The impact of anti-terrorism legislation on the freedom of expression in France and Turkey:

Outlook through the prism of the European Court of Human Rights

By Dorjana Bojanovska

LL.M LONG THESIS

COURSE: French Constitutional Law and its Influence Abroad

PROFESSOR: Mathias Möschel and Eszter Polgári

Central European University 1051 Budapest, Nador utca 9.

Hungary

Executive summary

With the aim to effectively battle terrorism and at the same time to establish certain safeguards, many countries have adopted special anti-terrorism laws or have included anti-terrorism provisions in their penal codes. The main question that this thesis will focus on will be, how the implementation of those laws impacts the freedom of expression in France and Turkey? To do so, the thesis will analyze the anti-terrorism legislation in both jurisdictions, their context and implementation, through the standards in the case law set by the jurisprudence of the European Court of Human Rights. More specifically, the thesis will focus on passive encouragement of terrorism i.e. glorification of and apology for terrorism, both vague categories that as such are prone to loose interpretation and even abuse in their implementation. The thesis will analyze the European Court of Human Rights' already established standards in Article 10 cases related to terrorism, especially in cases against Turkey. Consequently, it will apply those standards to potential cases that may arrive as a result of the implementation of the new 2014 French legislation, after the attack of Charlie Hebdo. Even though the protection of national security in relation to a specific context and circumstances can be a legitimate aim in justifying an interference, a line as to what forms of speech cannot be interfered with in any circumstances, must be drawn. The Court must be proactive and impose its already established standards in cases concerning interferences with Article 10 related to glorification/apology of terrorism, meaning that it must assess the quality of the law criminalizing these categories themselves and whether its vagueness and unforeseeability alone constitute a violation of Article 10.

Table of contents

Introduction

The issues of terrorism[1] and national security have been the topics that occupy most of today's political and legal discussions. On the one hand, the state has an obligation to protect its citizens and their right to life, liberty and security[2], but on the other "the measures adopted by States to counter terrorism have themselves often posed serious challenges to human rights and the rule of law."[3] With the aim to effectively battle terrorism and at the same time to establish certain safeguards, many countries have adopted special anti-terrorism laws or have included anti-terrorism provisions in their penal codes. Anti-terrorism laws and provisions give definitions and classifications of terrorist offences and terrorism-related actions and define the sanctions against them, impose restrictive and preventive measures to battle terrorism and restrict certain rights for the purpose of battling terrorism.

The main question that this thesis will focus on will be, how the implementation of anti-terrorism provisions and laws impact the freedom of expression in France and Turkey? To answer this question, I will look at the anti-terrorism legislation in both jurisdictions, their context and implementation, through the standards in the case law set by the jurisprudence of the European Court of Human Rights (from hereinafter ECtHR or the Court).

[1] As to the term "terrorism" the Security Councils' resolution 1566 (2004), defined acts of 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". The Secretary-General's High-level Panel on Threats, Challenges and Change defines terrorism as any action that is "intended to cause death or serious bodily harm to civilians or noncombatants, 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"

[2] According to Articles 2 and 5 from the ECHR, the State has a positive obligation to protect the right to life, liberty and security of its citizens.

[3] Fact Sheet No.32, *Human Rights, Terrorism and Counter-terrorism*, Office of the United Nations High Commissioner for Human Rights, available on http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf accessed on 16.09.2016, p. 1

This thesis will not focus on terrorist conduct as a form of expression but, rather on *terrorism-related speech.* Within the term "terrorism related speech" we can distinguish different forms of expression. For example, one kind of speech is when "terrorist organizations (…) express their political goals and demands through written and spoken statements."[4] This form of speech includes spreading the organizations' propaganda, claiming responsibility for certain violent terrorist acts or even threats of future attacks. But, this kind of speech differs from what can be viewed as passive encouragement of terrorism. Today, restrictions of speech "have expanded from existing prohibitions on incitement to much broader and less defined areas such as the "glorification" of and "apology" for terrorism."[5] This research will focus on those areas of speech.

Using violence as a method for expressing grievances and achieving goals must not be tolerated. Accordingly, it might seem justifiable that speech that cheers or "glorifies" such actions should not be tolerated as well. But, we also must consider that while implementing anti-terrorism legislation to sanction expression, "states have sometimes abused the qualification of "terrorists."[6] Vague and overbroad interpretations of articles and definitions in anti-terrorism legislation can also be abused and result in a threat to democracy. For example, the legislation can be used to prosecute political dissidents, activists and journalists.[7] Also, the interference can be "of such intensity as to discourage the contribution of the press to open

[4] Sottiaux, Stefan, *Terrorism and the Limitations of Rights, The ECHR and the US Constitution,* (Oregon: Hart Publishing, 2008) p. 81

[5] Ronald Bless, *Countering Terrorism while Protecting Freedom of the Media: A Crucial Balance for Governments*, in OSCE Yearbook 2010, (Hamburg: The Institute for Peace Research and Security Policy, 2010) p.286, accessed on 10.02.2017, available at: https://ifsh.de/file-CORE/documents/yearbook/english/10/OSCE-2010-pdf-Gesamt%20mit%20Schrift.pdf

[6] Salinas de Frias, Ana, *Counter-terrorism and human rights in the case law of the European Court of Human Rights*, (Strasbourg: Council of Europe Publishing, 2012) p.134

[7] For example the UN Human Council in the Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session, 15 October to 2 November 2012 stated that because of the vague definitions set by the Turkish anti-terrorism legislation there are "the high number of cases in which human rights defenders, lawyers, journalists and even children are charged under the Anti-Terrorism Law for the free expression of their opinions and ideas, in particular in the context of non-violent discussions of the Kurdish issue."

discussion on matters of public concern".[8] These are some of the reasons why, the line between justified interference of the freedom of expression and a violation of Article 10 must be drawn.

Most of the landmark Article 10 cases before the Court,[9] in relation to anti-terrorism legislation, are cases against Turkey. Turkey has a long history of abuse of anti-terrorism legislation to infringe upon freedom of expression.[10] Additionally, "in June 2006 Turkey amended its anti-terror laws and enacted a series of draconian provisions which fail to meet its human rights obligations under international law and have in practice been used to violate the human rights of its citizens."[11]. Even though amendments to these laws were enacted once again in 2013, to narrow the problematic vague definitions in the legislation, we cannot say that practices of abuse have stopped.

France has a long tradition of "criminalizing incitement and glorification of terrorism"[12] and imposing anti-terrorism legislation as well but, it has also a long tradition in respecting an open free speech and media environment.[13] Until now, there have been just a few Article 10 cases in relation to anti-terrorism legislation against France. Even before 2015, the French Parliament enacted several laws which broadened the sanctions for terrorism related crimes. However, after the Charlie Hebdo attack, the implementation of these laws has become more severe. Even though such reaction was a response to an attack that can be considered as one of the most gruesome attacks on freedom of expression, the criminalization of apology of terrorism and the

[8] Salinas de Frias, Ana, *Counter-terrorism and human rights in the case law of the European Court of Human Rights*, (Strasbourg: Council of Europe Publishing, 2012), p.136

[9] For example, the cases of Zana v. Turkey, Incal v. Turkey, Surek v. Turkey etc.

[10] According to Freedom House annual reports on Turkey, Turkeys' anti-terrorism legislation is over-broad and is used to infringe upon the freedom of expression, especially upon academic freedom and freedom of the media and the press. Reports available on: https://freedomhouse.org/country/turkey

[11] Yildiz, Kerim and Chaudary, Saadiya. "Threatening the protection of human rights: Turkey's anti-terror law" *KHRP Legal Review, Vol. 16*, (2009), p. 103

[12] Barak-Erez, Daphne and Scharia, David, "Freedom of Speech, Support for Terrorism, and the Challenge of Global Constitutional Law", *Harvard National Security Journal, Vol. 2 Issue 2* (2011), p. 6

[13] According to Freedom House annual county Report on freedom of the press – France 2016, accessed on 30.11.2016, available on https://freedomhouse.org/report/freedom-press/2016/france

implementation of the law had serious implications on the freedom of expression in the country itself. NGOs, such as Freedom House and Amnesty International warned that the "new security laws have raised concerns about the legal framework for the media in recent years"[14] and that "about 700 individuals were prosecuted for inciting or justifying terrorism, on the basis of… "apology of terrorism.""[15]

The focus of this thesis will not only be to interpret and compare the anti-terrorism legislation in the two jurisdictions. This thesis will analyze the Courts' already established standards in Article 10 cases related to terrorism, especially against Turkey, and will apply those standards to potential cases that may arrive as a result the implementation of the new French legislation after 2014. Assessing the legislation through the standards of the ECtHR and applying those standards on potential French cases must be seen only as an intellectual exercise, striving to explain and address the impact that anti-terrorism legislation may have on the freedom of expression, in a time when a threat of national security can be reasonably assumed. However, the research will begin with the hypothesis that the countries do not have the same approach to the implementation of anti-terrorism legislation and are not equal in respecting rights within the scope of freedom of expression.

The *first chapter* will focus on evaluating the history of adopting anti-terrorism legislation in both Turkey and France. The purpose is to gain context as to what has contributed to the implementation of such legislation. The current legislation in both jurisdictions will be analyzed and compared so, as to see if there are similarities of the provisions, as well as to evaluate the differences. The chapter will also focus on the implementation of the legislation

[14] Freedom House annual county Report on freedom of the press – France 2016, accessed on 30.11.2016, available on https://freedomhouse.org/report/freedom-press/2016/france

[15] Amnesty International Report 2015/2016, The state of the worlds human rights, accessed on 10.02.2017, available on: file:///C:/Users/Dora/Downloads/POL1025522016ENGLISH.PDF

in both jurisdictions. Constitutional review of the legislation by the constitutional courts in both jurisdictions will also be analyzed.

The *second chapter* will focus on the practices and standards of the ECtHR regarding Article 10 cases concerning anti-terrorism legislation. The chapter will give definitions of key terms set by the Court and evaluate already established jurisprudence and standards of the Court, trough the leading cases against Turkey**.**

The *third chapter* will focus on analyzing the established jurisprudence by the Court in cases against France before 2015. In this chapter, the established standards by the Court will also be applied to potential cases, that may arise as a result of the implementation of the new French legislation from 2014 after the Charlie Hebdo attack in 2015.

1. Overview of anti-terrorism legislation in France and Turkey

1.1 Historical context and evolution of anti-terrorism legislation in France and Turkey

1.1.1. France

In the past 60 years, France has been a target of both international and national terrorism. Accordingly, as a mechanism of protection from and prevention of terrorist threats and attacks, the French Parliament has adopted anti-terrorism legislation and provisions. Even though, early versions of anti-terrorist provisions were introduced in France as early as the 1890s[16], the first anti-terrorism legislation was enacted one century later in 1986.

During the Algerian war of independence in the 1950's and until its withdrawal in 1962, France faced terrorist attacks both in Algeria and on its own soil.[17] In that period France "had applied far-reaching laws relating to prevention of crimes against state security."[18] In the early 1980's Paris was a target to several attacks from different terrorist groups: Palestinian splinter groups aimed at Jewish targets as response to Frances support to Yasser Arafat, Syrian "security forces exploded a bomb...outside the offices of pro-Iraqi newspaper" and Armenian terrorists bombed the Paris-Orly airport.[19] Several years later in 1986, numerous terrorist bombings claimed by the Lebanese faction CSPPA and the French revolutionary group Action Directe, hit several

[16] In 1891 after a bombing of the National Assembly and several other bombings and attacks in 1983, statutes were passed that restricted the 1880 law of the Freedom of the press. These laws made advocacy of crime, violence and terrorism punishable by law.
[17] See Frank Foley, *"Countering Terrorism in Britain and France. Institutions, Norms and Shadows of the Past",* (Cambridge: Cambridge University Press, 2013) p. 16
[18] Anna Oehmichen in *"Terrorism and Anti-Terror Legislation: The Terrorized Legislator? A Comparison of Counter-Terrorism Legislation and Its Implications on Human Rights in the Legal Systems of the United Kingdom, Spain, Germany and France." (*Antwerp Portland: Intersentia, 2009) p.291
[19] See Frank Foley, *"Countering Terrorism in Britain and France. Institutions, Norms and Shadows of the Past",* (Cambridge: Cambridge University Press, 2013), p. 16

government and civil targets in Paris and Lyon. The first anti-terrorism legislation[20] in its contemporary meaning and understanding, was adopted in 1986 as a responce to these bombings. Since then the French Parliament has passed several diferent anti-terrorism statutes, as a response of later terrorist threats and attacks[21] and as a result of technological changes such as the development and mass use of the internet.

Olivier Dutheillet de Lamothe, a former member of the Constitutional Council, classifies the French response to terrorism as judicial i.e. as a response through regular adoption of special legislation against terrorism as "a special branch of criminal law, introducing permanent derogations from common criminal procedure."[22] He concludes that there are two conditions that have made the French experience with anti-terrorism effective. Those conditions are "permanent adaptation" and "good interface between intelligence agencies and the judiciary which requires good communication in both directions, both to provide a solid judicial relay for intelligence work and, in the opposite direction, to ensure appropriate analysis of information gleaned from judicial proceedings."[23]

Freedom of expression in France was regulated with the Law for freedom of the press of 1881 (hereinafter the 1881 Law)[24]. What strikes as most interesting is that this legislation was the first legislation to be amended and restricted as a result to terrorism attacks. In 1891 after a bombing of the National Assembly and several other bombings and attacks in 1983, statutes were passed that restricted the 1881 Law. These statutes made advocacy of crime, violence and

[20] Law no. 86-1020 of 9 September
[21] For example, Law no. 96-647 of 22 July was enacted after the terrorist attacks done by the islamist movement GIA and Law no. 2001-1062 of 15 November was enacted as a response to the September 11 attacks.
[22]Olivier Dutheillet de Lamothe, French Legislation Against Terrorism: Constitutional Issues, November 2006, p.2 accessed on 11.01.2017, available at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/constitutionalterrorism.pdf
[23]Olivier Dutheillet de Lamothe, French Legislation Against Terrorism: Constitutional Issues, November 2006, p.11 accessed on 11.01.2017, available at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/constitutionalterrorism.pdf
[24] Law of 29 July 1881 on the Freedom of the Press (Loi du 29 juillet 1881 sur la liberté de la presse).

terrorism punishable by law. What is even more interesting is that with numerous amendments the law is still in force today.[25] Today Article 23 of the Law makes incitement of violence an offence or a crime[26]. If actions described in Article 23 "have caused discrimination, hatred or violence against a person of a group of persons on grounds of their origin and belonging or not belonging to a particular ethnic group, nation, race or religion, shall be punished with one year of imprisonment and a fine of 45.000 Euros, or one of these two penalties only."[27] Before 2014 the act of "glorifying terrorism" in France was also regulated and sanctioned by the same law. However, even before the Charlie Hebdo attack in 2015, a new law[28] was adopted which placed the articles punishing the glorification of terrorism from the 1881 Law into article 421-2-5 of the Penal Code. The content and implementation of the provisions will be discussed further on in the second section of this chapter as well as in the last chapter of the thesis.

1.1.2 Turkey

Acts of terrorism in Turkey have claimed the lives of around 5.000 martyrs and 40.000 citizens from the 1980s to 2013,[29] with that number unfortunately being larger today. Terrorism in Turkey was motivated and lead by several ideas. Most terrorist organizations were either lead by Marxist-Leninist ideology, ideology of anti-imperialism, religious motivations or were established as separatist movements. Many organizations transformed from one to another and also adopted more than one leading ideology. Chronologically speaking, it can be said that terrorism in Turkey came in four waves.[30]

---

[25] The last amendments to the law were passed in February 2017.
[26] Article 23 makes Incitement of violence punishable trough means of: "speech, cries or threats made in public places or gatherings, or by means of writings, printed materials, drawings, engravings, paintings, emblems, images or any other material…"
[27] Article 24 of Law of 29 July 1881 on the Freedom of the Press (Loi du 29 juillet 1881 sur la liberté de la presse).
[28] Law of 13 November 2014
[29] Hikmet Sami Türk, *"*An Overview of Legal Responses to Terrorism*", Defence Against Terrorism Review Vol. 5, No. 1*, (Spring & Fall 2013), p. 75
[30] See Andrew Mango, *Turkey and the War on Terror, For Forty Years We Fought Alone*, (Oxon:Routledge, 2005), p.10.

