, states could address the conditions conducive to the spread of terrorism and reduce the threat. While human rights violations are identified among the conditions conducive to VERLT and terrorism, some OSCE participating States continue to undermine the link between human rights protection and the effective prevention of VERLT.

- **Overly broad and vague definition of terrorism, “extremism”, “radicalization” and VERLT in national legislations**

Some OSCE participating States have adopted overly broad definitions of terrorism, “extremism” and terrorism-related offences in national legislation and policies that may fuel the adoption of repressive measures at the domestic level against otherwise lawful and non-violent activities of individuals and groups. In particular, such definitions have been used in

¹¹ <http://www.osce.org/odihr/29103>

¹² <http://www.osce.org/secretariat/111438>

the OSCE region to clamp down on dissenting voices and civil society. Overly broad and vague definitions of terrorism and associated terms violate the principle of legality.

ODIHR has repeatedly stressed that holding views or beliefs that are considered radical or extreme, as well as their peaceful expression, are not crimes. “Radicalization” and “extremism” should not be an object for law enforcement counter-terrorism measures if they are not associated with violence, or with another unlawful act (e.g., incitement to hatred), as legally defined in compliance with international human rights law. “Extremist” individuals or groups who do not resort to, incite or condone criminal activity and/or violence should not be targeted by the criminal-justice system.¹³

- **The right to be free from discrimination and the prevention of VERLT**

In some participating States, initiatives to prevent terrorist radicalization and the recruitment of individuals towards VERLT (including in the case of foreign terrorist fighters) are based on discriminatory assumptions that particular segments of the population, e.g. grouped along race, ethnicity, nationality, religion and/or gender lines, may be more inclined to become radicalized towards terrorism. Discriminating against and stigmatizing particular groups is counterproductive, resulting in further alienation and allowing terrorist groups to recruit new members.

There might be a tendency by some OSCE participating States to define “early signs of radicalization” that would help detect individuals on the path to VERLT. Defining such signs is practically difficult as there is no single pathway to terrorist radicalization and no single terrorist profile. None of these signs considered individually would be a necessary or sufficient proof of terrorist radicalization or recruitment.

Relying on such signs is also problematic from a human rights perspective. The right to hold any ideology or belief – even if they are considered to be “radical” or “extreme” – as well as to peacefully express them, is a democratic requirement protected under international law and enshrined in OSCE commitments. As mentioned above, holding views deemed to be “radical” or “extreme” is not a crime unless associated with violence or another unlawful act, as legally defined in compliance with international human rights law.

- **Freedom of expression and the prevention of VERLT**

Freedom of expression as protected under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and OSCE commitments¹⁴ includes the freedom to seek, receive and impart information and ideas of all kinds through any mean of communication. Any interference with this right should be defined by law, necessary, proportionate to the objective of protecting national security, the rights of others or public order as well as non-discriminatory. Measures to counter incitement to terrorism as well as to monitor or block Internet websites throughout the OSCE region have unlawfully interfered with this freedom. Some legislation criminalizing the incitement to terrorism in the OSCE region is not precise and uses vague terminology such as “extremism”, “glorifying” or “promoting” terrorism.

¹³ See for example, *Ibid.*, OSCE/ODIHR Guidebook on VERLT and community-policing, page 42-43.

¹⁴ OSCE Conference on the human dimension of the CSCE, Copenhagen Document, Copenhagen, 29 June 1990, OSCE Conference on Security and Co-operation in Europe, Decision No. VIII, “The Human Dimension”, Budapest, 5-6 December 1994.

- **Freedom of religion or belief and VERLT**

Undue governmental restrictions on freedom of religion or belief in a number of OSCE participating States, often in the name of countering VERLT and protecting national security, have negatively affected the rights of members of religious and belief communities, including numerically smaller and non-traditional ones. This situation has also served to highlight the much misunderstood interrelationship between the freedom of religion or belief and security and, particularly, on how freedom of religion or belief for all can be advanced while simultaneously protecting national security. In this connection, the role of the freedom of religion or belief in creating the conditions for social stability and security, particularly its potential, in conjunction with other human rights, to undermine the ideologies that drive VERLT continues to be overlooked in a number of OSCE participating States.

- **Involvement of communities and civil society in efforts to prevent VERLT**

The OSCE participating States are putting a stronger emphasis on the involvement of communities and civil society, including victims, women and youth organizations in efforts to prevent VERLT. While this may constitute a positive step, such approach in some OSCE participating States has been abused upon to infringe on human rights, in particular the freedoms of expression, association, peaceful assembly, religion or belief and the right to be free from discrimination. Civil society organizations and communities in some OSCE participating States have for instance been put under surveillance, prohibited from operating and receiving funds as well as associated with terrorist groups due to their involvement in efforts to tackle VERLT. The protection of those communities and organizations that are willing to be involved in prevention efforts remains of concern.

