



CAUCASUS RESEARCH
RESOURCE CENTER



EUROPEAN INITIATIVE
LIBERAL ACADEMY TBILISI



Kingdom of the Netherlands

**COMBATING TERRORISM AND OTHER THREATS WITHIN THE
FRAMEWORK OF LEGITIMATE RESTRICTIONS ON FREEDOM OF
RELIGIO, EXPRESSION AND ASSOCIATION**

2021

The document is based on a study carried out by the Liberal Academy Tbilisi (LAT) and the Caucasus Research Resource Centre (CRRC) as part of a project supported by the Kingdom of the Netherlands. The Liberal Academy Tbilisi is responsible for the information and views expressed in the document, and it may not reflect the position of the donor.

Terrorism is one of the most important international challenges today, and combating the threats posed by it is an unconditional priority for many states. Georgia is no exception in this regard. In the modern world, having effective legislation in this field and, at the same time, in full compliance with international norms is critically important for any state, including Georgia, which is located in a geopolitically volatile region. On the other hand, this is not an easy task, especially given that counter-terrorism measures often come into direct conflict with fundamental human rights and freedoms. Work in the democratic world to overcome these contradictions has begun a long time ago and serious steps have been taken, which, we believe, must be provided for in the legislation of Georgia. This paper is an effort in this direction. Freedom of belief, religion and conscience, freedom of expression and freedom of association, along with other fundamental human rights and freedoms, are basic values of a democratic society. Terrorism is one of the major threats in the modern world, which, in the first place, undermines a democratic society, its values, peace, security and prosperity. Individuals and groups commit terrorist acts in the name of religion, and terrorist networks often operate under the guise of religious symbols and infrastructure, and ideas that are detrimental to a democratic society are disseminated through recognized mechanisms of freedom of expression, including the press, radio, television, the Internet, and modern electronic communications.

The question naturally arises as to what the state should do in such a situation. Whether it has the legitimate authority to take measures to neutralize activities that are detrimental to its national interests, including its territorial integrity, when they are carried out under the guise of freedom of religion and expression; Is it appropriate to apply any restrictive measures in the case of densely populated regions with ethnic and religious minorities, and the forces operating in our neighboring states may have been behind these events?

Freedoms of Belief, Conscience, Expression and Association in the Constitution of Georgia and International Law

Freedom of religion, belief and conscience in Georgia, as well as freedom of expression and freedom of association are guaranteed by the country's constitution.¹ However, neither freedom of belief and conscience, nor freedom of expression, nor freedom of association is an absolute right. According to 2nd Paragraph of Article 16² and 5th Paragraph of Article 17³ of the Constitution of Georgia, freedoms of belief and expression may be restricted if the following three conditions are simultaneously encountered: a) the restriction is in accordance with the law, i.e. provided by law; b) the restriction serves a certain legitimate purpose, such as ensuring state or public safety, protection of health and/or the rights of others, etc.; c) Restrictions are necessary in a democratic society. According to 2nd Paragraph of Article 22 of the Constitution of Georgia, an association may be liquidated by a court decision, in cases prescribed by law and in accordance with the established procedure.⁴

The above-mentioned rights and freedoms in Georgia are also protected by international human rights legal acts, which are a law directly applicable in our country.⁵

¹ Constitution of Georgia, 1st Paragraphs of Article 16, Article 17 and Article 22.

² Ibid, 2nd Paragraphs of Article 16.

³ Ibid, 5th Paragraphs of Article 17.

⁴ Ibid, 2nd Paragraphs of Article 22.

⁵ Ibid, 2nd Paragraphs of Article 4.

Article 18 of the International Covenant on Civil and Political Rights provides for freedom of thought, conscience and religion,⁶ Article 19 for freedom of expression,⁷ and Article 22 for the right to association.⁸ Under certain conditions, these rights are subject to restriction.⁹

The first paragraph of Article 9 of the European Convention on Human Rights provides for freedom of thought, conscience and religion.¹⁰ Freedom of expression, assembly and association shall be guaranteed by the first paragraphs of Articles 10 and 11 of the Convention.¹¹

2nd Paragraphs of Articles 2, 9, 10 and 11 of the European Convention set out the mandatory conditions for the restriction of the above-mentioned rights - the so-called "Three-sided test". In particular, the restriction: a) must be provided by law; b) must serve the purposes of public safety interests, public order, health or morals, or the protection of the rights and freedoms of others; c) must be necessary in a democratic society.¹²

Standards of the European Court of Human Rights

The European Court of Human Rights has a very rich practice of restricting freedom of thought, conscience and religion, freedom of expression and freedom of association. We will highlight the decisions of the Strasbourg Court that deal with the issue under consideration - the restriction of these freedoms in the context of fight against terrorism and other violent crimes.

