

## **Call for inputs on the Protection of Human Rights by Regional Organizations**

### **Overview of ODIHR work on human rights and counter-terrorism with reference to related tools and resources**

ODIHR is the principle human rights institution of the OSCE and is mandated to assist the organization's participating States to ensure full respect for human rights and fundamental freedoms; to abide by the rule of law; to promote principles of democracy; to build, strengthen and protect democratic institutions; and to promote tolerance throughout their societies.<sup>1</sup> Recognizing the importance of protecting human rights in effectively countering terrorism, the OSCE participating States also specifically tasked ODIHR to offer technical assistance and advice on the implementation of laws and policies aimed at countering terrorism and violent extremism and radicalization that lead to terrorism (VERLT) in line with their international human rights obligations and commitments.<sup>2</sup>

Against this background, ODIHR monitors human rights-compliance of anti-terrorism policies and practices and provides expert advice and guidance to participating States on ongoing and emerging human rights and counter-terrorism issues. Furthermore, the Office offers capacity building for law enforcement and other security sector actors to promote human rights-compliant counter-terrorism practices.<sup>3</sup> In its work, ODIHR co-operates closely with other OSCE Executive Structures, in particular the OSCE Secretariat's Action Against Terrorism Unit and the organization's field operations, as well as international and regional organizations and civil society working on human rights and counter-terrorism.

In accordance with the OSCE's comprehensive concept of security, OSCE participating States consistently re-affirmed their commitment to respect and protect human rights in the fight against terrorism.<sup>4</sup> Yet, ODIHR remains concerned about both the expanding scope of counter terrorism law and policy and a proliferation of restrictive security measures, which is in practice too often conducted in a way that deprioritizes human rights and risks eroding established human rights protections in the name of countering terrorism.<sup>5</sup>

These concerns are documented in a number of ODIHR publications and tools, for example, in relation to states' measures in response to the so-called "foreign terrorist fighters" (FTF) phenomenon pursuant to UN Security Council Resolutions 2396 (2017) and 2178 (2014) and related regional counter-terrorism instruments. In its Guidelines on addressing the FTF phenomenon, ODIHR outlined, among others, key human rights concerns related to the broadening scope of criminal offences in national laws – including in relation to terrorism-related travel, training, support or the public provocation of terrorism – and the increasing use of administrative measures to address terrorism-related risks preventively outside of a criminal law framework.<sup>6</sup> Furthermore, ODIHR addressed the human rights implications of the collection, processing and sharing of personal data as well as the use of new technologies in border security-related counter-terrorism measures to detect and prevent terrorism-related travel.<sup>7</sup> ODIHR

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<sup>1</sup> CSCE Summit 1992 – The Challenges of Change" (Helsinki Document), 10 July 1992.

<sup>2</sup> OSCE Bucharest Plan of Action Bucharest 2001 (Annex to Decision No. 1 on Combating Terrorism: The Bucharest Plan of Action for Combating Terrorism); OSCE Ministerial Statement on Supporting the United Nations Global Counter-Terrorism Strategy (Madrid 2007).

<sup>3</sup> For more details about ODIHR's thematic work on human rights and counter-terrorism see: <https://www.osce.org/odihr/countering-terrorism>. For more details on ODIHR training for law enforcement in this field see: <https://www.osce.org/odihr/566440>.

<sup>4</sup> See e.g. OSCE MC Decision No. 1/16 "Declaration on strengthening OSCE efforts to prevent and counter terrorism", Hamburg, 9 December 2016, and the 2012 OSCE Consolidated Framework for the Fight against Terrorism (PC.DEC/1063). The OSCE promotes a comprehensive approach to security, which underlines the equal importance of the politico-military, economic and environmental as well as human dimensions of security. Human rights are therefore an essential element of the OSCE's comprehensive concept of security.

<sup>5</sup> See *ODIHR Submission for the Call for inputs: Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space* (hereafter ODIHR submission for Global Study on Civic Space), December 2022, <https://www.osce.org/odihr/536040>.

<sup>6</sup> See *ODIHR Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework* (hereafter ODIHR Guidelines on FTFs), September 2018, <https://www.osce.org/odihr/393503>. On the basis of the Guidelines, ODIHR also continues to call for the urgent repatriation of FTFs and associated family members in displacement and detention camps in Syria and Iraq to their countries of origin in the OSCE region, see e.g. <https://www.osce.org/odihr/445909>.