The first wave of terrorism in Turkey started with a student movement[31] in 1968 and lasted until 1971. A starting point of terrorism in Turkey is considered to be 12th June 1968, when a group of students occupied the Law Faculty of Istanbul University. [32] [33] In this period three main terrorist organizations[34] emerged, "organized by extremist students [that] started to carry out terrorist actions in different parts of Turkey."[35] These organizations were mostly lead by anti-imperialistic ideas and claimed that "Turkey was occupied by the USA economically, culturally and to a certain extent, military."[36]

The second wave of terror in Turkey is considered to be from 1975 to 1980. In this period, more than 20 terrorist organizations operated in Turkey governed by different kind of ideologies. It was a period of clash between left-wing and right wing terrorist organizations, separatist terrorist organizations as well as religiously motivated organizations.[37] In this period terrorist attacks even reached beyond Turkeys borders, with the Armenian ASALA[38] executing assassinations of Turkish diplomats and other targets mostly outside of Turkish territories.[39]

The third wave is characterized with the rise of the PKK[40] as a large scale separatist movement. The PKK founded in 1978 and was organized primarily as an organization lead by communist

[31] See Atilla Yayla, Terrorism in Turkey, p.250, accessed on 02.02.2017, available at: http://www.politics.ankara.edu.tr/dergi/pdf/44/3/14_atilla_yayla.pdf
[32] Ibid.
[33] The occupants proclaimed their objectives as; (1) "to struggle against the government", (2) "to resist political power as long as possible", (3) "to eliminate the governmenta1 representatives at the university". Ibid.
[34] Mahir Cayan's Turkish People Liberation Party-Front (TPLP-F), Deniz Gezmış's Turkish People Liberation Army (TPLA), both Marxist-Leninist organizations governed by the opinion that Turkey was colonized and occupied by The USA economically and culturally and later İbrahim Kaypakkaya's Turkish Worker Peasant Liberation Army (TWPLA.) a more radical and separatist organization based on based on Kurdism and Che Guevara's "focoism. Ibid.
[35] Atilla Yayla, Terrorism in Turkey, p. 250 accessed on 02.02.2017, available at http://www.politics.ankara.edu.tr/dergi/pdf/44/3/14_atilla_yayla.pdf
[36] Atilla Yayla, Terrorism in Turkey, p. 251 accessed on 02.02.2017, available athttp://www.politics.ankara.edu.tr/dergi/pdf/44/3/14_atilla_yayla.pdf
[37] For example, The Idealist Youth Movement (IYM) a front organization for the extreme-right wing National Action Party (NAP), The Raiders Association (RA) the second right wing terrorist organization proclaiming Islam as an ideology governed by the idea of Islamic revolution,
[38] Armenian Secret Army for Liberation of Armenia.
[39] See Andrew Mango, "*Turkey and the War on Terror, For Forty Years We Fought Alone"*, (Oxon: Routledge, 2005), p.11
[40] Kurdistan Workers' Party (Kurdish: Partiya Karkerên Kurdistan)

ideology that continued as a separatist organization "committed to the foundation of an independent Kurdish state in south-eastern Turkey and Syria."[41] After the military coup in 1980, the proclamation of the Kurds as a separate ethnic group was denied by the Turkish state, considering them to be a biggest threat to Turkeys indivisibility.[42] Accordingly, "the Turkish-Kurdish conflict originates from Turkey's refusal to recognize Kurdish identity" and instead their aim to "assimilate Kurds into Turkish society."[43] The conflict started when PKK groups "started attacking Turkish military and police in the Eastern Turkey and they challenged Turkish sovereignty."[44] Turkey reacted by executing "fierce, military operations."[45] Despite the declared ceasefires in two occasions, one that lasted from 1999 to 2004 and the other from 2013 to 2015, the conflict is still raging today. "Since 1984, PKK's terrorist activities resulted in the death of more than 30,000 Turkish citizens, among whom were innocent civilians, teachers, and other public servants, many deliberately murdered."[46]

The fourth wave of terrorism in Turkey is led by "brutal religious fundamentalist groups, which like the PKK, had their roots in the south-east of the country" and had "links to the Middle Eastern terrorists and their sponsors."[47]

Before the 1990s the definition and sanctions of terrorism related activities were infringed in the Turkish Penal Code. In the 1990s several laws were enacted for the purpose of "combating

[41] Hanefi Yazıcı, "PKK Terrorism in Turkey", *Open Journal of Political Science, 6, 310-315*, (2016) p. 313 accessed on January 23, 2017, http://dx.doi.org/10.4236/ojps.2016.63027
[42] Ibid.
[43] See, Joan Klein, "Turkish responses to Kurdish identity politics: recent developments in historical perspective." In Ross Dayton, Identity and Conflict: PKK vs. Turkey (1984-Present), Student Research, Paper 2, 2013, accessed on 10.02.2017, available at: http://digitalcommons.fiu.edu/cgi/viewcontent.cgi?article=1001&context=ippcs_studentworks
[44] Hanefi Yazıcı, "PKK Terrorism in Turkey", *Open Journal of Political Science, 6, 310-315*, (2016) p. 313 accessed on January 23, 2017, http://dx.doi.org/10.4236/ojps.2016.63027
[45] Hanefi Yazıcı, "PKK Terrorism in Turkey", *Open Journal of Political Science, 6, 310-315*, (2016) p. 313 accessed on January 23, 2017, http://dx.doi.org/10.4236/ojps.2016.63027
[46] Alexander Yonah, Edgar H. Brenner and Serhat Tutuncuoglu Krause, *Turkey, terrorism, civil rights and the European Union*. (New York: Routledge, 2008) p. 103
[47] Andrew Mango, *Turkey and the War on Terror, For Forty Years We Fought Alone*,(Oxon: Routledge, 2005) p. 10

terror, monitoring terrorist activities, compensating victims for losses due to terrorist acts, providing instruction and employment opportunities, and protecting all officials who were engaged in combating terrorism."[48] Among them was the Law 3713 for Combating Terror of 12 April 1991 (hereinafter the Law 3713) as *lex specialis* aimed to define terrorism, terrorist organizations and activities and sanction terrorist-related crimes.

Since its enactment, the Law 3713 has been significantly amended several times, from which most crucial were the amendments from 2006 and 2013. Due to the historical context described above, anti-terrorism legislation in Turkey focuses on confronting domestic threats and "efforts to counter international terrorism are hampered by legislation that defines terrorism narrowly as a crime targeting the Turkish state or Turkish citizens."[49]

Freedom of expression is restricted by both the Penal code and the Law 3713, as well as the Constitution. Terrorist propaganda and the legitimizing and praising of terrorist organizations' actions are prohibited also by both the Penal Code and the Law 3713. The main issue, pointed out both by intragovernmental institutions and NGOs, was that the provisions in the legislation heavily impacted the freedom of expression in the country, because of their loose definitions and broad interpretations. More detailed analysis of the legislation will be presented below.

1.2. Comparative overview of current anti-terrorism legislation in France and Turkey: Differences, similar practices and implementation

1.2.1. Constitutional guarantees and restriction of freedom of expression

In Turkey, the restriction of fundamental rights for the sake of national security interests is regulated both on a Constitutional and on a statutory level. Several articles in the Constitution

[48] Sami Türk, Hikmet, "An Overview of Legal Responses to Terrorism*", Defence Against Terrorism Review Vol. 5, No. 1*, (Spring & Fall 2013), p.85
[49] Country Reports on Terrorism 2014, United States Department of State Publication Bureau of Counterterrorism Released June 2015, p. 149

of 1982 establish restrictions and limits to fundamental rights. Article 13 determines the possibility of restriction of fundamental rights but, only "by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence."[50] However, the article also states that these restrictions cannot "be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality."[51] It can be concluded that the Constitution gives weight to the values of democracy and sets the proportionality test as a precondition to the restriction of fundamental rights. Paragraph 1 of Article 14 of the Constitution also states that: "None of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights."[52] From this article it can be concluded acts against the integrity of the Turkish Republic and the constitutional order are acts that trigger suspension of certain fundamental rights of persons suspected of committing them. The Constitution also contains specific provisions regarding the scope and restriction of freedom of expression and the press. Article 26 defines the meaning and scope of the freedom of expression[53] and specific justifications as to restricting certain aspects of the right.

[50] Article 13 of Turkey's 1982 Constitution, Turkey's 1982 Constitutions with Amendments trough 2002, Oxford University Press, accessed on 30.11.2016, available at: https://www.constituteproject.org/constitution/Turkey_2002.pdf,

[51] Article 13 of Turkey's 1982 Constitution, Turkey's 1982 Constitutions with Amendments trough 2002, Oxford University Press, accessed on 30.11.2016, available at: https://www.constituteproject.org/constitution/Turkey_2002.pdf,

[52] Article 14 of Turkey's 1982 Constitution, Turkey's 1982 Constitutions with Amendments trough 2011, accessed on 20.01.2016: available at https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en

[53] Paragraph 1 of Article 26 of Turkey's 1982 Constitution states: "Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision does not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing.", Turkey's 1982 Constitutions with Amendments trough 2011, accessed on 20.01.2016, available at https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en

According to the Constitution "protecting national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary"[54] are legitimates purposes that can serve as a foundation for the restriction of freedom of expression.

Unlike in Turkey, in France freedom of expression is not explicitly guaranteed in the text of the constitution. The reason for that is the fact that the French Constitution of 1958 does not include a Bill of Rights. However, freedom of expression is guaranteed by other constitutional documents and its limitation is established by statutory provisions. The preamble of the Constitution states that "the French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789"[55]. Accordingly, freedom of speech in France is protected on a constitutional level with the Declaration of the Rights of Man and the Citizen of 1789. More specifically, freedom of expression is guaranteed by Article 10 and Article 11 of the Declaration. Article 10 states that "No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order." [56] Article 11 states that "…free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law."[57]

[54] Article 26 paragraph 2 of Turkey's 1982 Constitution, Turkey's 1982 Constitutions with Amendments trough 2011, accessed on 20.01.2016, available at https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en
[55] Preamble of the Constitution of October 4, 1958.
[56] Article 10 of the Declaration of the Rights of Man and the Citizen of 1789
[57] Article 11 of the Declaration of the Rights of Man and the Citizen of 1789

After the landmark decision in 1971,[58] the French Constitutional Council started to assess the constitutionality of referred legislation against rights enshrined in various documents, more specifically the 1789 Declaration, the Preambles of the 1946 and 1958 Constitutions and the Environmental Charter of 2005. The Council also started assessing legislation against the fundamental principles recognized by laws of the Republic (of the Third Republic), the principles of constitutional value and the objectives of constitutional value. Today, all of these documents, principles and objectives form what is known as the Constitutional Block (Bloc De Constitutionnalité). Freedom of expression as part of the 1881 Law, a law of the Republic is arguably one of those principles as well.

1.2.2 Glorifying terrorism and terrorist propaganda in anti-terrorism legislation

Article 220 paragraph 8 of the Turkish Penal Code, penalizes terrorist propaganda that legitimizes or prizes terrorist organizations methods. The prescribed penalty for such actions is imprisonment for a term or one to three years. If the crime is committed trough the press or by broadcasting, the sentence would be increased by half.[59] The Law 3713 also regulates terrorist propaganda or announcements of terrorist organizations. The amendments of the Law enacted in 2013, narrowed down the penalization of those who propagate or publish declarations of an illegal organization only in the case that content legitimizes or encourages acts of violence, threats or force.[60] The punishment for such crimes is one to three years imprisonment. The Law also establishes that periodicals involving public incitement of crimes within the framework of activities of a terrorist organization, that praise of committed crimes or carry out propaganda of a terrorist organization can be blocked from 15 days to 1 month, by a decision of a judge. As to the blocking of internet websites, "amendments to Law No. 5651,

[58] Decision No. 71-55 DC of July 16 1971
[59] Article 220 paragraph 8 of the Penal Code of Turkey.
[60] Summary of the 2013 amendments on the Law on the Fight Against Terrorism, accessed on January 23, 2017, available on: http://bianet.org/english/politics/145791-parliament-approves-new-judicial-reforms

commonly known as the Internet Law of Turkey, expanded the power of the Telecommunication Authority (TİB) to order the blocking of websites, allowing it to do so on vaguely defined grounds related to the right to privacy, without prior court approval, though a court had to uphold the order within 48 hours for a block to remain in place."[61]

As mentioned, in 2014 a new law was adopted[62] in France, which placed the articles sanctioning the glorification of terrorism from the 1881 Law into article 421-2-5 of the Penal Code. The law was proposed by the Government under accelerated procedure. In the preamble of the proposed text of the Law it was stated that "France cannot tolerate messages on its own soil that implore terrorism or glorify it with impunity. These messages… are likely to lead to commission of acts of terrorism."[63] The Government lists several arguments as to why the acts of glorification of terrorism should be moved to into the Criminal Code. The first is that such move would demonstrate "the Government's determination to combat ever-increasing development of terrorist propaganda which provokes or glorifies acts of terrorism."[64] Consequently, the Government argues that such move is not a move towards sanctioning freedom of expression, rather than of acts that are directly the origin of terrorist acts. As such, those acts should be subject to rules of procedure set for acts of terrorism. Reclassifying these acts as crimes into the Penal Code, will allow them to be subject to rules of criminal procedure rather than to procedural rules stated in the 1881 Law, which among other things also include the possibility of using the immediate appearance procedure.[65] Furthermore, in 2015 the Decree No. 2015-125 of 5 February 2015 on the blocking of sites causing acts of terrorism or

[61] Annual report on freedom of the press - Turkey for 2015, accessed on January 15, 2017, available on https://freedomhouse.org/report/freedom-world/2015/turkey

[62] the Law of 13 November 2014

[63] Whole text of the proposed Bill available in French at: http://www.assemblee-nationale.fr/14/projets/pl2110.asp accessed on 12.03.2017, (translation by Stein De Witte).

[64] Whole text of the proposed Bill available in French at: http://www.assemblee-nationale.fr/14/projets/pl2110.asp accessed on 12.03.2017 (translation by Stein De Witte).

[65] Ibid.

advocating them and sites sharing images and depictions of pornographic minors was adopted. This Decree "specifies the procedure to prevent the access of Internet users to websites inciting to the commission of terrorist acts or advocating them."[66] The Decree established that internet service providers by order of the Ministry of Interior must block the web sites within 24 hours. Blocking of the web sites is done without a court order.

If we only interpret and compare the black letter law, the text of the legal provisions regulating terrorist incitement or propaganda in both jurisdictions (citied below), we can conclude the following:

1. The French legislation imposes more severe punishments for the acts of apology of terrorism (up to 5 years or 75.000 euros fine),[67] whereas the Turkish Penal Code imposes a punishment of 3 years for acts of terrorist propaganda. French legislation even imposes more severe punishments, "7 years of prison and a fine of 100.000 euros when the acts are being committed while using a communication service or online."[68]
2. When the provisions are applied to the press, the French Penal Code makes a difference of the penalties depending on the responsible persons involved.[69] The Turkish Penal Code establishes that the penalty for broadcasting such propaganda, ergo for the press, will be one half of the penalty more than the one imposed for ordinary persons. So, the prison sentence can be up to 4,5 years, for the persons responsible. The Turkish law also establishes that periodicals involving public incitement of crimes within the framework of activities of a terrorist organization, praise of committed crimes or of criminals or the

[66] Decree No. 2015-125 of 5 February 2015
[67] Paragraph 1 of Article 421-2-5 of the French Penal Code (translation by Stein De Witte).
[68] Paragraph 2 of Article 421-2-5 of the French Penal Code (translation by Stein De Witte).
[69] Paragraph 3 of Article 421-2-5 of the French Penal Code states: "When these acts are committed by the written or audiovisual press or the online public, the specific provisions of the laws governing these matters shall apply with respect to the determination of the persons responsible." (translation by Stein De Witte).

propaganda of a terrorist organization can be blocked from 15 days to 1 month by a decision of a judge. If a delay is expected such decision can be made by the prosecutor. If such a decision is issued by a prosecutor, the prosecutor must inform the judge within 24 hours.

3. As for blocking of internet websites for praising or glorying terrorism, the laws of the two counties are almost the same, both allowing administrative blocking of websites without a court order. The French law determines that by an order issued by the Ministry of Interior, internet providers must block an internet web site that has contact that praises terrorism within 24 hours. As I have mentioned above after the "amendments to the Internet Law of Turkey and the expended powers to the Telecommunication Authority (TIB), now the TIB can order blocking of websites without Court approval.

1.2.3. Implementation

The Committee of experts on Terrorism (CODEXTER)[70] among other things is responsible for issuing country profiles on Council of Europe contracting states, regarding their legislative and institutional counter-terrorism capacity. In the country profile for France in 2013, CODEXTER stated that "in general, it should be said that France's action against international terrorism respects human rights and public liberties."[71] In the country profile for Turkey in 2013, the Committee states that "while maintaining its determined stance against terrorism, Turkey has taken important steps with a view to enhancing democratic standards and expanding freedoms" [72] However, regarding freedom of expression in correlation to anti-terrorism

[70] The Committee of experts on Terrorism (CODEXTER) is an intragovernmental body part of the Council of Europe, coordinating the action against terrorism. The Committee was responsible for drafting the Council of Europe Convention on the Prevention of Terrorism and other of soft law instruments. The Committee web site is: http://www.coe.int/en/web/counter-terrorism/codexter

[71] Profiles on Counter-terrorism Capacity – France, published by the Committee of experts on Terrorism (CODEXTER) in September 2013, accessed on 02.02.2017 available on https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806410 29

[72] Profiles on Counter-terrorism Capacity – Turkey, published by the Committee of experts on Terrorism (CODEXTER) in May 2013, accessed on 02.02.2017 available on

legislation, the two countries have a rather different record as perceived by the international community as well as leading NGOs.

Despite the fact that the 2013 amendments to the Turkish anti-terrorism legislation were meant to bring the legislation in line with European human rights standards, it seems that the situation with the respect of the right of freedom of expression has not improved. On the contrary, the state of freedom of expression in Turkey, especially in the last year and a half, has only been deteriorating. A European Commission working staff document on the progress Report on Turkey for 2016[73] states:

> "The anti-terror law and its implementation are not in line with the acquis. The criminal and anti-terror legislation and their interpretation should be aligned with ECtHR case-law, without reducing the capacity of Turkey to fight terrorism. The proportionality principle must be observed in practice."
>
> "Legislation and practice do not comply with ECtHR case-law. Freedom of expression has come under serious strain. Ongoing and new criminal cases against journalists, writers or social media users, withdrawal of accreditations as well as closure of or appointment of trustees to numerous media outlets are of serious concern. Selective and arbitrary application of the law, especially provisions on national security and the fight against terrorism, is having a negative impact on freedom of expression."