It should be noted at the outset that when it comes to the threat of terrorism, as well as any threat to human life, under Article 2 of the Convention, the State has a positive obligation to take preventive measures to neutralize such a threat.¹³

In one of the cases against Turkey, the European Court considered the complaint of an ethnic Kurdish poet, who was found guilty by Turkish courts of committing a crime under Turkish law on the prevention of terrorism. According to the accusation, in his poetic writings the poet was propagandizing against the integrity of the appellant state.¹⁴ The European Court agreed with the Turkish side that the tone of the poems was very aggressive towards the Turkish authorities and in some places could be considered as of inciting hatred, rebellion and violence.¹⁵ According to the standards of the European Court, the scope of the state is wide when there is incitement to violence.¹⁶ Nevertheless, in the present case, the European Court held that the criminal measures taken by the Turkish state against the poet were not "necessary in a democratic society" and, therefore, violated freedom of expression under Article 10 of the Convention.¹⁷

On the other hand, the European Court declared inadmissible Denis Leroy's complaint against France, alleging a violation of Articles 9 and 10 of the Convention by the State. A French court

⁶ International Covenant on Civil and Political Rights, 1st Paragraph of Article 18.

⁷ Ibid, 1st and 2nd Paragraphs of Article 19.

⁸ Ibid, 1st Paragraph of Article 22.

⁹ Ibid, 3rd Paragraph of Article 18, 3rd Paragraph of Article 19 and 2nd Paragraph of Article 22.

¹⁰ The Convention for the Protection of Human Rights and Fundamental Freedoms, 1st Paragraph of Article 9.

¹¹ Ibid, 1st Paragraphs of Article 10 and Article 11.

¹² Ibid, 2nd Paragraphs of Articles 9, 10 and 11.

¹³ Tagayeva and Others v. Russia, no. [26562/07](#), 13 April 2017, § 482.

¹⁴ Ibid, § 10.

¹⁵ Ibid, § 49.

¹⁶ Ibid, § 50.

¹⁷ Ibid, § 54.

had convicted Leroy, a cartoonist by profession, of glorifying terrorism.¹⁸ On the day of the terrorist attacks in the United States on September 11, 2001, Leroy published a graphic sketch in one of the Basque weekly editions depicting skyscrapers collapsing in the wake of a plane crash, with the words: "We have all dreamt about it ... Hamas did it."¹⁹ French courts found the applicant and the editor of the magazine guilty of apology of terrorism.²⁰ The ECHR has shared the assessment of French courts that the inscription on the disputed sketch was an idealization of the 9/11 terrorist attacks, prompting potential readers, even indirectly, to commit the crime.²¹ According to the ECHR, the author used the terms in the inscription to provide moral support to the perpetrators of terrorist acts and to justify the violence against thousands of innocent people.²² The court also rejected the applicant's allegation that his expression had no concrete consequences. The European Court agreed with the explanations of the French courts that the composition of the provocative call does not need a concrete result in order for this crime to be considered committed.²³

In this context, the European Court made interesting explanations in another Turkish case, in which the applicants were held accountable for their involvement in the religious-memorial ritual of three slain members of the Kurdistan Workers' Party, which is considered a terrorist organization in Turkey. According to Turkish courts, the applicants' participation in such a ritual was propaganda of a terrorist organization, as the ceremony was held at the political party office, where the symbols of the Kurdistan Workers' Party and photos of its members were displayed.²⁴ The European Court has ruled that certain forms of identification with a terrorist organization and, in particular, the apology of such an organization can be seen as support for terrorism, incitement to violence and hatred. In addition, glorifying the perpetrators of terrorist acts, blaming the victims of the attack, calling for financial support from terrorist organizations, and other such actions may be qualified as support for terrorism and violence.²⁵ Another issue is that in the present case the Turkish side failed to prove that it was the applicants who were responsible for selecting the venue for the ceremony or displaying the party symbols.²⁶

