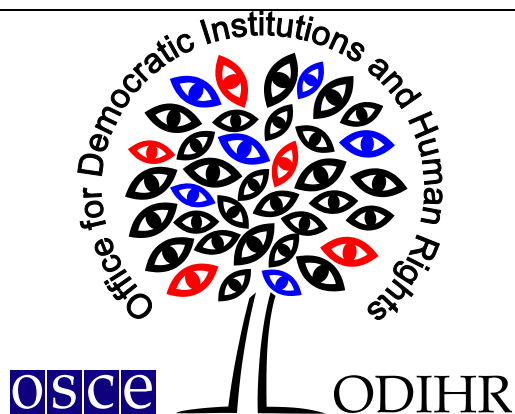


Warsaw, 30 December 2019

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**OPINION**

**ON THE LAW ON COUNTERING EXTREMIST**

**ACTIVITY OF THE**

**REPUBLIC OF MOLDOVA**

**based on an unofficial English translation of the legislation  
provided by the Ministry of Justice of the Republic of Moldova**

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*This Opinion is also available in Romanian.  
However, the English version remains the only official version of the document.*

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## **I. INTRODUCTION**

1. *On 30 October 2018, the Ministry of Justice of the Republic of Moldova sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for a legal review of various pieces of legislation and draft amendments, including relevant sections of the 2003 Law on Countering Extremist Activity (hereinafter the “Law”), to ensure greater compliance with international standards on countering racism, xenophobia, anti-Semitism and intolerance.*
2. *On 6 November 2018, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal analysis of these legal provisions.*
3. *On 20 February 2019, the Ministry of Justice of the Republic of Moldova specified that the 2003 Law on Countering Extremist Activity should be reviewed in its entirety to assess its compliance with OSCE human dimension commitments and international human rights standards.*
4. *This Opinion was prepared in response to the above request.*

## **II. SCOPE OF REVIEW**

5. The scope of this Opinion covers only the Law, as last amended in June 2016, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework on countering so-called “extremism” in Moldova.
6. The Opinion raises key issues and provides indications of areas of concern. In the interests of conciseness, the Opinion focuses more on those provisions that require improvements rather than on the positive aspects of the Law. The ensuing recommendations are based on international standards and practices and will also seek to highlight, as appropriate, good practices from other OSCE participating States.
7. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women<sup>1</sup> (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion analyses the potentially different impact of the Law on women and men.<sup>2</sup>
8. This Opinion is based on an unofficial English translation of the Law provided by the Ministry of Justice of the Republic of Moldova, which is attached to this document as an Annex. Errors from translation may result. This Opinion is also available in Romanian. However, the English version of the Opinion remains the only official version of the document.
9. In view of the above, ODIHR would like to make mention that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of Moldova that ODIHR may wish to make in the future.

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<sup>1</sup> *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Moldova acceded to this Convention on 1 July 1994.

<sup>2</sup> See par 32 of the [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004).

### III. EXECUTIVE SUMMARY

10. Countering violent extremism and radicalization that lead to terrorism (hereinafter “VERLT”) is a strategic focus area for the OSCE in the fight against terrorism.<sup>3</sup> At the same time, ODIHR and other international bodies have consistently raised concerns pertaining to “*extremism*”/“*extremist*” as a legal concept and the vagueness of such a term, particularly in the context of criminal legislation.<sup>4</sup> In that perspective, the 2003 Law on Countering Extremism, on account of its broad and imprecise wording, particularly insofar as the “basic notions” defined by the Law – such as the definitions of “*extremism*”, “*extremist activity*”, “*extremist organizations*” or “*extremist materials*” – are concerned, gives too wide discretion to those tasked with its implementation, thus potentially leading to arbitrary application/interpretation. More generally, it is questionable whether specific legislation on countering so-called “*extremist activity*” should be retained at all, given the inherent difficulty of providing a legal definition of the term “*extremism*”, the serious human rights concerns arising from vague and overbroad legislative definitions and the substantial overlap of such legislation with other provisions, especially criminal legislation.
11. If the Law is nevertheless retained, the legal drafters should substantially revise it to ensure that it fully complies with fundamental human rights principles. The activities that are prohibited by the Law for being “*extremist*” and leading to preventive and corrective measures do not all contain an element of violence and are not all defined with sufficient precision to allow an individual to regulate his or her conduct or the activities of an organization so as to avoid the application of such measures. The legal drafters should therefore remove vague and overbroad wording and generally substantially revise the definitions and provisions of the Law to ensure that they comply with the principle of legal certainty. Also, many of the measures that are envisioned in the Law to counter so-called “*extremism*” and the related punitive measures (suspension or ban of associations/organizations, closure of mass-media institutions, termination of assemblies) impose severe restrictions on the rights to freedom of expression, freedom of association, freedom of peaceful assembly and on the freedom of the media, and should therefore be reconsidered.
12. More specifically, and in addition to what was stated above, ODIHR makes the following specific recommendations:
  - A. to reconsider whether the Law should be retained at all and if it is, to substantially revise its definitions and other substantive provisions to ensure that it complies with