Reports from NGOs also warned about the deteriorating situation of freedom of expression in Turkey. Amnesty International reported that unfair proceedings under anti-terrorism laws

https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064102d

[73] Turkey 2016 Report, Commission Staff Working Document accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2016 Communication on EU Enlargement Policy, accessed on 04.02.2017, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0366&from=EN

"targeted political activists, journalists and others critical of public officials or government policy" as well as ordinary citizens for their social media posts.[74] Freedom House gives Turkey press freedom status of "not free", also emphasizing that in 2016 the "anti-terrorism law to punish critical reporting, and journalists faced growing violence, harassment, and intimidation from both state and non-state actors" and that "authorities prosecuted a number of prominent journalists on terrorism-related charges." [75] The report also states that "constitutional guarantees of press freedom and freedom of expression are only partially upheld in practice because they are undermined by …[the] broadly worded antiterrorism law that essentially leave punishment of normal journalistic activity to the discretion of prosecutors and judges."[76]

As it was mentioned before, the actions of glorification/apology of terrorism in France since 2014 have been embedded in the Penal Code. This alteration can be viewed as symbolic "in terms of a simple abuse of freedom of expression but must be excluded from the scope of that same freedom. However, we also mentioned that the aim of the Government when proposing the amendments was mostly to prevent prosecutions being brought on the basis of the protective procedural framework provided by the 1881 Law."[77] In an article the Human Rights Watch warned that the legislation will "deter free expression through a chilling effect."[78]

In its report for 2015/2016, Amnesty international claimed that after these amendments, about "700 individuals were prosecuted for inciting or justifying terrorism, on the basis of a new

[74] Amnesty International Report 2015/2016, The state of the worlds human rights, accessed on 10.02.2017, available on file:///C:/Users/Dora/Downloads/POL1025522016ENGLISH.PDF
[75] Freedom House annual report on Turkey for 2016, accessed on 10.02.2017. available on https://freedomhouse.org/report/freedom-press/2016/turkey
[76] Freedom House annual report on Turkey for 2016, accessed on 10.02.2017, available on https://freedomhouse.org/report/freedom-press/2016/turkey
[77] Marion Lacaze, "Latest developments in the repression and prevention of terrorism under French criminal law", Montesquieu Law Review, Issue No.3 October 2015, p. 5
[78] Human Rights Watch article "Dispatches: France, a country of freedom of expression - for some, accessed on 20.03.2017, by available at: https://www.hrw.org/news/2014/10/09/france-counterterrorism-bill-threatens-rights

provision ("apology of terrorism")."[79] The report also emphasizes that "due to the vague definition of the offence, in many cases authorities prosecuted individuals for statements that did not constitute incitement to violence and fell within the scope of legitimate exercise of freedom of expression."[80] Also, after the enactment of the Decree No. 2015-125 of 5 February 2015, Amnesty International claims that 87 websites were blocked from January to November 2016. [81]

However, although Freedom House in its 2016 Report stated that "new security laws have raised concerns about the legal framework for the media in recent years,"[82] still France has a long tradition of protecting press freedom and speech in general. The report claims that "the constitution and governing institutions in France support an open media environment, although certain laws limit aspects of press freedom and freedom of expression in practice." [83] Accordingly, Freedom House gives France press freedom status of "free."

1.3 Constitutional review of anti-terrorism legislation

Enactment of anti-terrorism legislation in France, often raises the issue of separation of powers between branches of government as well as the infringement of civil rights and liberties. Before 2008, the Constitutional Council had the task to review the constitutionality of anti-terrorism related legislation in eight different decisions. [84] Overall in its decisions regarding anti-

[79] Amnesty International Report 2015/2016, The state of the worlds human rights, accessed on 10.02.2017, available on: file:///C:/Users/Dora/Downloads/POL1025522016ENGLISH.PDF
[80] Amnesty International Report 2015/2016, The state of the worlds human rights, accessed on 10.02.2017, available on: file:///C:/Users/Dora/Downloads/POL1025522016ENGLISH.PDF
[81] Amnesty International Report 2015/2016, The state of the worlds human rights, accessed on 10.02.2017, available on: file:///C:/Users/Dora/Downloads/POL1025522016ENGLISH.PDF
[82] Freedom House annual report on France for 2016, accessed on 10.02.2017, available on: https://freedomhouse.org/report/freedom-press/2016/france
[83] Ibid
[84] Decision no. 80-127 DC On the law of security and liberty, Decision on Law on Fight against Terrorism, Decision no. 93-326 DC, Decision no. 93-334 DC, Decision 96-377 DC On the Act to strengthen enforcement measures to combat terrorism and violence against holders of public office or public service functions and to enact measures relating to the criminal investigation police, Decision no. 2003-467 DC, Decision no. 2004-492 DC and Decision 2005-532, Act pertaining to the fight against terrorism and containing various provisions concerning security and border controls. Sources: http://www.legislationline.org/topics/country/30/topic/5 and

terrorism legislation, the Council is somewhat restrictive. The Council has only suspended some provisions, mostly based on issues regarding separation of powers and not the violation of fundamental rights. Moreover, it is reported that the legislator not always respects these rulings.[85] The Council has also stated that it is the job of the legislator to balance security interest and individual rights.[86] Anna Oehmichen doubts the Councils' ability to "critically check the compatibility of future anti-terror legislation with individual rights."[87] Looking at the decision of the Council of 19 February 2016[88] regarding the imposition of administrative searches in homes without a judicial order, it's hard to disagree with the above said. In its decision, the Council ruled that only personal computer searches and copying of data gained from such searches, inside private homes, are unconstitutional whereas searches of the homes themselves were not a problem.

However, in a recent decision[89] the Council declared an article of the Criminal Code[90] that made the act of consulting an online communication service providing messages, images and representations, that directly cause the commission of acts of terrorism or are glorifying such acts, or are showing commission of such acts,[91] unconstitutional. The article did not apply to consultations carried out in good faith for informing the public or for scientific research.[92]

---

http://www.conseil-constitutionnel.fr/ accessed on 28.12.2016. The Law no. 2001-1062 of November 2001 on Daily Security, adopted as a response to the 9/11 attacks was not referred to the Constitutional Council due to urgency of the situation.

[85] Anna Oehmichen in *Terrorism and Anti-Terror Legislation: The Terrorized Legislator? A Comparison of Counter-Terrorism Legislation and Its Implications on Human Rights in the Legal Systems of the United Kingdom, Spain, Germany and France. (*Antwerp Portland: Intersentia, 2009) p. 334

[86] See Decision no. 2003-467 DC

[87] Anna Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorized Legislator? A Comparison of Counter-Terrorism Legislation and Its Implications on Human Rights in the Legal Systems of the United Kingdom, Spain, Germany and France. (*Antwerp Portland: Intersentia, 2009) p. 334

[88] Decision no. 2016-536 QPC of 19 February 2016

[89] Decision No 2016-611 QPC of 10 February 2017

[90] Article 421-2-5-2 of the Criminal Code, as drafted by the Act of 3 of June 2016 (translation by Stein De Witte).

[91] In Decision No 2016-611 QPC of 10 February 2017 (translation by Stein De Witte), the full decision, accessed on 20.03.2017, available on https://www.legifrance.gouv.fr/affichJuriConst.do?oldAction=rechJuriConst&idTexte=CONSTEXT000034033479&fastReqId=707384889&fastPos=1

[92] In Decision No 2016-611 QPC of 10 February 2017 (translation by Stein De Witte). the full decision, accessed on 20.03.2017, available on:

Among other things, the Court found the Article to be against Article 11 of the Declaration of the Rights of Man and the Citizen and emphasized the current importance of the media and the widespread development of online communication services and the importance of these services for participation in democratic life and the expression of ideas and opinions.[93]

Consequently, in an even more recent decision[94] the Constitutional Council asked by the Cour de Cassasion, had the task to review the "compliance with the rights and liberties that the Constitution guarantees [of] Article 421-2-6 of the Criminal Code, in its drafting pursuant to Law number 2014-1353 of 13 November 2014, reinforcing the provisions related to the fight against terrorism and Article 421-5 of the same Code."[95] The contested Article[96] defines what the terrorist act of preparing to commit a terrorist act entails "when the preparation of said infraction is intentionally related to an individual undertaking that has the goal of seriously

https://www.legifrance.gouv.fr/affichJuriConst.do?oldAction=rechJuriConst&idTexte=CONSTEXT000034033479&fastReqId=707384889&fastPos=1

[93]Decision No 2016-611 QPC of 10 February 2017, (translation by Stein De Witte), the full decision, accessed on 20.03.2017, available on https://www.legifrance.gouv.fr/affichJuriConst.do?oldAction=rechJuriConst&idTexte=CONSTEXT000034033479&fastReqId=707384889&fastPos=1

[94] Decision no. 2017-625 QPC of 07 April 2017

[95] Decision no. 2017-625 QPC of 07 April 2017 accessed on 10.07.2017 English version available on: http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2017-625-qpc/version-en-anglais.149217.html

[96] Article 421-2-6 of the Criminal Code, as written pursuant to the Law of 13 November 2014 states:
"I. - What constitutes an act of terrorism is preparing to commit one of the infractions mentioned in part II when the preparation of said infraction is intentionally related to an individual undertaking that has the goal of seriously disturbing public order by intimidation or terror and is characterised by:
"Section 1° - possessing, searching for, obtaining or making objects or substances that create a danger to others;
"Section 2°and one of the following material facts:
"a) gathering information on locations or persons that would allow for carrying out harmful actions in these locations or inflicting damage to these persons or staking out these locations or these persons;
"b) training or learning how to use arms in any form of combat, fabricating or using explosive, incendiary, nuclear, radiological, biological or chemical substances, or learning how to fly aircraft or navigate ships;
"c) regularly consulting one or more public online communication services or possessing documents that directly induce the commission of terrorist acts or in defence of them;
"d) travelling abroad to a terrorist group operations theatre.
"II. - Part I involves preparing to commit the following infractions:
"Section 1° - a terrorist act described in Section 1° of Article 421-1;
"Section 2° - a terrorist act described in Section 2° of Article 421-1 when the act consists in destroying, damaging or deteriorating by explosive or incendiary substances carried out at times and in locations that may result in harm to the physical well-being of one or several persons;
"Section 3° - a terrorist act described in Article 421-2 when the act may result in harm to the physical well-being of one or several persons;

disturbing public order by intimidation or terror."[97] For the actions described above, Article 421-5 of the Criminal Code establishes penalties from 150.000 to 500.000 Euros and from 10 to 20 years of imprisonment.[98] The applicants claimed that the "provisions, which establish an offence of "individual terrorist undertaking", infringe on the principle that offences and penalties must be defined by law insofar as the elements that make them up are not precisely defined and that they criminalise a great number of behaviours."[99] Additionally they claimed that "the provisions also infringe on the principle of the necessity of offences and penalties insofar as, on the one hand, the legislature punishes events that may not lead to the commission of acts of terrorism and that, on the other, the contested infraction only refers to an intention"[100] and that "these provisions infringe on the principle of the proportionality of penalties."[101] The Constitutional Council ruled that "by including the material facts that constitute a preparatory act of "searching for ... objects or substances that create a danger to others", without defining the acts that constitute such a search within the framework of an individual terrorist undertaking, the legislature allowed punishment for actions that have not materialised in, by themselves, the desire to prepare for an infraction."[102] Because of that the Council concluded that "the words "searching for", as appearing in Section 1° of Paragraph I of Article 421-2-6 are manifestly contrary to the principle of the necessity of offences and penalties"[103] and therefore declared them as unconstitutional. In the deliberation of this decision, the

[97] Part 1 of Article 421-2-6 of the Criminal Code, as written pursuant to the Law of 13 November 2014.
[98] Article 421-5 of the Criminal Code, in this same writing, establishes:
"The terrorist acts defined in Articles 421-2-1 and 421-2-2 are punishable by ten years of imprisonment and a fine of 225,000 euros.
"Leading or organising the group or the arrangement defined in Article 421-2-1 is punishable by twenty years of criminal detention and a fine of 500,000 euros.
"Attempting the infraction defined in Article 421-2-2 is punishable by these same penalties.
"The act of terrorism defined in Article 421-2-6 is punishable by ten years of imprisonment and a fine of 150,000 euros.
"The two first Subparagraphs of Article 132-23 relate to the minimal imprisonment periods applicable to the infractions established in this Article."
[99] Decision no. 2017-625 QPC of 07 April 2017, paragraph 4
[100] Ibid.
[101] Ibid
[102] Id. paragraph 17.
[103] Id. paragraph 18.

Constitutional Council considered Article 8 of the 1789 Declaration that provides that: "The law shall establish punishments only as strictly and obviously necessary... "[104]. All of the other contested provisions were declared constitutional as they "do not infringe on any other right or liberty guaranteed by the Constitution."[105]

As we can see from the above-mentioned decisions, the Constitutional Council in France is reluctant to take more progressive action in declaring anti-terrorism provisions unconstitutional. However, in light of its recent decisions mentioned above, we can see that the Council has addressed the vagueness and over-reaching effects of some provisions and consequently has declare some parts of them unconstitutional. Accordingly, even if we doubt the Councils' ability to "critically check the compatibility of future anti-terror legislation with individual rights,"[106] we can view these recent decisions as a step in the right direction. However, it also must be emphasized that considering the recent developments in France, it will be crucial for the Council to evolve even further in using all the means provided by the Constitutional Block or even by creating new progressive case-law, to protect the fundamental rights of citizens especially, their freedom of expression.

According to the official website of the Turkish Constitutional Court,[107] the Court hasn't produced any leading judgments concerning the constitutional review of anti-terrorism laws or provisions in relation to freedom of expression.[108] However, there are two leading judgments by the Court, decided upon individual complaints, regarding the restriction of freedom of

[104] Article 8 of the Declaration of the Rights of Man and the Citizen of 1789
[105] Decision no. 2017-625 QPC of 07 April 2017, paragraph 20.
[106] Anna Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorized Legislator? A Comparison of Counter-Terrorism Legislation and Its Implications on Human Rights in the Legal Systems of the United Kingdom, Spain, Germany and France. (*Antwerp Portland: Intersentia, 2009) p. 334
[107] http://constitutionalcourt.gov.tr/
[108] The decision available at:
http://constitutionalcourt.gov.tr/inlinepages/leadingjudgements/ConstitutionalityReview.html

expression and anti-terrorism legislation. In both decisions, the Court has found a violation of the applicants' freedom of expression.

The first decision[109] concerned confiscation and destruction of a book belonging to the applicant, based on the claim that the book contained propaganda of the PKK terrorist organization. The applicant claimed that the confiscation and the destruction of the book violated his right to freedom of expression, guaranteed with the Constitution and with Article 10 of the ECHR. The Court viewed the book as a whole and concluded that in the book the applicant reflected on events from his perspective and called upon the use of "peaceful means for the solution to the Kurdish problem instead of resorting to armed methods."[110] The court found that the means (confiscation and partly destruction of the book) were disproportionate with the objectives and not in line with the principle of necessity and proportionality in a democratic society. The Court therefore found that there was a violation of the applicants right to freedom of expression guaranteed with the Turkish Constitution.

The second decision[111] concerned an applicant that was tried for publishing books of poetry in which he supposedly supported the terrorist organization PKK. The applicant claimed that his right to freedom of expression has been violated because, "in the books that he has published, there are no calls for use of force and violence or for other terrorist methods, that the intervention in his freedom of expression where he was tried because of some political assessments regarding actual events is contradictory to the requirements of a democratic society."[112] When looking at the book as whole, The Court found that the book did not "[praise] violence;" rather than in the poems he expressed "the unrest felt because of the imprisonment of the leader and the director of the terrorist organization PKK, the grief felt after the persons

[109] Application No: 2013/409, date of Judgment: 25.06.2014
[110] Application No: 2013/409, date of Judgment: 25.06.2014, paragraph 105.
[111] FATİH TAŞ APPLICATION, Application No: 2013/1461, date of Decision: 12/11/2014
[112] Id, paragraph 88.

who have died in armed conflicts have been narrated with the language of poetry and quite abstractly; indicating that the persons who have died in the region defined as Kurdistan have died for freedom."[113] Therefore, his freedom of expression was violated.

The Turkish Constitutional Court in its decisions used an almost identical approach as the ECtHR, assessing the proportionality and the necessity in a democratic society. This is no surprise considering that both proportionality and the requirements of democratic order of the society are stated in the Turkish Constitution, as categories which are to be asses when evaluating the conformity of laws limiting fundamental rights with the Constitution.[114] However, in its reasoning the Court citied and applied not only its own jurisprudence but, also standards established with the case law of the ECtHR. That may be considered as an indication of the Courts' determination to base its decisions on international human rights law and standards and to work in the direction of preserving internationally protected fundamental rights. Considering the current situation in Turkey, the Court will have to continue making a stand into the protection of freedom of expression and other individual freedoms that are constitutionally guaranteed.

[113] FATİH TAŞ APPLICATION, Application No: 2013/1461, date of Decision: 12/11/2014, paragraph 106.
[114] See Article 13 of Turkey's 1982 Constitution, Turkey's 1982 Constitutions with Amendments trough 2002, Oxford University Press, accessed on 30.11.2016, available at: https://www.constituteproject.org/constitution/Turkey_2002.pdf,

2. Anti-terrorism legislation and freedom of expression - Practices and standards of the ECtHR through the cases of Turkey

2.1 National security, terrorism and glorification/apology to terrorism – the "loose" definitions

2.1.1 National security

Freedom of expression as protected by Article 10 of the European Convention on Human Rights is a qualified right. This means that its protection can be restricted based on one of the grounds established with Article 10 paragraph 2 namely national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others, preventing the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary.[115] In cases where there is an interference with freedom of expression, considered to be glorification or apology of terrorism, governments of contracting states usually invoke the protection of national security and/or public order as legitimate grounds for the interference. It has been claimed that cases where national security has been raised have "not often featured in litigation in Strasbourg, but the cases in which it has… have tended to be of fundamental importance."[116] Additionally, given the recent developments concerning the rise of international terrorism and legal responses to fight it, it is safe to say that the importance of such cases will continue to rise and their appearance in front of the Court will increase.

