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Resolution on counterterrorism legislation UNPO General Assembly 2024

Submitted by: Assemblea Nacional Catalana

Counterterrorist legislation and civil society

After the terrorist attacks of the 11th of September 2001, there has been a massive push for and introduction of counterterrorist legislation by countries and international organizations. However, in the absence of a universal definition, every state has had to create its own definition of terrorism in their national legislation, leading to overly broad, vague definitions which can be used in the political interest of the state.

A global study by the UN special rapporteurs on counterterrorist legislation and civil society confirms this, and shows how counterterrorist legislation has been used all over the world as a tool to restrict the civic space of civil society organizations with critical voices.ⁱ Other reports by the Centre for Strategic & International Studies and the UNPO confirm the massive scale of this practice, highlighting its use by both authoritarians and countries generally considered consolidated democracies.^{ii iii}

The fact that the power to define terrorism lies at the state level makes it an intrinsically political concept and enables the stretching of definitions.^{iv} Definitions in national law often refer to threats to security, public order, territorial integrity, political unity and sovereignty, which are interpreted by the state, and permit the inclusion of a wide variety of non-violent activities often executed by civil society actors.^{vvi}

The use of counterterrorist legislation to restrict civic space violates the right to peaceful assembly and freedom of expression, and many other human rights laid down in the Universal Declaration of Human Rights.^{vii} Additionally, since advocating for self-determination inherently challenges the Westphalian nation-state model, such legislation is also wielded to impede the exercise of this right to self-determination.^{viii}

This misuse of counterterrorist legislation is a perfect example of lawfare, or legal warfare, which refers to the use by political powers to prosecute political opponents and critical civil society actors.^{ix}

The use of counterterrorist legislation is of special concern as a terrorism charge permits exceptional measures that legalise the dissolution of a variety of basic human rights safeguards even before a legal conviction has taken place.^x The report by the UN special rapporteurs also highlights that the misuse of counterterrorist legislation has a chilling effect on civil society actors and obstructs them from carrying out their important work to protect human rights.^{xi}

The case of Catalonia

In the specific case of Catalonia, counterterrorist legislation is used to protect the indissoluble unity of the Spanish state as laid down in article 2 of the Spanish Constitution.^{xii} This article presents a challenge to the exercise of the right to self-determination, even though this right is laid down explicitly in article 2 of the UN General Assembly Resolution 1514 of 1960.^{xiii} Moreover, chapter 1 of The Charter of the United Nations refers in article 1.2 to the fact that the UN's purpose to 'develop friendly relations among nations' should be done with 'respect for the principle of equal rights and self-determination of peoples.'^{xiv} Spain signed and ratified the Charter in 1977, article

2 of the Spanish Constitution is therefore not in line with Spain's legal obligations under international law.^{xv}

The definition of terrorism laid down in article 573 of the Spanish Penal Code refers to any serious crime with the purpose of subverting the constitutional order or seriously destabilizing the political institutions and social and economic structures of the state.^{xvi} The aim of the Catalan independence movement is inherently in opposition to article 2 of the Spanish Constitution, and therefore any of the activities of the Catalan independence movement may be construed to be terrorist in nature under the current Spanish counterterrorism legislation. Moreover, the definition refers to 'any serious crime' and threats to public order, which may be interpreted in a variety of ways and can include a multitude of activities that do not have to be violent in nature.^{xvii}

In practice, the first case in which the counterterrorist legislation was used against the Catalan independence movement was in 2018, when charges of terrorism against Tamara Carrasco led to her confinement in her home town for 411 days, after which the charges were dismissed for lack of evidence. This constitutes a perfect example of the restrictive nature of terrorism charges even before conviction. After Tamara Carrasco, many other cases followed.

In the run up to the Catalan referendum in 2017, the Committees for the Defence of the Referendum (CDR) were created by concerned Catalan citizens, which later turned into Committees for the Defence of the Republic (CDR), which organised a series of peaceful protests mainly including road and rail blockages. In the months prior to the sentence of the Referendum trial in 2019, these groups planned non-violent protests and acts of civil disobedience. A few weeks before the sentence, on the 23rd September 2019, nine CDR activists were arrested and imprisoned in Madrid for months accused of terrorism in the so-called Operation Judas.^{xviii}

Spain's Public Prosecutor's Office has now requested 27 years in prison for eight of these activists after years of an investigation plagued with irregularities in the Audiencia Nacional —a National High Court located in Madrid and specialized in terrorism and drug trafficking crimes.^{xix}

Moreover, in the aftermath of the verdict on the Referendum Trial in October 2019, the activist platform Tsunami Democratic organised massive non-violent demonstrations inspired by the demonstrations in Hong Kong, such as the blockage of the road at the border with France or the peaceful occupation of Barcelona airport. The presumed organisers are now also facing terrorism charges.

Many of the victims of these fabricated terrorist accusations have been forced to go into exile for fear of an unfair trial leading to sentences of up to 20-30 years of prison, and exceptional measures such as pretrial detention.