- **The prevention of the phenomenon of foreign terrorist fighters and its impact on human rights**

The prevention of terrorist radicalization in the case of foreign terrorist fighters has become a growing priority in the OSCE region. While efforts in this regard are legitimate, they have too often resulted in reactive measures focusing on criminalizing a broad range of conducts on the basis of overly broad definitions of criminal offences, which fail to clearly refer to a criminal intent and/or to establish a sufficiently direct connection with the principal offence of terrorism. Such measures disproportionately limit the freedom of movement, the right to a nationality, the freedoms of religion or belief, expression, peaceful assembly and association as well as the principle of non-discrimination, the right to privacy and fair trial rights. Any measure should be necessary, proportionate and non-discriminatory, based on a thorough assessment of the phenomenon of foreign terrorist fighters and any resulting threats.

ODIHR ASSISTANCE TO OSCE PARTICIPATING STATES ON HUMAN RIGHTS AND VERLT

Recognizing the challenge of protecting human rights and effectively countering terrorism, the OSCE participating States tasked ODIHR to offer technical assistance and advice for the appropriate implementation of anti-terrorism policies in line with their international human rights obligations and commitments. The Human Rights and Anti-Terrorism Programme Programme works in three main areas:

- ✓ Monitoring;
- ✓ Capacity building;
- ✓ Expert advice.

ODIHR past events on VERLT

ODIHR and the OSCE Secretariat Transnational Threats Department have jointly organized the following events on VERLT:

- Expert roundtable on “Youth Engagement to Counter Violent Extremism and Radicalization that Lead to Terrorism” (October 2012): [2013 Report on Findings and Recommendations](#)¹⁵ (available in English and Russian);
- Two expert roundtables on “Preventing Women Terrorist Radicalization” (December 2011) and “The Role and Empowerment of Women in Countering VERLT” (March 2012): [Final Report](#)¹⁶ (available in English, Russian, Albanian, Bosnian, Serbian and Arabic)

The above reports contain a number of recommendations to OSCE participating States formulated by participants during the events and focusing on the protection of human rights in efforts to counter VERLT, in particular to:

- Reaffirm that the protection and promotion of human rights is at the core of any effective counter-terrorism policies.
- Promote freedom of expression and refrain from criminalizing or otherwise repressing the peaceful expression of non-violent radical or extremist views.
- Narrowly define legislations criminalizing incitement to terrorism in accordance with United Nations Security Council Resolution 1624 (2005).
- Ensure that human rights and fundamental freedoms, in particular the freedom of religion or belief, the freedom of expression and of the media, are upheld at all times while countering VERLT.
- Refrain from resorting to discriminatory counter-terrorism measures such as predictive profiling based on race, ethnicity, religion and/or gender.
- Ensure that policies and measures to counter terrorism, and in particular VERLT among youth are not discriminating, in their design or implementation, against certain individuals based on religious, racial or ethnic characteristics. Review, and where necessary terminate or correct such policies and measures.
- Effectively involve and engage women in all stages of development, implementation and evaluation of counter-terrorism and counter-radicalization strategies, policies and measures.

¹⁵ <http://www.osce.org/atu/103352>

¹⁶ <http://www.osce.org/secretariat/99919>

- Monitor and regularly evaluate, including on the basis of specific gender benchmarks, the effectiveness, positive and negative impacts of counter-terrorism and counter-radicalization policies and practices.
- Support the provision of platforms and safe spaces for women and youth to share resources, experiences and concerns in facing violent radicalization, including skills and tools to respond most effectively.
- Make genuine efforts to identify and address the issues of discrimination, exclusion and marginalization that fuel VERLT, especially among young people.
- Develop and implement educational initiatives to equip young people with the knowledge and skills, including on Internet safety, to understand and reject VERLT narratives and to promote counter-narratives based on human rights, tolerance, and democracy.
- Apply human rights-based approaches in the formal educational sector, both in terms of methods and curricula. Particular emphasis should be put on teaching human rights, promoting tolerance and on building key skills – such as critical thinking, dialogue and peaceful conflict resolution.
- Acknowledge and support, including financially, initiatives of civil society organizations designed to counter VERLT through the promotion of human rights, democracy and tolerance.
- Refrain from suppressing online content and, only monitor the Internet in full compliance with domestic legislation and international human rights standards on the protection of the right to privacy, freedom of expression, freedom of the media and free access to information.

ODIHR publication on VERLT

ODIHR and the OSCE Secretariat Transnational Threats Department also published a Guidebook on “[Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#)”¹⁷ (March 2014). This publication provides guidance on the central issues that can have an impact on the success or failure of police efforts to harness a community-policing approach to preventing terrorism and countering VERLT. It is primarily intended for policymakers and senior police professionals, but may also be a useful resource for members of civil society with an interest in these issues, in particular community leaders. It is available in English, Russian, Albanian, Bosnian, Serbian and Arabic.

The Guidebook presents a number of good practices on how human rights-based approaches (through community-policing) have led to increased effectiveness of counter-terrorism policies and practices.

¹⁷ <http://www.osce.org/secretariat/111438>