[115] See Article 10 paragraph 2 of the European Convention on Human Rights.
[116] Steven Greer, "Human rights files No. 15 - The exceptions to Articles 8 to 11 of the European Convention on Human Rights", (Council of Europe Publishing, Strasbourg, 1997) p. 19

In cases where national security is raised as a justifiable ground for interference, initially two main issues arise. The first issue is that both the term "national security" itself and the scope of what "national security interests" entail is not strongly defined. The second issue is that cases of national security are very delicate. Extensive on-the ground-information are required to establish the scope and seriousness of the situation in specific cases. Consequently, the margin of appreciation given to contracting states by the Court is wide and as a result the scope of what the national security interest can include becomes wider as well.

Concerning the first issue, we first must emphasize that even the Court has not established a definition as to what interest exactly fall under "national security interests". From the Court jurisprudence however, we can extract that national security interests are those who "[concern] the security of the state and the democratic constitutional order from threats posed by enemies both within and without."[117] This definition set as it is, is significantly broad and vague since it does not establish specifically what kind of threats can be considered or who can be considered an enemy.

One source we can turn to for a more detailed definition of what falls into the scope of justifiable national security interests in reference to freedom of expression are the Johannesburg principles.[118] Principle 2 of the Johannesburg Principles establishes exactly what are the legitimate governmental national security interest that are considered to be a justified restriction of freedom of expression. Such national security interest are those whose: "genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether

[117] Steven Greer, "Human rights files No. 15 - The exceptions to Articles 8 to 11 of the European Convention on Human Rights", (Council of Europe Publishing, Strasbourg, 1997) p. 19

[118] The Johannesburg Principles: National Security, Freedom of Expression and Access to Information, 1 were adopted by a group of experts on 1 October 1995. Their goal was to set authoritative standards clarifying the legitimate scope of restrictions on freedom of expression on grounds of protecting national security. https://www.article19.org/data/files/pdfs/publications/jo-burg-principles-overview.pdf

from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government."[119] This definition is more precise and goes further into establishing the source, nature and effect of the threat that can be considered justifiable and with that defines what national security interests are.

The second issue as we mentioned above, is the fact that in cases concerning national security the Court gives the contracting state a wide margin of appreciation. The justification for that lays in the fact that national security is "a vital interest to all states, and the Court and Commission, remote from the specific context, may well be ill equipped to identify genuine threats to it."[120] But even though states have a large "measure of discretion when evaluating threats to national security and when deciding how to combat these…the Court now tends to require national bodies to verify that any threat has a reasonable basis in fact.[121] This means that "national security" is not a talisman that gives member countries carte blanche,"[122] meaning that the existence of national security interest does not automatically justify the interference. However, even though the Court asks national bodies to verify that any threat has a reasonable basis in fact,[123] as we mentioned not defining what national security interest are widens the scope of what they can include.

One other problem might be that when it comes to freedom of expression and its limitation based on national security, the Court "seldom challenges the legitimate national security aim

[119] Paragraph a) of Principle 2 of the Johannesburg Principles, available at https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf accessed on 02.02.2017
[120] Steven Greer, "Human rights files No. 15 - The exceptions to Articles 8 to 11 of the European Convention on Human Rights", (Council of Europe Publishing, Strasbourg, 1997) p. 22
[121] Research Division, National security and European case law, Council of Europe / European Court of Human Rights, 2013, p.2
[122] Susan Rose-Ackerman & Benjamin Billa, Treaties and National Security, 40 N.Y.U. J. Int'l L. & Pol. 437 (2008), reprinted in Yale Law School Faculty Scholarship Series, Paper 595.
[123] Research Division, National security and European case law, Council of Europe / European Court of Human Rights, 2013, p.2

adduced by the state."[124] However, it must also be said that in recent years "the Court has…reduced the margin for appreciation in certain areas, such as freedom of expression in the armed forces (Grigoriades v. Greece; VDSÖ and Gübi v. Austria).[125] It also must be said that "the State's margin for appreciation in cases connected with national security is no longer uniformly broad"[126] in other spheres as well. For example, in some Article 3 cases where "any room for manoeuvre is explicitly excluded by the very nature of Article 3 (Chahal v. the United Kingdom [GC])"[127] or in certain Article 6 cases "the Court has been able to reduce significantly States' freedom…where it has considered the possible existence of measures with a less restrictive effect on freedoms (Van Mechelen v. the Netherlands), or when it has laid down a strict requirement for independent courts (Incal v. Turkey)."[128]

Finally, it must be emphasized that in cases where an interference of the applicants' freedom of expression is established the Court will not only examine if the interference was based on a legitimate ground (national security as an example) but, it will also take into consideration other factors as well. The Court will additionally examine the quality, clarity of the prescribed legislation and its implementation. Also, the Court will assess the necessity for the interference as well as the proportionality of the aim and the measures taken in the specific case. In cases concerning national security it has been concluded that the Court finds violation of Article 10 when the proportionality criterion is applied.[129] Accordingly, the court will take mainly several facts into account such as the nature of the interests at stake, if there is case of incitement to violence or not, the medium used to transmit the speech involved and the severity of the

[124] Research Division, National security and European case law, Council of Europe / European Court of Human Rights, 2013, p.17
[125] Research Division, National security and European case law, Council of Europe / European Court of Human Rights, 2013, p.2
[126] Ibid
[127] Ibid
[128] Ibid.
[129] Id. p.17

sentence imposed.[130]The Court has also set a standard to assess the whole situation and context in the specific case, which will be discussed further in detail in this chapter.

2.1.2. Terrorism

In recent times, international terrorism has become a serious and horrifying threat that has struck many countries and has claimed the lives of many innocent people. Countries have responded differently to terrorist threats by adopting different kinds of mechanisms for prevention and combat. Contracting states of the European Convention in Human Rights have an obligation to find a way to fight terrorism while respecting the human rights obligations set by the Convention. Accordingly, the main question that the ECtHR must answer in cases regarding anti-terrorism legislation and national security, is if all the measures and responses taken by states are in line with the Convention or not? One of the initial issues that arises when talking about regulating crimes of terrorism and evaluating their compatibility with the Convention, is the definition of such crimes. The challenge arises from the fact that there is lack of a commonly accepted definition of terrorism in academia as well as in international law.

It has been a long discussion upon academics and practitioners as to what acts the term "terrorism" include and how to define it. Like Anna Oehmichen concludes "there [are] nearly as many different definitions of terrorism as there had been terrorist groups throughout history."[131] Authors Alex P. Schmid and Albert J. Jongman did one of the most extensive research on the definition of terrorism.[132] They examined 109 definitions of terrorism between

[130]See Research Division, National security and European case law, Council of Europe / European Court of Human Rights, 2013

[131] Anna Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorized Legislator? A Comparison of Counter-Terrorism Legislation and Its Implications on Human Rights in the Legal Systems of the United Kingdom, Spain, Germany and France. (*Antwerp Portland: Intersentia, 2009), p. 5-6

[132] See Alex P. Schmid and Albert J. Jongman [et al.] *"Political terrorism: a new guide to actors, authors, concepts, data bases, theories, & literature", (*New Brunswick, N.J.: Transaction Publishers, 2008)

1936 and 1981 and concluded that there were 22 elements that most commonly defined terrorism. From them most commonly words used to describe terrorism were: violence, force and terror. Colin Warbrick on the other hand looks at acts of terrorism as to what they entail and the kinds of the response they provoke. He notes that, "however terrorism is defined, it covers some non-state violence directly or indirectly against state authorities. The authorities against which it is directed will always regard these activities as criminal. Accordingly, one line of response to core terrorism will be through criminal law enforcement."[133] In the fact sheet for Human rights, terrorism and anti-terrorism of the Office of the United Nations High Commissioner for Human Rights, terrorism is defined as commonly understood as "to refer to acts of violence that target civilians in the pursuit of political or ideological aims."[134] The OIDHR manual on Countering terrorism and protecting human rights established that even tough "terrorism occurs in many different context and takes different forms"[135] still it has some constant features. Those features are "its organized nature (whether the organization involved is large or small); its dangerousness (to life, limb and property); its attempt to undermine government in particular (by seeking to influence policy and law-makers); its randomness and consequential spreading of fear/terror among a population."[136] We can conclude that all of these definitions focus on different aspects of what acts are acts of terrorism, meaning what is the aim of such acts, what or who they are aimed at, the actors that cause those acts or threats and etc.

Although there have been many international treaties dealing with the subject of terrorism and establishing frameworks for combating it, there is no settled definition of terrorism in

[133] Colin Warbrick, The European Response to Terrorism in an Age of Human Rights, The European Journal of International Law Vol. 15 no.5 (2004), p.989
[134] Fact Sheet no. 32, Human rights terrorism and anti-terrorism, Office of the United Nations High Commissioner for Human Rights, p.5, accessed on 29.06.2017 available on http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf
[135] Countering Terrorism, Protecting Human Rights, A manual, OSCE Office for Democratic Institutions and Human Rights (ODIHR), (Poland 2007), p.23
[136] Ibid.

international law including the UN level.[137] This is because as mentioned before there have been many definitions of terrorism throughout history containing different elements. Additionally, there are two other issues that cause difficulty in defining what terrorism and acts of terrorism are. To define one act as terrorist it has to possess certain characteristics but, also it has to be judged as wrong.[138] The problem arises when there are certain situations when the use of violence may be viewed as necessary and justified. As an example to that notion, "most struggles for independence from colonialism and claims of self-determination have resulted in some form of violence that can be (and have been) described as terrorism."[139] The other issue is that "an overly broad definition of terrorism can be used to shut down non-violent dissent and undermine democratic society."[140] Accordingly, the problem with the definition of terrorism in this aspect is two-fold. First, there is the element of uncertainty in defining an act as terrorist regarding the end goal of the use of violence. Second there is the problem of over-reaching of vaguely defining acts as terrorist, that can lead to spreading the definition to include acts that don't even have the "violent" component.

Additionally, the lack of a clear definition of terrorism has everyday practical implications on an international level as well. The different or non-existing definitions between jurisdictions have "significant consequences with regard to co-operation between states, such as intelligence sharing, mutual legal assistance, asset freezing and confiscation and extradition."[141]

As an example of how definitions vary from one international document to another, we will now turn to establishing the definitions of terrorism in some of the most important international documents, chronologically. The first initial effort to define terrorism was in 1937 in Geneva

[137] Countering Terrorism, Protecting Human Rights, A manual, OSCE Office for Democratic Institutions and Human Rights (ODIHR), (Poland 2007), p.23
[138] Ibid
[139] Ibid
[140] Ibid.
[141] Id. p.22

Convention for the Prevention and Punishment of Genocide that unfortunately never entered into force, "which defined terrorism as "all criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public."[142] "In 1994 The General Assembly's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes" and that such acts "are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them."[143] A decade later in 2004, the Security Council in its resolution 1566 (2004), defined terrorist acts 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."[144] The same year "the Secretary-General's High-level Panel on Threats, Challenges and Change described terrorism as any action that is "intended to cause death or serious bodily harm to civilians or noncombatants, 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."[145] There has been an effort to define terrorism on the UN level with draft Comprehensive Convention on Terrorism that still has not been adopted. The current adopted definition in the draft convention it has been controversial as being too wide and

[142] Countering Terrorism, Protecting Human Rights, A manual, OSCE Office for Democratic Institutions and Human Rights (ODIHR), (Poland 2007), p.23
[143] Fact Sheet no. 32, Human rights terrorism and anti-terrorism, Office of the United Nations High Commissioner for Human Rights, p.6, accessed on 29.06.2017 available on http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf
[144] Ibid.
[145] Ibid.

lacking precision[146]. This is mainly because "the definition, terrorism includes not only action causing death or serious bodily injury, but also "serious damage to public or private property" and any (not only serious) damage that is likely to result in "major economic loss."[147]

No matter how terrorism might be defined in national and international legislation, the ECtHR through its jurisprudence has made several things clear. First, that "Contracting States, may not in the name of struggle against espionage and terrorism, adopt whatever measures they deem appropriate."[148] Second, and relating to Article 10, that the "the fundamental principles which emerge from its judgments relating to Article 10" also 'apply to measures taken by national authorities to maintain national security and public safety as part of the fight against terrorism."[149]

Some authors claim that freedom of expression is "not the fundamental right which forms the focus of the European Court of Human Rights' (ECtHR) control of state acts aiming at fighting terrorism" [150] rather than "the right to respect of private life which in conjunction with procedural rights (art 13 ECHR) raises many more concerns, in particular in the context of international terrorism."[151] However, in the recent international context it can be expected that the focus of the Court will be aimed at establishing standards regarding the limitations and interference with expression based on anti-terrorist legislation. The bases of such assumption can be based in the fact that "the debate over free speech and incitement to terrorism is actively

[146] Countering Terrorism, Protecting Human Rights, A manual, OSCE Office for Democratic Institutions and Human Rights (ODIHR), (Poland 2007), p.24
[147] Ibid.
[148] Klass and Others v. The Federal Republic of Germany, Judgment of 6 September 1978, app. No. 5029/71
[149] Zana v. Turkey, Judgment from 25 November 1997, App. No. 69/1996/688/880
[150] Michael, Geistlinger, Fight Against Terrorism and Limitation of the Freedom of Expression: Some Remarks on Recent Judgments of the European Court of Human Rights, Collection of Papers, Faculty of Law, Nis, Vol. 61,(2012), p. 50
[151] Ibid.

being played out on the Internet"[152] due to the fact that "in recent years, Islamic fundamentalists have used the Internet as a tool to radicalize discontented citizens throughout Europe."[153]

2.1.3 Glorification of/apology to terrorism

The term apology, glorification or praising of terrorism is different from what can be defined as incitement to terrorism. CODEXTER, Committee of the Council of Europe defines apology and glorification as "public expression of praise, support or justification of terrorists and/or terrorist acts."[154] The definition differs from the definition of incitement that is "the direct promotion of criminal acts with the intent of inspiring another person, who may not be known to the speaker, to commit the act."[155] Incitement to terrorism can be also view as "a strategy commonly used by terrorist organizations to further support for their cause and call for violent action."[156]

The goal for sanctioning glorification/apology of terrorism is also somewhat different from the one sanctioning incitement to violence. Where the goal to sanction incitement is to stop a certain action (speech) that produces a violent/unlawful reaction from happening, the goal of sanctioning glorification is "to prevent a climate conducive to violence."[157]

[152] Ezekiel Rediker, The Incitement of Terrorism on the Internet: Legal Standards, Enforcement, and the Role of the European Union, Michigan Journal of International Law, Volume 36, Issue 2, (2015), p. 322
[153] Ibid.
[154] Council of Europe CODEXTER Committee, "Apologie du Terrorisme" and "Incitement to Terrorism": Analytical Report, CODEXTER (2004) 04
[155] Ibid.
[156] Fact Sheet no. 32, Human rights terrorism and anti-terrorism, Office of the United Nations High Commissioner for Human Rights, p.42, accessed on 29.06.2017 available on http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf
[157] Daragh Murray, "Freedom of expression, counter terrorism and the internet in the light of the UK Terrorist Act 2006 and the jurisprudence of the European Court of Human Rights", Netherlands Quarterly of Human Rights, Volume 27, Issue 3, (September 2009), p.339

When it comes to incitement most national legislations tend to set the standard of imminent violence.[158] The standard and threshold set in Brandenburg v Ohio[159] set by the US Supreme Court, that expression cannot be limited unless its "advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action"[160] has been also incorporated in the Johannesburg principles.[161] Principle 6 of the Johannesburg principle states that "expression may be punished as a threat to national security only if a government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence."[162] Within its jurisprudence the ECtHR "has [also] recognized that statements expressing incitement to 'hatred, revenge, recrimination or armed resistance' or 'violence, armed resistance or an uprising would fall outside the scope of protection.[163]

It can be concluded, "the term "incitement" from a legal point of view is more precise than "apology" or glorification."[164] That is actually where the initial problem lays. As Daragh Murray says, "glorification of terrorism is, almost by definition, an ambiguous area."[165] That

[158] Daragh Murray, "Freedom of expression, counter terrorism and the internet in the light of the UK Terrorist Act 2006 and the jurisprudence of the European Court of Human Rights", Netherlands Quarterly of Human Rights, Volume 27, Issue 3, (September 2009), p.340
[159] Brandenburg vs Ohio, 9 June, 1969, 395 U.S. 444 (1969).
[160]Brandenburg vs Ohio, 9 June, 1969, 395 U.S. 444 (1969) in Daragh Murray, "Freedom of expression, counter terrorism and the internet in the light of the UK Terrorist Act 2006 and the jurisprudence of the European Court of Human Rights", Netherlands Quarterly of Human Rights, Volume 27, Issue 3, (September 2009), p.340
[161] See Daragh Murray, "Freedom of expression, counter terrorism and the internet in the light of the UK Terrorist Act 2006 and the jurisprudence of the European Court of Human Rights", Netherlands Quarterly of Human Rights, Volume 27, Issue 3, (September 2009), p.340
[162] Principle 6 of the The Johannesburg Principles: National Security, Freedom of Expression and Access to Information, accessed on 15.07.2017 available on https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf
[163] See Daragh Murray, "Freedom of expression, counter terrorism and the internet in the light of the UK Terrorist Act 2006 and the jurisprudence of the European Court of Human Rights", Netherlands Quarterly of Human Rights, Volume 27, Issue 3, (September 2009), p.341
[164] Clémence Gautier-Pongelard, Mahery Imbiki and Nicolas Päzold, "Incitement to Terrorism and Freedom of Speech",p. 1, accessed on 20.02.2017, available at: http://www.doyoubuzz.com/var/f/eN/Bk/eNBkPy49UzoFRqbjfCXhawZEL8lJVc1tvGnQA7HSMim-r60TI3.pdf
[165] See Daragh Murray, "Freedom of expression, counter terrorism and the internet in the light of the UK Terrorist Act 2006 and the jurisprudence of the European Court of Human Rights", Netherlands Quarterly of Human Rights, Volume 27, Issue 3, (September 2009), p.341

is why, as he mentions, the Constitutional Court of Spain has found "prohibition in this regard to be unconstitutional, while Finland has also dismissed the likely hood of ever enacting such a law."[166]

On an international level, there is also a problem with setting standards in terms of the sanctioning of the glorification of terrorism. Council of Europe's Convention on the Prevention of Terrorism sets a very vague standard imposing an "obligation to criminalize the public provocation to commit a terrorist offence even where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more of such offenses may be committed."[167] However, "the explanatory protocol to the convention makes clear that apologie or glorification of terrorism may be included in the definition."[168] The problem with setting such broad and overreaching standards is that it allows countries to than translate these "these international obligations…into broad and sweeping laws."[169] There has been a problem on the EU level as well since there has been a "widespread uncertainty about what constitutes the incitement of terrorism in the European Union."[170] The problem lays in the fact that "the EU has taken the unfortunate half measure of advocating that member states criminalize the glorification of terrorism but, has provided little guidance about what constitutes terrorism or glorification."[171] Such vagueness and lack of precision lead to states adopting fractured approaches.[172] "The law must be clear enough for any person to judge whether or not his speech might be in violation, but the fractured approach renders such judgment impossible."[173]

[166] Daragh Murray, "Freedom of expression, counter terrorism and the internet in the light of the UK Terrorist Act 2006 and the jurisprudence of the European Court of Human Rights", Netherlands Quarterly of Human Rights, Volume 27, Issue 3, (September 2009), p.341
[167] Jacob Mchangama, Freedom of expression and national security, Society, Vol. 53 Issue 4, (August 2016), p.364
[168] Ibid.
[169] Ibid.
[170] Ezekiel Rediker, The Incitement of Terrorism on the Internet: Legal Standards, Enforcement, and the Role of the European Union, Michigan Journal of International Law, Volume 36, Issue 2, (2015), p. 322
[171] Ibid.
[172] Ibid.
[173] Ibid.