The UNPO Tools of Repression report emphasized that these measures have a chilling effect on the freedom of expression in Spain and consequently within the Catalan independence movement.^{xxi}

Besides the chilling effect, the misuse of counterterrorist legislation to target the Catalan independence movement has led Europol to include the Catalan independence movement in their Terrorist Situation and Trend Report of 2023 in the sections on 'left-wing and anarchist terrorism' and 'extremism'. This inclusion has tarnished the international reputation of the movement and underscores the importance of raising awareness of the use of terrorism labels for political purposes.^{xxii} In response to this report, the Catalan National Assembly has filed a complaint before the European Ombudsman seeking to redress this criminalization of a peaceful, legitimate, democratic self-determination movement.^{xxiii}

On the 27th February 2024, the European Civic Forum published a solidarity statement for activists accused of terrorism in Catalonia stating their concerns regarding the restrictions on the right to peaceful assembly in Spain and emphasizing that the terrorist accusations are not in line with international human rights standards and EU law. The statement was signed by 20 other organizations worldwide, including the UNPO.^{xxiv}

Proposals

For all these reasons, the Catalan National Assembly urges the UNPO to take appropriate measures to:

DENOUNCE the use of counterterrorism legislation against peaceful civil society organisations in general and those fighting for the right to self-determination in particular.

RAISE AWARENESS on the stretching of terrorism definitions in national legislation and international organizations' statutes.

STRESS the importance of the creation of a universal definition of terrorism, being limited in scope and precise in wording, including an exception clause that safeguards legitimate activities from being included, as proposed by the ODHIR OSCE and supported by Swiss authorities during the Council of Europe Committee on Counter-Terrorism (CDTC) 11th plenary meeting held in Helsinki, Finland.^{xxv}

MONITOR amendments to national and international counterterrorist legislation and definitions of terrorism.

URGE international organizations to pressure national governments to bring their national legal definitions of terrorism in line with the universal definition of terrorism after its creation.

URGE Europol to remove the Catalan independence movement from the sections on left-wing and anarchist terrorism and extremism from their Terrorism Situation and Trend Report of 2023.

URGE national governments to drop all unfounded terrorist charges against peaceful civil society organizations and their members and pay proportionate compensations to the victims of these charges for months of pre-trial detention.

ⁱ https://defendcivicspace.com/wp-content/uploads/2024/01/SRCT_GlobalStudy-1.pdf

ⁱⁱ https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/180322_CounterterrorismMeasures.pdf

ⁱⁱⁱ https://int.assemblea.cat/wp-content/uploads/2022/11/Report_2022_Tools_of_Repression_UNPO-1.pdf

^{iv} <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1400&context=jil>

^v <https://doi.org/10.1093/oxfordhb/9780198732914.013.2>

^{vi} https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/180322_CounterterrorismMeasures.pdf

^{vii} <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>

^{viii} <https://archive.org/details/muslimsarecoming0000kund>

^{ix} <https://progressive.international/blueprint/b75fd240-66ae-4e48-9059-8ccfe9be9cb7-lawfare-vs-democracy/en>

^x https://journals.sagepub.com/doi/pdf/10.1177/20322844211004762?casa_token=ExT4Z4QydnsAAAAA:qtZ7qLFKVAdPV_dQnzMyttUBJsHYc-e0zOWsr1SznDvksM3C4Z-P5t4Wyin9t93tOT_MufN1ev_x2A

^{xi} https://defendcivicspace.com/wp-content/uploads/2024/01/SRCT_GlobalStudy-1.pdf

^{xii} <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

^{xiii} <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples>

^{xiv} <https://www.un.org/en/about-us/un-charter/full-text> (art. 1.2)

^{xv} <https://www.boe.es/buscar/doc.php?id=BOE-A-1979-24010>

^{xvi} https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Cod_e_2016.pdf (art. 573)

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- ^{xvii} https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Cod_e_2016.pdf (art. 573)
- ^{xviii} <https://www.catalannews.com/politics/item/supporters-gather-as-detained-pro-independence-activists-appear-in-madrid-high-court>
- ^{xix} https://www.elnacional.cat/en/news/judge-correction-catalan-cdr-protesters-operation-judas_720582_102.html
- ^{xx} <https://www.catalannews.com/society-science/item/public-prosecution-requests-27-years-in-prison-for-8-pro-independence-cdr-activists-for-terrorism>
- ^{xxi} https://int.assemblea.cat/wp-content/uploads/2022/11/Report_2022_Tools_of_Repression_UNPO-1.pdf
- ^{xxii} <https://www.europol.europa.eu/cms/sites/default/files/documents/European%20Union%20Terrorism%20Situation%20and%20Trend%20report%202023.pdf>
- ^{xxiii} <https://int.assemblea.cat/news/assemblea-makes-an-official-complaint-to-the-eu-ombudsman-for-the-categorisation-of-the-catalan-pro-independence-movement-as-extremism-in-a-europol-terrorism-report/> ; https://intranet.assemblea.cat/sites/default/files/correu/u1371/catalan_national_assembly_communication_europol_executive_director.pdf?_gl=1*1bjfvag*_ga*MjA5ODIyNzE1Mi4xNjU4MjI2NzI4*_ga_6HVTGMG0PK*MTY5NTIyMDQ4
- ^{xxiv} <https://civic-forum.eu/wp-content/uploads/2024/02/Joint-statement-Solidarity-for-Activists-in-Catalonia.pdf>
- ^{xxv} <https://rm.coe.int/cdct-2023-14-final-lod-helsinki-2784-5920-1033-v-1/1680ae0a2e>