<sup>7</sup> See ODIHR Policy Brief *Border Management and Human Rights: Collection, processing and sharing of personal data and the use of new technologies in the counter-terrorism and freedom of movement context*, October 2021, <https://www.osce.org/odihr/499777>.

regularly uses these resources in its activities, including in OSCE and other international fora to draw attention to related human rights risks and promote human rights compliant counter-terrorism responses in the region.<sup>8</sup>

In order to strengthen legal and policy frameworks on counter-terrorism in line with international human rights standards, ODIHR also continues to provide analysis and opinions on counter-terrorism related laws and policies as well as specific legal issues related to regional counter-terrorism instruments. In a *Note on the proposed revision of the definition of terrorist offences in Article 1 of the Council of Europe Convention on the Prevention of Terrorism*, ODIHR made a number of specific recommendations to more clearly define and strictly circumscribe the proposed definition and include clear exceptions or exclusion clauses to safeguard human rights.<sup>9</sup> In a *Note on the Shanghai Convention on Combating Terrorism, Separatism and Extremism*, the Office highlighted its serious concerns, in particular, about the Convention's requirement to criminalize so-called "extremism" due to its inherently vague and subjective nature and the severe human rights impact this may have.<sup>10</sup> In a number of opinions on national legislation, ODIHR expressed similar concerns about the impact of overbroad and vague counter-terrorism and so-called "anti-extremism" laws, which are prone to arbitrary or even abusive application, on a broad range of human rights and civic space.<sup>11</sup>

Countering violent extremism and radicalization that leads to terrorism (VERLT) and promoting and protecting human rights in the context of counter-terrorism are two of several strategic focus areas of the OSCE's counter-terrorism efforts.<sup>12</sup> While measures to prevent and counter VERLT offer opportunities to address the conditions conducive to terrorism, they also represent inherent human rights challenges, in particular where related national policies and programmes involve the identification of "early signs of radicalization", detecting and countering attitudes, beliefs and behaviors that are considered pre-cursors to terrorism.<sup>13</sup> Furthermore, despite OSCE commitments, which emphasize that terrorism must not be identified with any ethnicity, nationality, religion or belief, in practice there are concerns that counterterrorism efforts and programmes to prevent VERLT often had a disproportionate or even exclusive focus on specific groups in society, namely Muslims and specific ethnic groups.<sup>14</sup> In its contributions to OSCE and international forums and when reviewing national VERLT strategies and action plans, ODIHR seeks to promote awareness about such human rights challenges and greater human rights compliance in this field.

In addition, given the increasing attention across the OSCE region to radicalization to terrorism in prisons, ODIHR promotes enhanced oversight for better protection of human rights while preventing and countering VERLT in places of detention, in particular. To this end, ODIHR jointly published with Penal Reform International a Guide for detention monitors on this topic.<sup>15</sup> Furthermore, the Office facilitated dialogue between policy-makers, practitioners and detention monitors in several OSCE regions and provides tailored training for independent detention monitors from national human rights structures, national preventive mechanisms and civil society organizations to strengthen their capacity to assess related prison-based security strategies for their human rights compliance.<sup>16</sup> Thereby, ODIHR seeks to strengthen external scrutiny of measures states are implementing to manage violent extremist prisoners and counter the spread of VERLT in prisons.

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<sup>8</sup> See e.g. <https://www.osce.org/odihr/484865>.

<sup>9</sup> See <https://legislationline.org/taxonomy/term/25663>.

<sup>10</sup> See <https://legislationline.org/taxonomy/term/24296>.

<sup>11</sup> See ODIHR submission for Global Study on Civic Space, pp. 2-4. All ODIHR opinions and comments on counter-terrorism legislation, referred to therein, are also available in full at: <https://legislationline.org/legal-reviews>.

<sup>12</sup> OSCE Consolidated Framework for the Fight against Terrorism (PC.DEC/1063), para 17.

<sup>13</sup> See ODIHR Guidelines on FTFs, p 54. The human rights particularly at risk in preventing and countering VERLT are also more fully explored in the ODIHR and OSCE Secretariat Guidebook *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach*, March 2014, <https://www.osce.org/secretariat/111438>.

<sup>14</sup> See ODIHR submission for Global Study on Civic Space, pp. 5-6 and ODIHR Guidelines on FTFs, section on discrimination, pp. 62-63.

<sup>15</sup> The guidance tool is available in English, Russian, French, Albanian and Bosnian at: <https://www.osce.org/odihr/492934>.

<sup>16</sup> See e.g. <https://www.osce.org/odihr/547939> and <https://www.osce.org/odihr/570930>.