When the ECtHR is establishing if an interference is prescribed by law, the Court assesses not only if a provision exists in the positive legislation but, if the effects of such provision are foreseeable. What this means is that "a norm cannot be regarded as "law" unless it is formulated with sufficient precision to enable the citizen to regulate its conduct…"[174] Accordingly, the vague definition of these categories can also raise the issue of legal certainty. That is why the notion of penalizing apology, glorification or praising of terrorism is problematic to begin with. As it has been already mentioned before that the problems with the implementation of anti-terrorism legislation come from vague definitions that are prone to loose interpretations and even abuse.

In a Joint Declaration, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative of Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression stated: "…States should not employ vague terms such as "glorifying" or "promoting" terrorism when restricting expression. Incitement should be understood as a direct call to engage in terrorism…"[175] The UN Secretary General has also emphasized that: "laws should only allow for the criminal prosecution of direct incitement to terrorism, that is, speech that directly encourages the commission of a crime, is intended to result in criminal action and is likely to result in criminal action".[176] In a report in 2016, the Special Rapporteur on human rights and counter terrorism Ben Emmerson, cited the former Special Rapporteur on how the "offence of incitement to terrorism [must be defined] to comply with international human rights law."[177] Accordingly, the offence "(1) must be limited to the incitement to conduct that is truly

[174] Sunday Times v. United Kingdom, Judgment from 26 April 1979, Application No. 6538/74
[175] Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative of Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression from December 21 2005.
[176] The protection human rights and fundamental freedoms while countering therrorism, Report of Secretary-General no. A/63/337 of 28.08.2008, United Nations General Assembly, paragraph 62.
[177] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism no. A/HRC/31/65 of 22.02.2016, Human Rights Council, paragraph 24.

terrorist in nature; (b) must restrict freedom of expression no more than is necessary for the protection of national security, public order and safety or public health or morals; (c) must be prescribed by law in precise language, and avoid vague terms such as "glorifying" or "promoting" terrorism; (d) must include an actual (objective) risk that the act incited will be committed; (e) should expressly refer to intent to communicate a message and intent that this message incite the commission of a terrorist act; and (f) should preserve the application of legal defences or principles leading to the exclusion of criminal liability by referring to "unlawful" incitement to terrorism." [178] This would mean that the qualification of glorification and apology of terrorism as a crime is problematic as to its compliance with international human rights standards. That is why the Special Rapporteur on human rights and counter terrorism would conclude: "There is now a troubling trend of criminalizing the 'glorification' of terrorism – we need to look not just at the words but at the speaker's intention and the impact they have."[179]

2.2 The Turkish cases

As it was previously mentioned, over the past 20 years one of the most important Article 10 cases in front of the ECtHR regarding anti-terrorism legislation are those against Turkey. Accordingly, most of the Courts' standards have been established trough those specific cases. Hereinafter, I will primarily review the Grand Chamber Judgments of such cases. After, I will evaluate several cases that came before the Court after the year of 2000, mentioned in the Fact Sheet on Terrorism issued by the Court as leading cases in the field of Article 10 and anti-terrorism legislation.

[178] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism no. A/HRC/31/65 of 22.02.2016, Human Rights Council, paragraph 24.
[179] Whole statement accessed on 11.03.2017, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17229#sthash.AHaOEHOM.dpuf

2.2.1 Zana v. Turkey

The first decision from the Court regarding anti-terrorism legislation and Article 10 was the 1997 decision in the case of Zana v. Turkey.[180] Mr. Zana, former mayor of a city in Turkey, was convicted in 1991 for giving the following statement in an interview published in 1987: "I support the PKK national liberation movement; on the other hand, I am not in favour of massacres. Anyone can make mistakes, and the PKK kill women and children by mistake…"[181] Given that the prosecution was led before 1991, meaning before the *lex specialis* anti-terrorism legislation was enacted, he was convicted and sentence to 12 months imprisonment, under the Criminal Code article 312 for the crime of having "defended an act punishable by law as a serious crime" and "endangering public safety".[182] However, the Court took into account that even though applicant was convicted by the Criminal Code, he was sentenced by the later enacted Law 3713 "to serve one-fifth of the sentence (two months and twelve days) in custody and four-fifths on parole."[183]

The government invoked national security and public safety as a legitimated aim prescribed by paragraph 2 of Article 10, since the PKK was a terrorist origination and the "Article 312 of the Turkish Criminal Code by the national courts in the case had had the aim of punishing any act calculated to afford support to that type of organization."[184] The Court in this case assessed the situation and circumstances surrounding the statement given by the applicant as a whole. Accordingly, it took into account that the statement by the applicant was given at a time when the tensions in the south-east of Turkey were escalating and the PKK carried attacks that claimed many lives. The Court also took into account that the applicant was a former mayor of an important city in South-East Turkey and accordingly, his statements gave more weight

[180] Zana v. Turkey, Judgment from 25 November 1997, App. No. 69/1996/688/880
[181] Zana v. Turkey, Judgment from 25 November 1997, App. No. 69/1996/688/880, paragraph 12.
[182] Id., paragraph 26.
[183] Id. paragraph 26.
[184] Id. paragraph 48.

especially. The Court also considered the fact that the interview was published in a very major national daily newspaper.

As to the notion of proportionality, the Court considered that the applicant only served only one fifth of the prison sentence, so the sentence was not disproportionate. Considering all of the above and the fact that the government has a wide margin of appreciation in cases where national security is at stake, the Court decided that the interference was proportionate to the legitimate aims pursued and that there had been no violation of Article 10 of the Convention.

2.2.2 Incal v Turkey

The applicant was at the time a member of the executive committee of the People's Labor Party ("the HEP"), a party later declared unconstitutional by the Turkish Constitutional Court. The executive committee of the party, distributed "a leaflet criticising the measures taken by the local authorities, in particular against small-scale illegal trading and the sprawl of squatters' camps around the city."[185] Among other things the leaflet called "all Kurdish and Turkish democratic patriots to assume their responsibilities and oppose this special war being waged against the proletarian people." The leaflet also claimed that there had been a "state terror against Turkish and Kurdish proletarians."[186] The applicant, like Mr. Zana the applicant in the previous case, was convicted under Article 312 of the Penal Code. The applicant was sentenced to six months and twenty days imprisonment and a fine of 55.555 Turkish liras for "attempting to incite hatred and hostility through racist words."[187] Later, after the end of the proceeding in front of all instances, on request of the applicant the prosecuting authorities decided "to stay execution of the prison sentence for four months"[188]. The Turkish National Security Court did not accept the public prosecutor's argument for the applicability of the Law 3713 primarily

[185] Incal v. Turkey, Judgment from 9 June 1998, Application no. 41/1997/825/1031, paragraph 10.
[186] Ibid.
[187] Id. paragraph 15.
[188] Id. paragraph 20.

because, "the leaflet suggested recourse to resistance against the police… which it held to be illegal forms of protest."[189]

In this case however, the Court ruled that there was a violation of the applicant rights guaranteed by Article 10 of the Convention. In this case the Court reaffirmed the standards set in Zana v. Turkey and considered the context surrounding the case. The thing that can "distinguish both cases is the Court's appreciation of the actual threat posed by the expression involved" and that "contrary to Zana, the circumstances could not have been considered likely to exacerbate an already explosive situation."[190] The Court concluded that the leaflets were meant to criticize certain measures taken by the local government, that were of interest of the people. The Court also emphasized that "interferences with the freedom of expression of a politician who is a member of an opposition party, like the applicant, call for the closest scrutiny on the Court's part."[191] Additionally, according to the Court, "the limits of permissible criticism are wider with regard to the government than in relation to a private citizen, or even a politician."[192]

2.2.3 Standards established with the July 1999 cases

In July 1998, the Court on the same day delivered the total number of thirteen judgments[193] all against Turkey and all "dealing with language critical of the Turkish government's Kurdish policy."[194] The Court established that there had been a violation of Article 10 in eleven of them

[189] Incal v. Turkey, Judgment from 9 June 1998, Application no. 41/1997/825/1031, paragraph 16.
[190] Stefan Sottiaux, The "Clear and Present Danger" Test in the Case of the European Court of Human Rights, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht [Heidelberg], 64(2003), Studgart, p. 671, accessed on 09.02.2017, available at http://www.zaoerv.de/63_2003/63_2003_3_a_653_680.pdf
[191] Incal v. Turkey, Judgment from 9 June 1998, Application no. 41/1997/825/1031, paragraph 46.
[192] Incal v. Turkey, Judgment from 9 June 1998, Application no. 41/1997/825/1031, paragraph 54.
[193] Baskaya and Okcuoglu v. Turkey, Erdogu and Ince v. Turkey, Karatas v. Turkey, Polat v. Turkey, Gerger v. Turkey, Ceylan v. Turkey, Arslan v. Turkey, Sürek and Özdemir v. Turkey, Sürek v. Turkey (Number 1, 2, 3 and 4) and Okcuoglu v. Turkey.
[194] Stefan Sottiaux, The "Clear and Present Danger" Test in the Case of the European Court of Human Rights, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht [Heidelberg], 64(2003), Studgart, p. 672, accessed on 09.02.2017, available at http://www.zaoerv.de/63_2003/63_2003_3_a_653_680.pdf

except in Sürek v. Turkey (Number 1 and 3). All of the cases were concerning applicants convicted under article 312 of the Penal Code or the Law 3713. In most of the cases the Court relaying on Zana v. Turkey, took the circumstances of the situation but, also the medium in which the speech was broadcasted into consideration. Also, the Court considered the nature of the message, meaning when "remarks incite to violence against an individual or public official or a sector of the population, the State authorities enjoy a wider margin of appreciation."[195] Stefan Sottiaux explains the impact and significance of these decisions by listing several reasons.[196] First, because they showed that the Court was "rather reluctant to interpret the applicant's communications as incitement to violence."[197] Second, that advocacy of non-violent lawless actions is acceptable. Finally, that "incitement to violence does not automatically justify an interference with the applicant's right to freedom of expression."[198]

2.2.4. Cases after 2000

2.2.4.1 Ürper and Others v. Turkey

The applicants, 26 in total, were the owners, executive directors, editors-in-chief, news directors and journalists of four daily newspapers published in Turkey.[199] The newspapers were suspended based on Article 6 point 5 of the Law 3713 stating that "publication of periodicals involving public incitement of crimes within the framework of activities of a terrorist organisation, praise of committed crimes or of criminals or the propaganda of a terrorist

[195] Sürek and Ozdemir v. Turkey, 8 July 1999, para. 61 in Stefan Sottiaux, The "Clear and Present Danger" Test in the Case of the European Court of Human Rights, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht [Heidelberg], 64(2003), Studgart, p. 673, accessed on 09.02.2017, available at http://www.zaoerv.de/63_2003/63_2003_3_a_653_680.pdf
[196] Stefan Sottiaux, The "Clear and Present Danger" Test in the Case of the European Court of Human Rights, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht [Heidelberg], 64(2003), Studgart, p. 675, accessed on 09.02.2017, available at http://www.zaoerv.de/63_2003/63_2003_3_a_653_680.pdf
[197] Ibid.
[198] Stefan Sottiaux, The "Clear and Present Danger" Test in the Case of the European Court of Human Rights, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht [Heidelberg], 64(2003), Studgart, p. 675, accessed on 09.02.2017, available at http://www.zaoerv.de/63_2003/63_2003_3_a_653_680.pdf
[199] More specifically the newspapers: Ülkede Özgür Gündem, Gündem, Güncel and Gerçek Demokrasi.

organisation may be suspended from fifteen days to one month…"[200] The newspapers were suspended for a period of 15 days to a month for publishing publications that were deemed to be "propaganda in favour of a terrorist organisation, the PKK/KONGRA-GEL1, as well as the approval of crimes committed by that organisation and its members, whilst at the same time disclosing the identity of officials with anti-terrorist duties, thus making them targets for terrorist attack"[201]

The applicants claimed that the interference with their freedom of expression was not prescribed by law, claiming primarily that Article 6 point 5 of the Law was unconstitutional and in violation of the Convention. Also the applicants claimed that one of the decision that suspended "the publication and distribution of Güncel had not been based on any domestic legal provision."[202] In its reasoning the Court referred to among others to the case of the Association Ekin v. France (that will be discussed further in the next chapter) and stipulated that the Court will not only asses if the interference is prescribed by law but also "to the quality of law, which requires that legal norms should be accessible to the person concerned, their consequences foreseeable and their compatibility with the rule of law ensured."[203] The Court acknowledged that "the question of the latter's accessibility and foreseeability, as well as its compatibility with the rule of law"[204] still remained to be assessed. The Court also stated that it had "serious doubts as to whether the decision of 16 July 2007 was soundly grounded in domestic law." However, despite the above-mentioned remarks, "the Court [considered] that it is not required to reach a final conclusion on this "lawfulness" issue"[205] on the grounds that it

[200] Artcie 6 point 5 of the Turkish Law no. 3713 on the fight against terrorism.
[201] Ürper and Others v. Turkey, Judgment from 26 January 2010, Applications no's. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07, paragraph 37.
[202] Id. paragraph 27.
[203] Id. paragraph 28.
[204] Id. paragraph 29.
[205] Id. paragraph 29.

had already reached a decision that there has been a violation of Article 10 based on other issues.

In its decision, the Court emphasized that even though prior restraints are not prohibited under the convention, given that they impose danger to the curtail roll of the press and the value of prompt news, they "call for the most careful scrutiny on the part of the Court."[206] The Court concluded that there could have been less draconian measures imposed "such as the confiscation of particular issues of the newspapers or restrictions on the publication of specific article."[207] Also the Court emphasized that "the domestic courts largely overstepped the narrow margin of appreciation afforded to them and unjustifiably restricted the essential role of the press as a public watchdog in a democratic society." [208]Considering all of the above the Court decided that there had been a violation of Article 10 of the Convention.

2.2.4.2 Müdür Duman v Turkey

In a trade union protest held in 2000 in Istanbul, number of participants chanted slogans in support of a leader of the PKK. Police identified the participants as members of the HADEP – The People's Democracy Party. After the protest the police searched the premises of a branch of the Party and they found publications, articles, books and other materials concerning the PKK and its leader that were deemed illegal. The applicant was a director of a that specific district branch. He claimed that he had no knowledge of the presence of the materials in the offices and claimed that they were brought there by third parties. He was charged according to article 312 of the Penal Code for praising and condoning acts punishable by law and sentenced with a fine and six months' imprisonment.

[206] Ürper and Others v. Turkey, Judgment from 26 January 2010, Applications no's. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07paragraph 39
[207] Id. paragraph 43.
[208] Id. paragraph 44.