<sup>3</sup> OSCE, Permanent Council Decision No. 1063, [Consolidated Framework for the Fight against Terrorism](#).

<sup>4</sup> See e.g., ODIHR, [Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework](#), September 2018, pp. 21 and 31; and OSCE, [Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#) (2014), Sub-Section 2.3.1. See also ODIHR, [Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism” in the Republic of Kazakhstan](#) (6 October 2016), paras 21-24; ODIHR, [Comments on the Draft Laws of the Republic of Kazakhstan “On counteractive measures against extremist activities” and “On amendments to several legislative acts with regard to counteractive measures against extremist activities”](#) (11 February 2005), paras 2-3 and 11-15; ODIHR, [Comments on the Draft Laws “On counteractive measures against extremist activities” and “On amendments to several legislative acts with regard to counteractive measures against extremist activities” in Kazakhstan](#) (20 October 2004), paras 5-7; and ODIHR, [Preliminary Comments on the Draft Laws “On counteractive measures against extremist activities” and “On amendments to several legislative acts with regard to counteractive measures against extremist activities” in Kazakhstan](#) (23 June 2004), paras 4.1. to 4.3. See also UN Special Rapporteur on freedom of religion or belief, [2014 Report on the Mission to the Republic of Kazakhstan](#), A/HRC/28/66/Add.1, 23 December 2014, paras 44-51; ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), paras 100, 205 and 213; Venice Commission, [Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation](#), CDL-AD(2012)016-e, 15-16 June 2012, par 30; UN Human Rights Committee (CCPR), [General Comment no. 34 on Article 19: Freedoms of opinion and expression](#), 12 September 2011, par 46, where the CCPR has stressed the need to ensure that offences such as “*extremist activity*” are clearly defined to ensure that they do not lead to disproportionate interference with freedom of expression.

the principle of legal certainty, while safeguarding legitimate activities, especially the exercise of human rights and fundamental freedoms; [pars 22-24 and 38]

- B. to change the title of the Law to refer to “*violent* extremist activity” and amend the definition of “*extremism*” in Article 1 of the Law as well as all other definitions in the Law containing references to “*extremism*”/“*extremist*” and its manifestation as follows:
- focus solely on *violent* actions or behaviours; [par 24]
  - remove the reference to vague terms such as “*radical*”, “*degrading national dignity*” and “*propaganda of the exceptional nature [...] of citizens on the basis of their race, nationality etc.*”; [pars 23, 29 and 30]
  - specify that the wording “*inciting to carrying out acts of violence*” should address expression that is intended to incite imminent violence, is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence; [par 32]
  - reconsider the reference to the symbols and emblems of so-called “*other extremist organizations*”; [par 35]
- C. to ensure that relevant legislation on registration of public associations and other (non-governmental) organizations reflect the presumption of lawfulness of the objectives and activities of an association, and only withdraw or refuse a registration when they clearly conflict with international human rights standards and not on other grounds; [pars 49-50]
- D. to substantially amend Article 6 of the Law with a view: to ensure that a suspension or ban of an organization are measures of last resort that may only be imposed in case of activities that constitute criminal offences, defined in compliance with international standards; to provide or refer to the procedures available in order to guarantee the effective enjoyment of the right to appeal the liquidation or suspension decision before an independent and impartial tribunal; to ensure prompt and effective judicial review both on facts and laws and do not automatically pronounce the liquidation/suspension, while respecting all due process guarantees; [pars 52]
- E. to delete Articles 10 (6) and 12 (3) of the Law concerning the liability of the founders and managers of such associations, [pars 49 and 54-58] while providing for a greater range of possible sanctions; [par 53]
- F. to remove Article 7 on the liability of mass-media institutions or, if the provision is retained, to replace the power to ban or suspend an organization only in cases of criminal offence (that is compliant with international standards) by a scheme of more proportionate sanction; [pars 64]
- G. to specify in Article 12 (1) which exact laws are applicable and which behaviours will trigger prescribed kind of liability; [par 71] and
- H. to delete Article 13 of the Law, especially the provisions pertaining to the liability of organizers and to the termination of assemblies, in its entirety. [pars 74-82]