In certain cases where the exercise of freedom of belief, expression or association, or any other right provided for in the Convention is in the nature of an abuse of these rights and freedoms, the European Court shall consider not whether the interference of the state in these rights and freedoms was justified, but whether an act itself, which the applicant alleges as freedom of belief, expression or association, actually is protected by the Convention. In such a case, the European Court shall examine whether the conditions laid down in Article 17 of the Convention ("prohibition of abuse of rights") apply.²⁷

In one case in which a Danish television channel was banned from broadcasting and fined for promoting the terrorist activities of the Kurdistan Workers' Party, which has been declared a

¹⁸ *Leroy c. France*, n° 36109/03, 2 octobre 2008, § 3.

¹⁹ *Ibid*, § 6.

²⁰ *Ibid*, §§ 11-12, 14 and 17.

²¹ *Ibid*, § 42.

²² *Ibid*, § 43.

²³ *Ibid*, § 43.

²⁴ *Güler et Uğur c. Turquie*, nos 31706/10 et 33088/10, 2 décembre 2014, §§ 9-13.

²⁵ *Ibid*, § 52.

²⁶ *Ibid*, §§ 55-57.

²⁷ The Convention for the Protection of Human Rights and Fundamental Freedoms, Article 17.

terrorist organization in Turkey, the European Court ruled that the channel did not comply with Article 17 of the Convention, and it shall not be protected by Article 10, because this channel regularly aired one-sided coverage of the organization's activities, which included calls for participation in hostilities and guerrilla groups, while the guerrilla fighters themselves were portrayed as heroes. According to the European Court, this was propaganda of a terrorist organization and not just an expression of sympathy for certain ideas.²⁸

In another case in which Hizb ut-Tahrir sued Germany for banning its activities in the country, the European Court also ruled that the appeal was inadmissible - the organization could not benefit from Articles 9, 10, 11 and 14 of the Convention, because the materials published by it - newspaper articles, booklets, etc. - contained constant statements that the state of Israel has no right to exist, that this state should be abolished and its population should be destroyed. The Court said such statements run counter to the values of the Convention, including the principles of the peaceful settlement of international conflicts and of the supremacy of human life.²⁹

The content that includes Holocaust denial, neo-Nazi ideology, identification of all Muslims with terrorism, accusing Jews of all kinds of evil in Russia,³⁰ also xenophobia, racism and hate speech³¹ is inconsistent with the principles of the Convention and therefore cannot benefit from the observance of the Convention. According to the European Court, Sharia law is also inconsistent with the values of the Convention and the fundamental principles of democracy, as it does not find a place for political pluralism and constant evolution of civil liberties.³² Articles containing open calls for armed civil conflict, the seizure of state power by the proletariat and its domination over other classes, and the gradual secession of the territory of the country, are considered inappropriate for the fundamental values of the Convention.³³

International legal acts against terrorism

Terrorism was recognized as a global threat in the early 1990s. However, work at the UN level was carried out before within the so-called "sectoral approach".³⁴

The beginning of the 1990s was marked by the escalation of terrorist acts in various regions of the world. From this period, the creation of international networks of terrorist and other criminal groups began, which were funded by transnational crimes such as drug, human and arms trafficking, money laundering, distribution of nuclear and other dangerous materials, etc. Such a development required a new stage in international cooperation. On December 9, 1999, the UN

²⁸ Roj TV A/S v. Denmark, no. [24683/14](#), 17 April 2018, §§ 46-48.

²⁹ Hizb Ut-Tahrir and other v. Germany, no. [31098/08](#), 12 June 2012, §§ 73-74, 78, 86.

³⁰ Delfi AS v. Estonia, no. [64569/09](#), [GC], 16 June 2015. § 136.

³¹ R.L. v. Switzerland, no. [43874/98](#), 25 November 2003; Molnar c. la Roumanie, no. [16637/06](#), 23 octobre 2012.

³² Refah Partisi (the Welfare Party) and Others v. Turkey [GC], nos. [41340/98](#), [41342/98](#), [41343/98](#) and [41344/98](#), 13 February 2003, § 123.

³³ Romanov v. Ukraine, no. [63782/11](#), 16 July 2020, §§ 163, 166.