This case is interesting because, even though the applicant in the proceedings in front of the national courts claimed that he had no knowledge of the materials being in the offices, the Court established that the interference was with his right to freedom of expression. First, because "the applicant's criminal conviction for the offence of praising and condoning acts punishable by law under Article 312 § 1 of the former Criminal Code was indisputably directed at activities falling within the scope of freedom of expression."[209] Second, the Court considered that "in such circumstances, the applicant's conviction must be regarded as constituting an interference with his exercise of his right to freedom of expression. To hold otherwise would be tantamount to requiring him to acknowledge the acts of which he stood accused."[210]

The Court considered the fact that the applicant was only convicted for keeping the materials it the offices, which the national courts took as an indication that the applicant respected and approved the PKK and its leader. Furthermore, the Court emphasized that "neither in the domestic court decisions nor in the observations of the Government [was] there any indication that the material in question advocated violence, armed resistance or an uprising." [211] Additionally, the Court considered the fact that the national courts in their reasoning did not indicate "whether they had examined the proportionality of the interference and the balancing of rights taking into account freedom of expression."[212] The Court also took into account the nature and severity of the penalties imposed, in this case a penalty amounting to six months imprisonment. Considering all of the above, the Court concluded that the applicant's conviction was disproportionate to the aims pursued and accordingly not necessary in a democratic society. Accordingly, there had been a violation of Article 10 of the Convention.

[209] Müdür Duman v Turkey, Judgment from 6 October 2016, Application no. 15450/03, paragraph 30.
[210] Id. paragraph 30.
[211] Id. paragraph 33.
[212] Id. paragraph 34.

2.3 The standards of the ECtHR trough the Turkish cases – A conclusion

States invoke national security or the protection of public order as legitimate aims when restricting speech on grounds of anti-terrorism legislation. Even though States enjoy a wide margin of appreciation when protecting national security interest, we have mentioned that "national security" is not a talisman that gives member countries carte blanche."[213] The Court will assess is the legitimate aim is proportionate to the means applied in the specific case, it will also asses of course if the interference amounted to a pressing social need. From the above cases, we confirm that in cases of restriction of speech based on anti-terrorism legislation, the Court will assess the context and circumstances surrounding the interference as an objective factor but, also the subjective factors, meaning the characteristics of the applicant himself or herself. What this means is that the Court will consider the applicants' influence in society and also if the applicant is an ordinary individual or a politician or somebody holding public office. The Court has established that "interferences with the freedom of expression of a politician who is a member of an opposition party… call for the closest scrutiny on the Court's part."[214] In Zana v. Turkey the fact that the applicant was a major of a city in Turkey made a significant difference in terms of his influence in society. Additionally, the Court will assess the influence and the reach of the media in which the speech was introduced in.

The Court will consider if the speech, that has been restricted or sanctioned is criticism against the government. According to the Court, "the limits of permissible criticism are wider with regard to the government than in relation to a private citizen, or even a politician." [215] The Court will also take into account the nature of the message, meaning when "remarks incite to

[213] Susan Rose-Ackerman & Benjamin Billa, Treaties and National Security, *40 N.Y.U. J. Int'l L. & Pol. 437* (2008), reprinted in *Yale Law School Faculty Scholarship Series, Paper 595.*
[214] Incal v. Turkey, Judgment from 9 June 1998, Application no. 41/1997/825/1031, paragraph 46.
[215]Id. paragraph 54.

violence against an individual or public official or a sector of the population, the State authorities enjoy a wider margin of appreciation."[216]

The Court will also not only asses if the interference is prescribed by law but also "to the quality of law, which requires that legal norms should be accessible to the person concerned, their consequences foreseeable and their compatibility with the rule of law ensured."[217] Therefore, we might conclude that the standard to assess the quality of the law is established and with that the groundwork for "fighting against" vague and unforeseeable legislation is laid. However, as we have seen the Court is reluctant to engage into an estimate of the lawlessness of the interference, in cases where a violation of Article 10 is ultimately established.

As to the proportionality of the measures applied, the Court will assess the nature and severity of the penalties imposed and if they are proportionate with the pressing social need. As we have seen the Court is very reluctant to decide that a prison sentence for speech is proportionate to the aim. This is because the Court will assess if less draconian measures can be imposed, which in such cases can mean imposing monetary fines or suspended sentences.

[216] Sürek and Ozdemir v. Turkey, 8 July 1999, para. 61 in Stefan Sottiaux, The "Clear and Present Danger" Test in the Case of the European Court of Human Rights, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht [Heidelberg], 64(2003), Studgart, p. 673, accessed on 09.02.2017, available at http://www.zaoerv.de/63_2003/63_2003_3_a_653_680.pdf

[217] Ürper and Others v. Turkey, Judgment from 26 January 2010, Applications no's. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07, paragraph 28.

3.Anti-terrorism legislation vs. Article 10 – the current jurisprudence and hypothetical cases of France

3.1 The French cases before 2014

3.1.1 Leroy v France

The applicant was a cartoonist. On the 13th of September 2001, just 2 days after the terrorist attack on the World Trade Center in New York, a Basque weekly newspaper published his cartoon portraying the attack, with a caption which read: "We have all dreamt of it... Hamas did it."[218] In the next issue, the newspaper published reactions to the cartoon sent by third parties. The newspaper also published an explanation from the applicant, stating that the applicant wanted to make a political statement against imperialism, to portray the decline of the United States through a form of satire. He also stated that he had not considered the grief that he might cause with the cartoon. The applicant was charged with a monetary fine in the amount of 1.500 Euros, for the act of "glorifying terrorism" based on the then in force Article 24 of the 1881 Law. The applicant came in front of the Court, claiming that his rights of freedom of expression protected by Article 10 of the Convention have been violated.

The Court held that there was an interference with the applicants' freedom of expression. The interference was prescribed by law and pursued two legitimate aims - the maintenance of public safety and the prevention of disorder and crime. The Court than had to assess whether this interference was necessary in a democratic society. The Court took several important aspects into consideration. First, the date when the cartoon was published - just 2 days after the attacks.

[218] Information Note on the Courts case-law No. 112 from October 2008 on Leroy v France, Judgment from 2 October 2008, Application no. 36109/03

Second, the applicant with the cartoon had not only glorified the violent destruction of American imperialism but, also "expressed his moral support for and solidarity with those whom he presumed to be the perpetrators of the attacks, demonstrated approval of the violence."[219] Third, such form of apology of violence, that had taken the lives of so thousands of innocent civilians, "undermined the dignity of the victims."[220] Fourth, "despite the newspaper's limited circulation", the Court observed that the drawing's publication "had provoked a certain public reaction, capable of stirring up violence and of having a demonstrable impact on public order in the Basque Country."[221] Accordingly, the Court concluded that the interference was necessary in a democratic society and that the measures imposed upon the victim (a modest monetary fine) by the national Courts were not disproportionate to the aim. In this case the principled facts were not as important as the context. The time and territory in which the cartoon was published was crucial. In that contextual sense, the responsibilities of the cartoonist towards the public were higher and it was reasonable to believe that there is a higher chance for public disorder as a response to the cartoon.

3.1.2 Association Ekin v. France

The applicant association published a book titled "Euskadi at war". The book was published in four languages including French and distributed in many countries among which was France. The book was written by numerous co-authors which the applicant claimed were "academics with specialist knowledge of the Basque Country [who were] giving an account of the historical, cultural, linguistic and socio-political aspects of the Basque cause."[222] The last

[219] Information Note on the Courts case-law No. 112 from October 2008 on Leroy v France, Judgment from 2 October 2008, Application no. 36109/03.
[220] Ibid.
[221] Fact Sheet, *Hate speech*, European Court of Human Rights Press Unit, July 2013, accessed on 08.02.2017 available on: http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427369687?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Grupo&blobheadervalue1=attachment%3B+filename%3DHate_speech__julio_de_2013.PDF&blobheadervalue2=Docs_Libertad+religiosa_interes, p. 3
[222] Association Ekin v France, Jugement from 17 July 2001, Application no. 39288/98, paragraph 12.

article of the book titled "Euskadi at war, a promise of peace" was an article written by the Basque national liberation movement. The book was banned from circulation, distribution and sales in France based on an order by the French Ministry of the Interior under section 14 of the 1881 Law, as amended by the decree of 6 May 1939, on the ground that "the circulation in France of this book, which promotes separatism and vindicates recourse to violence, is likely to constitute a threat to public order."[223] The law also stated that "newspapers and texts of foreign origin written in French and printed abroad or in France may also be prohibited."[224] The applicant filed a complaint to the ECtHR for a violation under Article 10. More specifically the applicant association claimed that section 14 of the 1881 Law, as amended, "was too unclear for a legal rule and did not meet the requirement of being accessible and foreseeable in its effects"[225] but also that "the provision gave rise to discrimination as regards freedom of expression on the legal basis of language or national origin and was therefore in breach of Article 14 of the Convention taken in conjunction with Article 10."[226] The applicant also claimed that the interference was not necessary in a democratic society.

When looking at the first claim, the Court once again emphasized that it is not only relevant that the imposed measure should have bases in domestic law. When conducting the "prescribed by law" assessment, the Court will also look at the "quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences, and that it should be compatible with the rule of law."[227] The Court, relying on its own jurisprudence, further explains as to what the term "law" entails. First, the Court explained that the term "law" "must be understood in its "substantive" sense, not its "formal" one" and that it "includes everything that goes to make up the written law, including enactments

[223] Association Ekin v France, Jugement from 17 July 2001, Application no. 39288/98, paragraph 13.
[224] Id. paragraph 18.
[225] Id. paragraph 39.
[226] Id. paragraph 39.
[227] Id. paragraph 44.

of lower rank than statutes… and the court decisions interpreting them."[228] The Court posed the question as to whether at the time of the decision by the national courts in the case, there had been a clear jurisprudence established by the national courts that precisely defined the content of the Article as amended. Additionally, it posed the question of whether the applicant association could have "[regulated] its conduct when it came to publishing books."[229] The Court noted that given the "limited review carried out by the Conseil d'Etat at the time of the impugned acts, the Court is inclined to think that the restriction complained of by the applicant association did not fulfil the requirement of foreseeability."[230] However, yet again and just like in the above mentioned and later decided case of Ürper and Others v. Turkey, the Court considered that the issue of foreseeability was not necessary to determine considering the outcome of the decision and the established violation of Article 10.

The Court raised concerns about the fact that the provisions gave the Minister of Interior the power to "impose general and absolute bans throughout France on the circulation, distribution or sale of any document written in a foreign language or any document regarded as being of foreign origin, even if written in French"[231] without specifying the "circumstances in which the power may be used."[232]Also, the Court noted that it was particularly troubling that "there is no definition of the concept of "foreign origin" nor any indication of the grounds on which a publication deemed to be foreign may be banned."[233] The Court found this provision to be against the Article 10 text that writes that the rights protected with it subsist "regardless of frontiers".[234] Additionally, the Court concluded that the ex-post facto judicial review of such

[228] Association Ekin v France, Jugement from 17 July 2001, Application no. 39288/98, paragraph 46.
[229] Id. paragraph 46.
[230] Id. paragraph 46.
[231] Id. paragraph 60.
[232] Id. paragraph 60.
[233] Id. paragraph 60.
[234] Article 10 of the European Convention of Human Rights.

decisions "in cases concerning administrative bans on publications provide insufficient guarantees against abuse."[235]

The Court accepted that the legitimate aim of the Government was to "prevent disorder by prohibiting the circulation in France of a book promoting separatism and vindicating the use of violence."[236] The Court yet again took into account the context i.e. the then current situation in the Basque Country, and concluded that the aim of the Government was legitimate namely the prevention of disorder or crime. However, the Court, ultimately decided that "the ban did not meet a pressing social need and was not proportionate to the legitimate aim pursued"[237] and accordingly there was a volition of Article 10 of the Convention.

3.1.3 Bidart v France

The applicant, was a former leader of a Basque separatist organization in France. He had been convicted several times, "in particular for conspiracy to commit a terrorist attack, premeditated murder in connection with terrorist activity and armed robbery."[238] In 2007 he was released for the period from 2007 to 2014. His release was conditioned by several general and special obligations. After participating "in a peaceful demonstration in front of Agen prison in support of Basque prisoners being held there…the Paris Sentence Execution Court, in a judgment of 14 May 2008, decided to impose on him certain additional specific obligations: to refrain from appearing in front of any prison to express his support for individuals detained for the commission of terrorist acts, from disseminating any work or audiovisual production authored or co-authored by him concerning, in whole or in part, the offences of which he had been

[235] Association Ekin v France, Jugement from 17 July 2001, Application no. 39288/98, paragraph 61.
[236] Id. paragraph 48.
[237] Id. paragraph 63.
[238] Press release: Restrictions on freedom of expression imposed on former leader of Basque separatist organisation when he was released on licence were justified," issued by the Registrar of the Court ECHR 357 (2015) on 12.11.2015, p.1,

convicted, and from speaking publicly about those offences."[239] After exhausted all domestic legal remedies the applicant filed a complaint to the ECtHR, claiming that the additional restrictions had violated his freedom of expression guaranteed with Article 10 of the Convention.

The Court found that the additional obligations imposed on the applicants did constitute an interference with his freedom of expression. The Court also raised concerns regarding the fact that national Judges had not "weighed up the interests at stake and had not fully established the existence of the risk to public order"[240] and that it had imposed its restriction based "on hypothetical rather than actual remarks or writings" [241] of the applicant. However, the Court acknowledged that the decision restricting the applicant's freedom of expression was a court decision judicial decision against which the applicant had remedy and accordingly "had enjoyed genuine guarantees against abuse."[242] The Court also concluded that the imposed measures were limited in three respects. The measures were only to be imposed to individuals convicted of certain offences, they were only imposed during the time of the release and finally only restricted the applicant in talking about the offences he had committed. Finally, the Court also took into account the context surrounding the restriction, namely the fact that the applicant was a pronoun leader of a terrorist organization committed to life imprisonment for terrorist related murders and the fact that his release disturbed the local population. Considering all of the above, the Court ruled that the domestic court's decision was in line with their margin of appreciation and that there had been no violation of Article 10 of the Convention.

[239] Press release: Restrictions on freedom of expression imposed on former leader of Basque separatist organisation when he was released on licence were justified," issued by the Registrar of the Court ECHR 357 (2015) on 12.11.2015, p. 1
[240] Id. p. 2
[241] Id. p.2
[242] Id. p.2.

3.2 The Court standards and their application on the French legislation and in potential cases after 2015

As I have mentioned, even before the Charlie Hebdo attack the Law of No. 2014-1353 of 13 of November 2014 on reinforcing the provisions relating to the fight against terrorism was enacted, that placed the provisions sanctioning glorification of terrorism into the French Penal Code. The Law set the ground to what will follow i.e. its intense enforcement after the attack. On January 12, 2015, the Minister of Justice of France instructed prosecutors to adopt a "systematic, adapted and individualized" response, using the criminal law, to racist, anti-Semitic speech and speech "glorifying" terrorism. [243] "The instruction explicitly referred to the attacks of January 7 to 9 on Charlie Hebdo, police officers and people shopping in a kosher supermarket."[244]

It has been reported that arrests and convictions were raising in high numbers after both the Carlie Hebdo attack and the November 2015 attacks. More specifically 298 prosecutions were documented in January 2015 after the Charlie Hebdo attacks and more than 800 between November and January.[245] Referring back to the other previously mentioned annual report by Amnesty International for 2015, their numbers show that "700 individuals were prosecuted for inciting or justifying terrorism, on the basis of a new provision ("apology of terrorism")."[246] Whatever the exact numbers may be it, these sources show a very vast and expanded implementation of the Law after the attacks.

[243]Whole instruction on French available at: http://www.justice.gouv.fr/publication/circ_20150113_infractions_commises_suite_attentats201510002055.pdf

[244] Human Rights Watch article "Dispatches: France, a country of freedom of expression - for some accessed on 20.03.2017, available at: https://www.hrw.org/news/2014/10/09/france-counterterrorism-bill-threatens-rights

[245]"The treat of "glorifying terrorism laws", by Cathal Sheerin for the IFEX (The global network defending and promoting freedom of expression) calling on sources from LeMonde.fr, accessed on 12.03.2017, available at: https://www.ifex.org/europe_central_asia/2017/02/02/glorifying_terrorism_charges/

[246] Amnesty International Report 2015/2016, The state of the worlds human rights, accessed on 10.02.2017, available on: file:///C:/Users/Dora/Downloads/POL1025522016ENGLISH.PDF

Among the prosecuted was a 25 year old man who was handed a suspended sentence for scribbling "Vive Daesh" on a toilet wall.[247] A 16 year old high school student was placed into police custody and later introduced in front of a judge, for the crime of "apology for terrorism" for publishing a cartoon on his Facebook page "representing a character with the newspaper Charlie-Hebdo, hit by bullets, accompanied by an 'ironic' comment."[248] Even though it was not certain if the boy had knowledge that his actions could fall under the scope of the definition of apology of terrorism, the Nanet Public prosecutor wanted to send a message that young people must be aware of their responsibilities.[249] A 19 year old boy from Toulouse was also reported to be arrested, after the police searched his home based on a Facebook status he shared stating: "Those who are Charlie, I piss on you". The boy, who had no prior record, was reportedly sentenced to 5 months imprisonment.[250] The most reported conviction was the one of the French comedian, Dieudonné M'bala M'bala, who was sentenced to a two-month suspended sentence for apology of terrorism, for a post he made on his Facebook profile. The post stated: "Tonight, as far as I'm concerned, I feel like Charlie Coulibaly." "Investigators concluded that this was intended to mock the "Je Suis Charlie" slogan and express support for the perpetrator of the Paris supermarket killings (whose last name was "Coulibaly")."[251] Mr.