***Additional Recommendations, highlighted in bold, are also included in the text of the opinion.***

## IV. ANALYSIS AND RECOMMENDATIONS

### 1. Relevant International Standards and OSCE Commitments

13. The term “*extremism*” is not an agreed upon legal concept and can have multiple meanings. It may describe ideas that are diametrically opposed to a society’s core values, and/or it can refer to the “*ruthless methods*” by which political ideas are realised, namely by “*show[ing] disregard for the life, liberty, and human rights of others*”.<sup>5</sup>
14. There is no consensus at the international level on a normative definition of “*extremism*”.<sup>6</sup> It is noted that in the context of the Shanghai Cooperation Organization, to which only a limited number of states are members,<sup>7</sup> two conventions contain some definitions of “*extremism*”: while the [Shanghai Convention on Combating Terrorism, Separatism, and Extremism \(2001\)](#),<sup>8</sup> requires violence as an essential element of the definition,<sup>9</sup> the 2017 [Convention to Combat Extremism](#) no longer necessarily requires violent acts but refers more broadly to “*violent and other unconstitutional actions*” when defining so-called “*extremism*”.<sup>10</sup>
15. ODIHR and other international bodies have previously raised concerns pertaining to “*extremism*”/“*extremist*” as a legal concept and the vagueness of such a term, particularly in the context of criminal legislation.<sup>11</sup> Indeed, it has been reiterated by the UN Special Rapporteur and the ECtHR that freedom of expression protects all forms of ideas, information or opinions, including those that “*offend, shock or disturb*” the State or any part of the population,<sup>12</sup> even “*deeply offensive*” speech.<sup>13</sup> While the right to freedom of expression may in very limited cases be restricted, any such restrictions must strictly conform with the requirements of international human rights standards.<sup>14</sup> Simply holding or peacefully expressing views that are considered “*radical*” or “*extreme*” under any

<sup>5</sup> See e.g., OSCE Chairperson in Office’s Special Representative on Countering Radicalisation and Violent Extremism, [Report on Countering Violent Extremism and Radicalisation that Lead to Terrorism: Ideas, Recommendations, and Good Practices from the OSCE Region](#), 29 September 2017, p. 15, referring to Roger Scruton, *The Palgrave Macmillan Dictionary of Political Thought*, 3rd ed. (Basingstoke: Palgrave Macmillan, 2007).

<sup>6</sup> See e.g., UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereinafter “UN Special Rapporteur on counter-terrorism”), [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, paras 11 and 21, noting that “[d]espite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an ‘elusive concept’”.

<sup>7</sup> See <<http://infoshos.ru/en/>>. Moldova is not a member of the Shanghai Cooperation Organization.

<sup>8</sup> See <<http://www.cfr.org/counterterrorism/shanghai-convention-combating-terrorism-separatism-extremism/p25184>>. Moldova is not a State Party to this Convention.

<sup>9</sup> Article 1 of the Shanghai Convention on Combating Terrorism, Separatism, and Extremism defines “*extremism*” as “*an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties*”.

<sup>10</sup> Shanghai Cooperation Organization, [Convention of the Shanghai Cooperation Organization to Combat Extremism](#) (Astana, 9 June 2017); Moldova is not a State Party to this Convention. Article 2 par 1 (2) of the Convention defines “*extremism*” as: “*ideology and practices aimed at resolving political, social, racial, national and religious conflicts through violent and other unconstitutional actions*”.

<sup>11</sup> See the references mentioned in *op. cit.* footnote 4.

<sup>12</sup> UN Special Rapporteur on counter-terrorism, [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, par 38. See also e.g., European Court of Human Rights, [Handyside v. United Kingdom](#) (Application no. 5493/72, judgment of 7 December 1976); and [Bodrožić v. Serbia](#) (Application no. 32550/05, judgment of 23 June 2009), paras 46 and 56.

<sup>13</sup> See *op. cit.* footnote 4, paras 11 and 38 (2011 CCPR General Comment no. 34).