³⁴ Rohan Perera, Declaration on Measures to Eliminate International Terrorism, 1994, and the 1996 Supplementary Declaration thereto, https://legal.un.org/avl/pdf/ha/dot/dot_e.pdf.

General Assembly adopted the International Convention for the Suppression of the Financing of Terrorism.³⁵

One of the most dangerous forms of terrorism is nuclear terrorism. The International Treaty on the Non-Proliferation of Nuclear Weapons was signed in 1968, and in 1970 entered into force.³⁶ On April 13, 2005, the International Convention for the Suppression of Acts of Nuclear Terrorism was adopted.³⁷

However, the activation of the UN was not limited to the adoption of conventions. Activities against terrorism have been intensified by the UN Security Council, the body with the primary responsibility for maintaining international peace and security.³⁸ On October 19, 1999, the UN Security Council adopted Resolution No.1269 (1999), the first paragraph of the preamble of which stated that the rise of international terrorist acts endangers not only the well-being of individuals but also the peace and security of all states.³⁹

The terrorist acts of September 11, 2001 made the need to intensify the fight against terrorism even more apparent. Just on September 12, 2001, i.e. the next day after the attacks in the United States, the UN Security Council adopted Resolution No.1368 (2001).⁴⁰ On September 28, 2001, the UN Security Council adopted Resolution No.1373 (2001), which became one of the leading guidelines for the fight against terrorism in the modern world.⁴¹ In the preamble to Resolution No.1624 (2005) of 14 September 2005, the Security Council resolutely condemned the incitement of terrorist acts, as well as the attempt to justify or glorify (apology) them, which may encourage further acts of terrorism.⁴²

At the regional level in Europe, the Council of Europe Convention on Terrorism of 2005⁴³ and the Additional Protocol to the Council of Europe Convention on Prevention of Terrorism of 2015 are of particular importance.⁴⁴

The Convention for the Prevention of Terrorism criminalized “public provocation to commit a terrorist offense”, which was defined as the deliberate dissemination of a terrorist message to the public when such an act, regardless of whether it contains direct advocacy of a terrorist offense, constitutes the threat of committing one or more such crimes.⁴⁵ The Convention specifically stipulates that it is not necessary for a terrorist act to actually be committed in order to constitute a crime under the Convention.⁴⁶

³⁵ International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations in Resolution 54/109 of 9 December 1999.

³⁶ Treaty on the Non-Proliferation of Nuclear Weapons.

³⁷ International Convention for the Suppression of Acts of Nuclear Terrorism, Article 1(1).

³⁸ UN Charter, Article 24(1).

³⁹ UNSC Resolution 1269 (1999).

⁴⁰ UNSC Resolution 1368 (2001), 12 September 2001, §§ 3-4.

⁴¹ UNSC Resolution 1373 (2001), 28 September 2001.

⁴² UNSC Resolution 1624 (2005), 14 September 2005, 5th paragraph of the preamble.

⁴³ Council of Europe Convention on the Prevention of Terrorism, ETS No. 196.

⁴⁴ Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, ETS No. 217.

⁴⁵ Council of Europe Convention on the Prevention of Terrorism, Article 5(1).

⁴⁶ Council of Europe Convention on the Prevention of Terrorism, Article 8.

It should be noted that Georgia has signed but not ratified the Convention on the Prevention of Terrorism,⁴⁷ while its Additional Protocol has neither been signed nor, obviously, ratified.⁴⁸

UN Security Council sanctions against Iran and measures taken by the United States

On December 23, 2006, the UN Security Council adopted Resolution No.1737 (2006) imposing sanctions on Iran over its nuclear program.⁴⁹ The Security Council added to the resolution a list of individuals and organizations linked to Iran's nuclear and/or ballistic missile programs.⁵⁰

On March 24, 2007, the Security Council adopted another resolution No.1747 (2007) on Iran's nuclear program, endorsing its decisions contained in resolution No.1737 (2006).⁵¹ Among other things, this resolution is notable for the fact that in its Annex No.1, it names additional individuals and organizations that have been sanctioned by the UN Security Council for their links to Iran's nuclear and ballistic missile programs. Among such persons is Brigadier General Qasem Soleimani.⁵²

Enforcement mechanism of UN Security Council sanctions in Georgia

According to Article 40 of the Law of Georgia on Facilitation of Prevention of Money Laundering and Financing of Terrorism, a Government Commission has been established in Georgia, which is the main contact body for providing information to the UN Sanctions Committee and enforcing sanctions.⁵³