[247] Amnesty International Report 2015/2016, The state of the worlds human rights, accessed on 10.02.2017, available on: file:///C:/Users/Dora/Downloads/POL1025522016ENGLISH.PDF

[248] Charlie Hebdo: à Nantes, un adolescent de 16 ans poursuivi pour "apologie du terrorisme" sur Facebook, published on France Info, accessed on 12.03.2017, (translated by Stein De Witte) available at: http://france3-regions.francetvinfo.fr/pays-de-la-loire/2015/01/17/charlie-hebdo-nantes-un-adolescent-de-16-ans-poursuivi-pour-apologie-du-terrorisme-sur-facebook-634720.html

[249] Charlie Hebdo: à Nantes, un adolescent de 16 ans poursuivi pour "apologie du terrorisme" sur Facebook, published on France Info, accessed on 12.03.2017, (translated by Stein De Witte) available at: http://france3-regions.francetvinfo.fr/pays-de-la-loire/2015/01/17/charlie-hebdo-nantes-un-adolescent-de-16-ans-poursuivi-pour-apologie-du-terrorisme-sur-facebook-634720.html

[250] "5 Mois de prison ferme pour un jeune Toullousian condamne pour apologie du terrorisme, published on France Info, accessed on 20.03.2017, (translated by Stein De Witte) available at http://france3-regions.francetvinfo.fr/occitanie/2015/01/16/5-mois-de-prison-ferme-pour-un-jeune-toulousain-condamne-pour-apologie-du-terrorisme-634476.html

[251] "France Arrests Comedian for his Facebook Comments, Showing the Sham of West's Free Speech Celebration" by Glen Greenwald for The Intercept, accessed on 20.03.2017, available at: https://theintercept.com/2015/01/14/days-hosting-massive-free-speech-march-france-arrests-comedian-facebook-comments/

M’Bala is well known to the French and more general public by his controversial acts of “comedy” and is previously convicted for anti-Semitic speech.[252]

In light of these reports it must be mentioned that there have recently been cases in front of the Court de Cassation regarding accusations of apology of terrorism. In a recent decision[253], the Court de Cassation had the task to decide if an appealed conviction of the lower Court based on Article 421-2-5 of the Penal Code for apology of terrorism, among other things, is valid. The case concerned an arrested man that had made the following statement to the policemen that escorted him: "Charlie Hebdo and Y. ..., it's Z's fault ... They killed me in prison, I found Islam as a fight, now that I have I'm going to die for her [Islam] my religion forbids me to commit suicide so I want to fall under the RAID bullets. A good cop is a dead cop, when I'm out I'm going to kill guards, I will come to the fire and the police and gendarmerie…"[254] The Court took into account that the spoken words of the accused justified the attacks committed in France in March 2012 and January and November 2015, however it also considered the fact that at the time the accused was in the presence of only the policeman who escorted him, in a police van taking him to jail of the court before which he was to appear. The law states that for an accused to be convicted of acts of apology of terrorism the speech must be made public and the accused must have will to make loud public statements. The Cour de Cassation decided that in the specific circumstances of the case such conditions were not met so it annulled the

[252] See “Comic Dieudonne given jail sentence for anti-Semitism” from 25 November 2015 on BBC News, accessed on 08.07.2017 available on http://www.bbc.com/news/world-europe-34921071

[253] Decision No. 16-86965 of Public hearing on 11 July 2017 (N° de pourvoi: 16-86965 Audience publique du mardi 11 juillet 2017), accessed on 20.07.2017, available on https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000035192638&fastReqId=1672682646&fastPos=4

[254] Decision No. 16-86965 of Public hearing on 11 July 2017 (N° de pourvoi: 16-86965 Audience publique du mardi 11 juillet 2017), accessed on 20.07.2017, available on https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000035192638&fastReqId=1672682646&fastPos=4

decision of the lower Court for the acts of apology of terrorism and returned it for repeated deliberation.

In another decision[255] regarding a case of apology of terrorism based on Article 421-2-5 of the Penal Code, the Cour de Cassasion also decided to annul and return the decision of the lower Court for repeated deliberation. It was a case concerning an accused that had participated in a rally held to pay tribute to the victims of the attacks in France between 7 and 9 January 2015 carrying a sign with the words on one side: "I am human-I am Charlie", and on the other, "I am life", with the representation of a heart, and "I am A ..." referring to the brothers involved in the terrorist attacks targeted by this demonstration. The Court took into account that the accused himself went to the police station to explain that with what he had written, he had no intention to defend or legitimize the terrorist acts rather, he had the goal to bring people to debate about the terrorist attacks. The Court also pointed out that the accused in the rally had shown consideration about the victims of the terrorist attacks. Consequently, the Court found that because the element of intention does not exist in the specific circumstances as well as the fact that the accused showed sympathy and consideration for the victims, the action of the accused lacks the characteristics of the crime apology of terrorism.

Human Rights Watch would state that the cases that have been opened against French citizens "for allegedly "glorifying terrorism," some of whom have already been summarily sentenced to imprisonment, shows the contradictions in France's approach to the right to express opinions that offend, shock, or disturb."[256] However, to determine the quality and implementation of the

[255]Decision No. 16-83331 of 25 April 2017 (N° de pourvoi: 16-83331 Audience publique du mardi 25 avril 2017) accessed on 19.07.2017 available on: https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000034548172&fastReqId=611249351&fastPos=6

[256] Human Rights Watch article "Dispatches: France, a country of freedom of expression - for some" accessed on 20.03.2017, available at: https://www.hrw.org/news/2014/10/09/france-counterterrorism-bill-threatens-rights

Law and its compliance to ECtHR standards in relation to Article 10, several aspects of the Law and its implementation must be assessed.

First, the question of the quality of the law and the notion of legal certainty must be raised. Not knowing the law does not make individuals prone to prosecution. However, as mentioned several times before, when the Court assesses if an interference has been prescribed by law, it looks not only if a provision exists in the positive legislation but, if the effects of such provision are foreseeable. What this means is that that "the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable."[257] The laws capacity to be foreseeable, as a standard was established with the case of Sunday Times v. United Kingdom and as we saw was later implemented in the cases of Ürper and Others v. Turkey and Association Ekin v. France. Referring back to the Amnesty International Annual Report for 2015/2016, it is emphasized that "due to the vague definition of the offence, in many cases authorities prosecuted individuals for statements that did not constitute incitement to violence and fell within the scope of legitimate exercise of freedom of expression" to the quality of law, which requires that legal norms should be accessible to the person concerned, their consequences foreseeable and their compatibility with the rule of law ensured."[258] Also, in the case of the 16 year old boy in Nanet who was arrested and brought to Court for a drawing he had posted on Facebook, we saw that the issue of his awareness as to whether his actions

[257] Sunday Times v. United Kingdom, Judgment from 26 April 1979, Application No. 6538/74, paragraph 49.
[258] Amnesty International Report 2015/2016, The state of the worlds human rights, accessed on 10.02.2017, available on file:///C:/Users/Dora/Downloads/POL1025522016ENGLISH.PDF

were subject to criminal prosecution was raised.[259] However, in Leroy v. France the Court assessed the provisions prohibiting the glorification of terrorism, that were than part of the 1881 Law, and concluded that the interference was prescribed by Law. Given the fact the almost the same textual provisions were transferred into the Penal Code, we can assume that even if some of the above-mentioned cases came in front of the Court, it would be very hard to expect that the Court would look at the quality of the legislation. Additionally, after looking at the Courts reasoning in both Ürper v. Turkey and Association Ekin v. France, we can conclude that the Court in such circumstances would be reluctant to further analyze the quality of the Law or to make a decision of a violation, based only on the foreseeability of the legislation. This creates a problem when it comes to legislation criminalizing the glorification of/apology to terrorism which is almost by definition vague. We have seen previously that the Special Rapporteur on human rights and counter terrorism has stated that to comply with international standards the criminalisation of incitement of violence "must be prescribed by law in precise language, and avoid vague terms such as "glorifying" or "promoting" terrorism"[260] This means that glorifying or promoting terrorism as terms themselves, impose problems on legal certainty and as such do not comply with international legal standards. Therefore, the Court must be proactive and impose its already established standards in cases concerning interferences with Article 10 related to glorification/apology of terrorism, meaning that the Court must assess the quality of the law criminalizing these categorise itself and weather its vagueness and unforeseeability alone constitute a violation of Article 10

[259] "5 Mois de prison ferme pour un jeune Toullousian condamne pour apologie du terrorisme, published on France Info, accessed on 20.03.2017, (translated by Stein De Witte) available at http://france3-regions.francetvinfo.fr/occitanie/2015/01/16/5-mois-de-prison-ferme-pour-un-jeune-toulousain-condamne-pour-apologie-du-terrorisme-634476.html

[260] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism no. A/HRC/31/65 of 22.02.2016, Human Rights Council, paragraph 24.

Second, as described in Zana v. Turkey, Association Ekin v. France and Leroy v. France, the Court assesses the context, the time and circumstances in which the expression and the interference has been made. In the potential cases, it is almost certain that the Government would propose national security and the protection of public order as legitimate aims for the interference. The Court states that the term national security also "could not be comprehensively defined, thus giving it a degree of elasticity and hence flexibility, which is reflected by the margin of appreciation which states have in this sphere".[261] In the particular period, after the Charlie Hebdo attack, the Court would definitely consider that the arrests for the glorification of terrorism were made in a very delicate time. The Court will take into consideration that the glorification was done right after an attack that claimed the lives of innocent people but, also an attack on a popular satirical newspaper that can be considered as a gruesome attack on freedom of expression itself. It is clear that in such context, where the general public is overwhelmed by fear, anger and grieve, the risk of public disorder is very high.

The Court will also asses the goal of the speech, was it just satire or a "joke" or an expressed moral support for the perpetrators of the attacks. The Court has established that advocacy of non-violent lawless actions is acceptable,[262] and that even "incitement to violence does not automatically justify an interference with the applicant's right to freedom of expression."[263] However, given the specific context it is uncertain if the Court will conclude that the protection of public order in such circumstances does not express a pressing social need. The reason for this is that when the risk of public disorder is on a very high level, like in these cases, the Court

[261] Research Division, National security and European case law, Council of Europe / European Court of Human Rights, 2013, p.4
[262] Stefan Sottiaux, The "Clear and Present Danger" Test in the Case of the European Court of Human Rights, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht [Heidelberg], 64(2003), Studgart, p. 672, accessed on 09.02.2017, available at http://www.zaoerv.de/63_2003/63_2003_3_a_653_680.pdf
[263] Ibid.

will always give the state a very wide margin of appreciation."[264] I would argue that the context is one of the most important factors to consider when assessing the nature and gravity of a situation but, a line as to what forms of speech cannot be interfered with in any circumstances, must be drawn as well. Having said that, I agree with the UN Secretary-General that "laws should only allow for the criminal prosecution of direct incitement to terrorism, that is, speech that directly encourages the commission of a crime, is intended to result in criminal action and is likely to result in criminal action."[265] Therefore, convicting civilians and imposing prison sentences for ironic comments on Facebook statuses and satirical cartoons published on individual Facebook accounts is going too far in undermining freedom of expression, whatever the context.

The third aspect that has to be assessed is the application of the principle of proportionality. In each case the Court will examine if the means, meaning the severity of the penalties imposed, are proportional to the aim that the Government wanted to pursue. From the Court's jurisprudence, we can see that if a modest monetary fine is imposed (like in Leroy v France) the Court would not consider the means to be disproportionate. However, it would be very interesting to see if a potential case comes in front of the Court where the maximum of the monetary penalty prescribed by the new Law is imposed, which amounts to 75.000 euro fine for the acts of apology of terrorism. The Law also prescribes up to 5 years of imprisonment for such acts. In just the reported cases of arrests mentioned above, the prison sentences that were imposed amounted to 5 months imprisonment or suspended sentences. In cases where prison sentences are imposed for speech the Court is more likely to deem the penalties disproportionate. In Müdür Duman v Turkey the Court stated that the penalty amounting to six

[264] The protection human rights and fundamental freedoms while countering therrorism, Report of Secretary-General no. A/63/337 of 28.08.2008, United Nations General Assembly, paragraph 62.
[265] The protection human rights and fundamental freedoms while countering therrorism, Report of Secretary-General no. A/63/337 of 28.08.2008, United Nations General Assembly, paragraph 62.

months imprisonment was disproportionate to the aims pursued and accordingly not necessary in a democratic society. Accordingly, it can be reasonably assumed that the Court will consider prison sentences for the glorification of terrorism or a monetary penalty amounting to 75.000 euro to be disproportionate.

Finally, we must look at potential cases that might arise from the blocking of internet sites with an administrative ban and without prior judicial decision. The Central Office for Combating Crime and Related to Information and Communication Technologies may request from the author or the host of the website to withdraw content or entire site due to statements that are considered apology or provocation of terrorism. If the site or content is still online after 24 hours of the request, the Central Office can remove the website or content with an administrative ban, meaning it can block it from appearing on search engines for French users.[266] In Association Ekin v France we have seen that the Court concluded that the ex-post facto judicial review "in cases concerning administrative bans on publications provide insufficient guarantees against abuse."[267] Also, even after assessing the context surrounding that case and concluding that the aim of the Government, namely the prevention of disorder or crime was legitimate, the Court ultimately decided that "the ban did not meet a pressing social need and was not proportionate to the legitimate aim pursued"[268] and accordingly there was an violation of Article 10 of the Convention. Can this mean that we can expect that the Court will apply the same standard in future cases of administrative blocking of websites, even if they cannot be considered as blanket bans?[269] It will all depend on the future stands and role that

[266] More information available on the official website of the French Administration: https://www.service-public.fr/particuliers/vosdroits/F32512 accessed on 20.03.2017
[267] Association Ekin v France, Jugement from 17 July 2001, Application no. 39288/98, paragraph 61.
[268] Association Ekin v France, Jugement from 17 July 2001, Application no. 39288/98, paragraph 63.
[269] In Yildirim v. Turkey Application no. 3111/10, the Court decided that blanket bans on internet websites are unacceptable and in violation of Article 10 of the Convention.

the Court will be willing to take regarding terrorism related speech and its protection under the Convention.

Conclusion

For more than 5 decades, both France and Turkey have suffered their share of the devastating consequences of terrorism. As a response to terrorist attacks and for the purpose of countering them, both states have adopted anti-terrorism legislation. Depending on the change of context, technology and the influence of the development of international human right standards, both countries have amended their legislation over time. The imposition of anti-terrorism legislation itself is preventive, which means restrictive in substance. The nature of the response to terrorism and the tailoring of the legislation itself, is a product of historical, sociological and contextual factors as well as of the nature of the attacks and the terrorist groups responsible for executing them.

In the beginning, terrorist groups in Turkey adopted a Marxist-Leninist ideology and an ideology of anti-imperialism. Later on and to date, the country has been struggling with groups lead by religious motivations or separatist movements, especially with the rise of the PKK as a large scale separatist movement. The influence of these ideologies can be sensed in Turkish anti-terrorism legislation and in articles in the Turkish Constitution, tailored to respond to the threats they impose. Accordingly, in the Turkish anti-terrorism legislation and the Turkish Constitution, the focus is placed on the protection of the invisibility and integrity of the State and its secular order. Protecting these values is a priority even if it means restricting certain human rights, speech being one of them.

For more than 60 years France has been a target of both international and national terrorism. Starting from the attacks in the context of the Algerian war of independence from the 1950's to 1962; to the 1980's when it adopted its first anti-terrorism legislation after suffering attacks claimed by different international terrorist organizations caring out different agendas; and

today as a target of the most gruesome attacks carried on in the name of religion. The legislation adopted in France and amended over time is also a result of the nature of the occurring attacks and new threats.

Freedom of speech is protected in both jurisdictions on the constitutional level. In Turkey freedom of speech as well as its restrictions is directly regulated in the constitutional text. In France freedom of speech is protected with 1789 Declaration and as a fundamental principle recognized by the Laws of the Republic, meaning the 1881 Law. However, the Turkish Constitutional Court and the French Constitutional Council have a different approach when deciding upon the constitutionality of anti-terrorism legislation and individual cases brought to the Court. Overall before 2008, when the French Constitutional Council only conduced a priory abstract review, it was somewhat restrictive in its decisions. When reviewing anti-terrorism legislation, the Council only suspended some provisions of the legislation, mostly based on issues regarding separation of powers and not the restrictions of fundamental rights. Even recently we can see the same trend especially considering the 19 February 2016[270] decision of the Council regarding the imposition of administrative searches in homes without a judicial order. However, in a recent QPC decision[271] the Council declared an article of the Criminal Code[272] that made the act of consulting an online communication service providing messages, images and representations, that directly cause the commission of acts of terrorism or are glorifying such acts, or are showing commission of such acts,[273] unconstitutional. Among other things, the Court found the Article to be against Article 11 of the Declaration of the Rights of Man and the Citizen.

[270] Decision no. 2016-536 QPC of 19 February 2016
[271] Decision No 2016-611 QPC of 10 February 2017
[272] Article 421-2-5-2 of the Criminal Code, as drafted by the Act of 3 of June 2016 (translation by Stein De Witte).
[273] In Decision No 2016-611 QPC of 10 February 2017 (translation by Stein De Witte), the full decision, accessed on 20.03.2017, available on https://www.legifrance.gouv.fr/affichJuriConst.do?oldAction=rechJuriConst&idTexte=CONSTEXT000034033479&fastReqId=707384889&fastPos=1

The Turkish Constitutional Court on the other hand, relays heavily on the standards and jurisprudence of the ECtHR. The Turkish Constitutional Court also uses an almost identical approach as the ECtHR in assessing proportionality and the necessity in a democratic society. This is also because both proportionality and the requirements of democratic order of the society are stated in the Turkish Constitution, as categories which are to be asses when evaluating the conformity of laws limiting fundamental rights with the Constitution.[274] Applying those standards and principles, the Court has brought two leading judgment upon individual complaints, where it has established that the implementation of anti-terrorism legislation violated the applicants' constitutionally guaranteed freedom of speech.