The composition and rules of operation of the Commission are defined by the Resolution No.487 of the Government of Georgia of 26 December 2011 on the Establishment of a Governmental Commission on the Implementation of United Nations Security Council Resolutions and the Statute approved by the same resolution. According to the resolution, the Chairman of the Government Commission is the Minister of Justice of Georgia,⁵⁴ while the Department of International Public Law of the Ministry of Justice provides technical support to the Commission.⁵⁵

Conclusion and recommendations

All of the above makes it clear that the fight against terrorism and other violent crimes is the duty of all states not only in the context of domestic law and national interests, but also in the interests of international law and global peace and security. Our country also faces terrorist challenges.

⁴⁷ <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/196?module=signatures-by-treaty&treaty=196> .

⁴⁸ <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/196?module=signatures-by-treaty&treaty=217> .

⁴⁹ UNSC Resolution 1737 (2006), 23 December 2006.

⁵⁰ UNSC Resolution 1737 (2006), 23 December 2006, Annex.

⁵¹ UNSC Resolution 1747 (2007), 24 March 2007.

⁵² UNSC Resolution 1747 (2007), 24 March 2007, Annex 1, 'Iranian Revolutionary Guard Corps ker persons', No. 6: Brigadier General Qasem Soleimani (Commander of Qods force).

⁵³ Law of Georgia on Facilitation of Money Laundering and Prevention of Financing of Terrorism, Article 40, Paragraph 1.

⁵⁴ Resolution No.487 of the Government of Georgia of 21 December 2011 on the Establishment of a Governmental Commission on the Implementation of United Nations Security Council Resolutions, Article 1.

⁵⁵ Paragraph 3 of Article 2 of the Statute of the Government Commission on the Implementation of the Resolutions of the United Nations Security Council.

Consequently, it is extremely important to improve national legislation and bring it more in line with international legal norms in order to minimize space for the forces posing a threat to the stability, security and territorial integrity of the country. What can be done in such a situation?

1. First of all, the legislation needs to be perfected. We already have legislation that provides a strong legal basis for combating terrorism and other similar challenges. But there is a room for its further improvement. In particular:

(A) The Council of Europe Convention on the Prevention of Terrorism shall be ratified without further delay, and its Additional Protocol shall also be signed and ratified;

(B) In view of the above, as a result of the measures referred to in subparagraph (A) or even without such, the following amendments shall be made to Article 330(1) of the Criminal Code of Georgia:

- The words "UN Security Council sanctioned person" should be added to the first part of the statement in order to extend the crime to all UN Security Council sanctioned individuals who may not be specifically exposed to terrorism but who, by virtue of the sanction itself, endanger international peace and security;
- The words "praise or worship" should also be added to the disposition of the first part, which includes an apology for terrorism, both in secular expressions and in religious rituals;
- The words "directly or indirectly" should also be added to the disposition of the first part, in order to ensure criminal liability to individuals who glorify, worship, support and call for terrorism, including expressions in which the idea is indirectly conveyed, which currently allows the author to avoid criminal liability;
- The words "if it poses a clear, direct and substantial threat to the conduct of terrorist activities" shall be removed in Parts 1 and 2, as terrorism itself poses an imminent threat to society. Terrorists and their apologists should not be allowed to glorify terrorism, to worship terrorists, or to publicly call for terrorism, while at the same time escaping responsibility on the pretext that the threat was not "obvious, direct and substantial"; Such a crime should be considered committed regardless of the outcome;
- Relevant changes should be reflected in the title of the respective article.

(C) In addition, an article should be added to the Criminal Code criminalizing travelling abroad for the purpose of terrorism, funding travelling abroad for the purpose of terrorism, and organizing or otherwise facilitating travelling abroad for the purpose of terrorism as provided for in the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism.

2. The work of the Government Commission for Relations with the UN Sanctions Committee should be intensified, both in terms of intensification of activities and publicity. The website of the Ministry of Justice of Georgia contains only general information about the above-

mentioned commission.⁵⁶ No information on the activities of the Commission has been published. The public should be aware of the decisions of the commission in order to make sure that both the commission and its agencies fulfill their duties under the law properly.

⁵⁶ <https://justice.gov.ge/Ministry/Department/305>.