On a statutory level, both countries have anti-terrorism provisions embedded in their Penal Codes, as well as in specific legislation. In France, the glorification/apology of terrorism is sanctioned in the Penal Code. In Turkey, the legitimizing and prizing of terrorist organizations methods and propaganda are criminalized with the Penal Code and the Law 3713. When assessing only the black letter law, I concluded that the French legislation imposes more severe punishments for the acts of apology of terrorism. When the provisions are applied to the press, the French Penal Code makes a difference of the penalties regarding of the responsible persons involved. The Turkish Penal Code establishes that the penalty for broadcasting such propaganda, ergo for the press, will be one half of the penalty more than the one imposed for ordinary citizens. As for blocking of internet websites for praising or glorying terrorism, the laws of the two counties are almost the same, both allowing administrative blocking of websites without a court order.

[274] See Article 13 of Turkey's 1982 Constitution, Turkey's 1982 Constitutions with Amendments trough 2002, Oxford University Press, accessed on 30.11.2016, available at: https://www.constituteproject.org/constitution/Turkey_2002.pdf,

Despite the similar black letter law in force in both countries, the implementation of these laws heavily differs in the two jurisdictions. Even though the 2013 amendments to the Turkish anti-terrorism legislation were meant to bring the legislation in line with European human rights standards, it seems that the situation with the respect of the right of freedom of expression has not improved. In the past year and a half, the situation deteriorated even more, with NGO's reporting that that unfair proceedings under anti-terrorism laws "targeted political activists, journalists and others critical of public officials or government policy" as well as ordinary citizens for their social media posts.[275] Accordingly, Freedom House gives Turkey press freedom status of "not free."

Since 2014, the actions of glorification/apology of terrorism in France have been embedded in the Penal Code. This alteration can be viewed as both symbolic but also intentional for the purpose to "to prevent prosecutions being brought on the basis of the protective procedural framework provided by the 1881 Law."[276] However, even though after the Charlie Hebdo attack the law has been implemented more severely and broadly and freedom of expression has been compromised to a certain extent, Freedom House still gives France press freedom status of "free". This can be also accredited to Frances long tradition of protecting press freedom and speech in general.

In cases in front of the ECtHR where there is an interference with freedom of expression that is considered to be glorification or apology of terrorism, governments invoke the protection of national security and/or public order as legitimate grounds for the interference. However, what is problematic is that the terms national security, terrorism and glorification or apology of terrorism are not precisely defined in theory or practice. This is especially emphasized when it

[275] Amnesty International Report 2015/2016, The state of the worlds human rights, accessed on 10.02.2017, available on file:///C:/Users/Dora/Downloads/POL1025522016ENGLISH.PDF
[276] Marion Lacaze, "Latest developments in the repression and prevention of terrorism under French criminal law", Montesquieu Law Review, Issue No.3 October 2015, p. 5

comes to the terms glorification or apology of terrorism. Even if defined as public support, passive praising, or legitimizing terrorism, these are still vague categories. Accordingly, the vague definition of these categories also raise the issue of legal certainty. The first problem is that there are not foreseeable to an extent that citizens can regulate their conduct accordingly. The second is that vague definitions that are prone to loose interpretation and even abuse in their implementation. This is why international human rights bodies warn that criminalization of such acts is not in line with human rights standards.

In analyzing the ECtHR jurisprudence through the cases of Turkey and France before 2014, several things can be concluded. Even though States enjoy a wide margin of appreciation when protecting national security interest, "national security" is not a talisman that gives member countries carte blanche."[277] The Court will assess if the legitimate aim is proportionate to the means applied in the specific case, it will also asses if the interference amounted to a pressing social need. In cases of restriction of speech based on anti-terrorism legislation, the Court will assess the context and circumstances surrounding the interference as an objective factor but, also the subjective factors, meaning the characteristics and the influence of the applicant himself or herself. The Court will assess the nature of the message. Criticism towards the government has a higher standard of permissibility than towards individuals but, when "remarks incite to violence against an individual or public official or a sector of the population, the State authorities enjoy a wider margin of appreciation."[278] The Court consider the influence and the reach of the media in which the speech was introduced in. When assessing if the interference is prescribed by law, the Court will evaluate the quality of the law and its foreseeability and compatibility with the rule of law. However, in cases where a violation of

[277] Susan Rose-Ackerman & Benjamin Billa, Treaties and National Security, *40 N.Y.U. J. Int'l L. & Pol. 437* (2008), reprinted in *Yale Law School Faculty Scholarship Series, Paper 595.*

[278] Sürek and Ozdemir v. Turkey, 8 July 1999, para. 61 in Stefan Sottiaux, The "Clear and Present Danger" Test in the Case of the European Court of Human Rights, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht [Heidelberg], 64(2003), Studgart, p. 673, accessed on 09.02.2017, available at http://www.zaoerv.de/63_2003/63_2003_3_a_653_680.pdf

Article 10 is ultimately established on other grounds, the Court is reluctant to engage into an estimate of the lawlessness of the interference.

As to the proportionality of the measures applied, the Court is very reluctant to decide that a prison sentence for speech is proportionate to the aim. This is because the Court will assess if less draconian measures can be imposed, which in such cases can mean imposing monetary fines or suspended sentences.

When applying the above-mentioned standards to potential cases that might arrive from the implementation of the new French Law from 2014 after the Charlie Hebdo attack, several things can be concluded. First, it would be very hard to assume that the Court would look into the foreseeability of the legislation or further analyze the quality of the law as to make a decision of a violation solely based on the foreseeability of the legislation. Second, the Court would take into account the context and the circumstances in which the interferences have been made. In these cases, the interferences where made after an attack that claimed the lives of innocent people but, also an attack on a pronoun satirical newspaper that can be considered as a gruesome attack on freedom of expression itself. It is clear that in such context, where the general public is overwhelmed by fear, anger and grieve, the risk of public disorder is very high, the Court will conclude that the state has a very wide margin of appreciation. Third, the Court will assess the proportionality of the imposed sanctions. In cases where prison sentences are imposed for speech the Court is more likely to deem the penalties disproportioned and therefore not necessary in a democratic society. Accordingly, it can be reasonably assumed that the Court will consider prison sentences for the glorification of terrorism or a monetary penalty amounting to 75.000 euro to be disproportioned. Therefore, in the cases of at hand it is reusable to assume that a violation is most likely to be established based on the proportionality principle. However, even though I would argue that the context is one of the most important factors to consider when assessing the nature and gravity of a situation, a line as to what forms of speech

cannot be interfered with in any circumstances, must be drawn. This is especially relevant in cases involving the publication of sarcastic Facebook comments or cartons by ordinary citizens. Also, given that glorifying of promoting terrorism as terms themselves impose problems on legal certainty and as such do not comply with international legal standards, the Court must be proactive and impose its already established standards in cases concerning interferences with Article 10 related to glorification/apology of terrorism. This means, that the Court must assess the quality of the law criminalizing these categorise itself and weather its vagueness and unforeseeability alone constitute a violation of Article 10.

Bibliography

Books and Journal articles:

Bless, Ronald, "Countering Terrorism while Protecting Freedom of the Media: A Crucial Balance for Governments," OSCE Yearbook 2010, Hamburg: The Institute for Peace Research and Security Policy, (2010): 283-289, accessed February 10, 2017, https://ifsh.de/file-CORE/documents/yearbook/english/10/OSCE-2010-pdf-Gesamt%20mit%20Schrift.pdf

Dutheillet de Lamothe Olivier, "French Legislation Against Terrorism: Constitutional Issues", November 2006, accessed November 1, 2017, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/pdf/Conseil/constitutionalterrorism.pdf

Dayton, Ross, "Identity and Conflict: PKK vs. Turkey (1984-Present)," *Student Research, Paper 2*, (2013), accessed on 10.02.2017, http://digitalcommons.fiu.edu/cgi/viewcontent.cgi?article=1001&context=ippcs_studentworks

Frank Foley, *Countering Terrorism in Britain and France. Institutions, Norms and Shadows of the Past.* Cambridge: Cambridge University Press, 2013.

Geistlinger, Michael, "Fight Against Terrorism and Limitation of the Freedom of Expression: Some Remarks on Recent Judgments of the European Court of Human Rights", *Collection of Papers, Faculty of Law, Nis, Vol. 61*,(2012), p. 49-58

Greer, Steven, *Human rights files No. 15 - The exceptions to Articles 8 to 11 of the European Convention on Human Rights*. Strasbourg: Council of Europe Publishing, 1997.

Gautier-Pongelard, Clémence, Imbiki Mahery and Päzold Nicolas, "Incitement to Terrorism and Freedom of Speech" (2010), accessed on February 2, 2017, http://www.doyoubuzz.com/var/f/eN/Bk/eNBkPy49UzoFRqbjfCXhawZEL8lJVc1tvGnQA7HSMim-r60TI3.pdf

Lacaze, Marion "Latest developments in the repression and prevention of terrorism under French criminal law", *Montesquieu Law Review, Issue No.3* (October 2015), p. 2-9.

Mango, Andrew, *Turkey and the War on Terror, For Forty Years We Fought Alone*. Oxon: Routledge, 2005.

Mchangama, Jacob "Freedom of expression and national security", *Society, Vol. 53 Issue 4,* (August 2016), p.363-367

Murray, Daragh "Freedom of expression, counter terrorism and the internet in the light of the UK Terrorist Act 2006 and the jurisprudence of the European Court of Human Rights", *Netherlands Quarterly of Human Rights, Volume 27, Issue 3,* (September 2009), p.331-360

Oehmichen, Anna, *Terrorism and Anti-Terror Legislation: The Terrorized Legislator? A Comparison of Counter-Terrorism Legislation and Its Implications on Human Rights in the Legal Systems of the United Kingdom, Spain, Germany and France.* Antwerp Portland: Intersentia, 2009

Rediker, Ezekiel "The Incitement of Terrorism on the Internet: Legal Standards, Enforcement, and the Role of the European Union", *Michigan Journal of International Law, Volume 36, Issue 2,* (2015), p. 321-351

Rose-Ackerman, Susan & Billa, Benjamin, "Treaties and National Security", *40 N.Y.U. J. Int'l L. & Pol. 437 (2008), reprinted in Yale Law School Faculty Scholarship Series, Paper 595.*

Salinas de Frias, Ana, *Counter-terrorism and human rights in the case law of the European Court of Human Rights*. Strasbourg: Council of Europe Publishing, 2012.

Sami Türk, Hikmet *"*An Overview of Legal Responses to Terrorism*", Defence Against Terrorism Review Vol. 5, No. 1*. (Spring & Fall 2013), p. 75-92.

Sottiaux, Stefan, *Terrorism and the Limitations of Rights, The ECHR and the US Constitution.* Oregon: Hart Publishing, 2008.

Stefan Sottiaux, "The "Clear and Present Danger" Test in the Case of the European Court of Human Rights", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht [Heidelberg], 64,* Studgart (2003), accessed on February 9, 2017, p.653-679. http://www.zaoerv.de/63_2003/63_2003_3_a_653_680.pdf

Yonah, Alexander, H. Brenner, Edgar and Tutuncuoglu Krause, Serhat, *Turkey, terrorism, civil rights and the European Union*. New York: Routledge, 2008.

Yazıcı, Hanefi, "PKK Terrorism in Turkey," *Open Journal of Political Science, 6, 310-315*, (2016) accessed on January 23, 2017, p.310-315, http://dx.doi.org/10.4236/ojps.2016.63027

Yayla, Atilla, "Terrorism in Turkey", p. 249-262, http://www.politics.ankara.edu.tr/dergi/pdf/44/3/14_atilla_yayla.pdf

Warbrick, Colin "The European Response to Terrorism in an Age of Human Rights", *The European Journal of International Law Vol. 15 no.5* (2004), p.989 - 1018

Caselaw:

ECtHR:

Sunday Times v. United Kingdom, Judgment from 26 April 1979, Application No. 6538/74

Zana v. Turkey, Judgment from 25 November 1997, Application no. 69/1996/688/880

Incal v. Turkey, Judgment from 9 June 1998, Application no. 41/1997/825/1031

Association Ekin v France, Jugement from 17 July 2001, Application no. 39288/98

Leroy v France, Judgment from 2 October 2008, Application no. 36109/03

Ürper and Others v. Turkey, Judgment from 26 January 2010, Applications no's. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07

Müdür Duman v Turkey, Judgment from 6 October 2016, Application no. 15450/03.

French Constitutional Council:

Decision No. 71-55 DC of July 16, 1971

Decision no. 80-127 DC of January 20, 1981

Decision no. 93-326 DC of August 11, 1993

Decision no. 93-334 DC of January 20, 1994

Decision 96-377 DC of July 16, 1996

Decision no. 2003-467 DC of March 13, 2003

Decision no. 2004-492 DC of March 2, 2004

Decision 2005-532 of January 19, 2006

Decision no. 2016-536 QPC of 19 February 2016

Decision No 2016-611 QPC of 10 February 2017

Decision no. 2017-625 QPC of 07 April 2017

Turkish Constitutional Court:

Application No: 2013/409, date of Judgment: 25.06.2014, paragraph 105.

FATİH TAŞ Application, Application No: 2013/1461, date of Decision: 12/11/2014

French Cour de Cassasion

Decision No. 16-86965 of 11 July 2017

Decision No. 16-83331 of 25 April 2017

Reports:

Annual report on freedom of the press – France 2016, Freedom House annual county report, accessed on November 30, 2016, https://freedomhouse.org/report/freedom-press/2016/france

Annual report on freedom of the press - Turkey for 2016, accessed on February 10, 2017, available on https://freedomhouse.org/report/freedom-press/2016/turkey

Annual report on freedom of the press - Turkey for 2015, accessed on January 15, 2017, available on https://freedomhouse.org/report/freedom-world/2015/turkey

"Apologie du Terrorisme" and "Incitement to Terrorism": Analytical Report, Council of Europe CODEXTER Committee, CODEXTER (2004)

Country Reports on Terrorism 2014, United States Department of State Publication Bureau of Counterterrorism Released June 2015.

Profiles on Counter-terrorism Capacity – France, Committee of experts on Terrorism (CODEXTER), September 2013, accessed on February 02, 2017, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641029

Profiles on Counter-terrorism Capacity – Turkey, Committee of experts on Terrorism (CODEXTER), May 2013, accessed on February 02, 2017, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064102d

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism no. A/HRC/31/65 of 22.02.2016, Human Rights Council.

The protection human rights and fundamental freedoms while countering therrorism, Report of Secretary-General no. A/63/337 of 28.08.2008, United Nations General Assembly.

The state of the worlds human rights, Amnesty International Report 2015/2016

Turkey 2016 Report, Commission Staff Working Document accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2016 Communication on EU Enlargement Policy, accessed on 04.02.2017, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0366&from=EN

News Articles:

"Charlie Hebdo: à Nantes, un adolescent de 16 ans poursuivi pour "apologie du terrorisme" sur Facebook," published on France Info, accessed on March 12, 2017, http://france3-regions.francetvinfo.fr/pays-de-la-loire/2015/01/17/charlie-hebdo-nantes-un-adolescent-de-16-ans-poursuivi-pour-apologie-du-terrorisme-sur-facebook-634720.html

"Dispatches: France, a country of freedom of expression - for some" for Human Rights Watch, accessed on March 20, 2017, https://www.hrw.org/news/2014/10/09/france-counterterrorism-bill-threatens-rights

"France Arrests Comedian for his Facebook Comments, Showing the Sham of West's Free Speech Celebration" by Glen Greenwald for The Intercept, accessed on March 20, 2017, https://theintercept.com/2015/01/14/days-hosting-massive-free-speech-march-france-arrests-comedian-facebook-comments/

"5 Mois de prison ferme pour un jeune Toullousian condamne pour apologie du terrorisme, published on France Info, accessed on March 20, 2017, http://france3-regions.francetvinfo.fr/occitanie/2015/01/16/5-mois-de-prison-ferme-pour-un-jeune-toulousain-condamne-pour-apologie-du-terrorisme-634476.html

"The treat of "glorifying terrorism laws", by Cathal Sheerin for the IFEX (The global network defending and promoting freedom of expression) calling on sources from LeMonde.fr, accessed on March 12, 2017, https://www.ifex.org/europe_central_asia/2017/02/02/glorifying_terrorism_charges/

Other documents:

Countering Terrorism, Protecting Human Rights, A manual, OSCE Office for Democratic Institutions and Human Rights (ODIHR), (Poland 2007)

Fact Sheet, *Hate speech,* European Court of Human Rights Press Unit, July 2013, http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427369687?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Grupo&blobheadervalue1=attachment%3B+filename%3DHate_speech__julio_de_2013.PDF&blobheadervalue2=Docs_Libertad+religiosa_interes

Fact Sheet No.32, *Human Rights, Terrorism and Counter-terrorism,* Office of the United Nations High Commissioner for Human Rights, accessed on November 15, 2017. accessed on 16.09.2016, http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf

Information Note on the Courts case-law No. 112 from October 2008 on Leroy v France, Judgment from 2 October 2008, Application no. 36109/03

Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative of Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression from December 21 2005.

The Johannesburg Principles: National Security, Freedom of Expression and Access to Information, available on https://www.article19.org/data/files/pdfs/publications/jo-burg-principles-overview.pdf

National security and European case law, Research Division, Council of Europe / European Court of Human Rights, 2013

Press release: Restrictions on freedom of expression imposed on former leader of Basque separatist organisation when he was released on licence were justified," issued by the Registrar of the Court ECHR 357 (2015) on 12.11.2015

UN Human Council in the Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session, 15 October to 2 November