<sup>14</sup> See e.g., Article 19 (3) of the UN International Covenant on Civil and Political Rights (ICCPR), which states that the right to freedom of expression may “be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals”. See also Article 20 of the ICCPR as well as Article 4 of the UN International Convention on the Elimination of All Forms of Racial Discrimination, Article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, and UN [Security Council resolution 1624\(2005\)](#). Under Article 20 of the ICCPR, States are required to have legal prohibitions for certain forms of expression (“any propaganda for war” and “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”, see below). However, as the UN Human Rights Committee has noted, every case in which the State restricts freedom of expression, including those covered by Article 20, must be in strict conformity with the requirements of Article 19 ICCPR, see *op. cit.* footnote 4, paras 50-52 (2011 CCPR General Comment no. 34).

definition should never be prohibited or criminalized, unless such views are linked to violence or criminal activity.<sup>15</sup> Certain forms of expression would only be seen as threatening national security when the following three criteria are met cumulatively: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.<sup>16</sup> Consequently, Moldova is under no international obligation to take measures to counter extremism *per se* and, as a result, all such measures cannot trace their legitimacy back to international law. On the contrary, the possibility to peacefully pursue a political, or any other, agenda – even where different from the objectives of the government and considered to be “extreme” – must be protected.<sup>17</sup>

16. Generally speaking, actions or behaviours sometimes defined as “*extremist*” do not necessarily, in themselves, constitute a threat to society if they are not connected to violence or other criminal acts, such as incitement to hatred, inciting or condoning criminal activity and/or violence, as legally defined in compliance with international human rights law.<sup>18</sup> At the same time, actions involving violence, as a rule, are generally covered by criminal legislation. Article 20 par 2 of the International Covenant on Civil and Political Rights (ICCPR)<sup>19</sup> states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Moreover, pursuant to Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination<sup>20</sup> (hereinafter “CERD”),<sup>21</sup> “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin” shall be considered offences punishable by law. However, for forms of expression to constitute incitement, the requirements referred to in par 15 *supra* need to be met.

<sup>15</sup> *Op. cit.* footnote 12, par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism). See also ODIHR [Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#) (2014), page 42, which states that “[s]imply holding views or beliefs that are considered radical or extreme, as well as their peaceful expression, should not be considered crimes”.

<sup>16</sup> See UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information (hereinafter “the International Mandate-holders on Freedom of Expression”), [2016 Joint Declaration on Freedom of Expression and Countering Violent Extremism](#), 3 May 2016, par 2 (d); and Principle 6 of the [Johannesburg Principles on Freedom of Expression and National Security](#) (1995), adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg and endorsed by the UN Special Rapporteur on freedom of opinion and expression. See also the UN Secretary General, [Report on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism](#), A/63/337, 28 August 2008, par 62.

<sup>17</sup> *Op. cit.* footnote 12, par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism).

<sup>18</sup> *ibid.* par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism). See also *op. cit.* footnote 15, pages 42-43 (2014 ODIHR Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism).

<sup>19</sup> UN International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly by Resolution 2200A (XXI) of 16 December 1966. The Republic of Moldova acceded to the ICCPR on 26 January 1993.

<sup>20</sup> UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD), adopted by the UN General Assembly by Resolution 2106 (XX) of 21 December 1965. The Republic of Moldova acceded to this Convention on 26 January 1993.

<sup>21</sup> While recognizing that the term “*race*” is a purely social construct that has no basis as a scientific concept, for the purpose of the opinion, the term “*race*” or “*racial*” may be used in reference to international instruments using such a term to ensure that all discriminatory actions based on a person’s (perceived or actual) alleged “*race*”, ancestry, ethnicity, colour or nationality are covered - while generally preferring the use of alternative terms such as “*ancestry*” or “*national or ethnic origin*” (see e.g., ODIHR, [Hate Crime Laws: A Practical Guide](#) (2009) pages 41-42; see also the footnote under the first paragraph of Council of Europe’s Commission on Intolerance and Racism (ECRI), [General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination](#), adopted on 13 December 2002, where it is stated that “[s]ince all human beings belong to the same species, ECRI rejects theories based on the existence of different ‘*rac*es’. However, in this Recommendation ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to ‘*another race*’ are not excluded from the protection provided for by the legislation”). Except when part of a citation from a legal instrument or case law, the word “*race*” or “*racial*” is placed in quotation marks in this Opinion to indicate that underlying theories based on the alleged existence of different “*rac*es” are not accepted.

17. In this context, bias-motivated crimes are often, as in the Moldovan legislative framework, seen as one of the manifestations of “*extremism*”. Numerous OSCE commitments also concern OSCE participating States’ fight against discrimination and “*hate crimes*”,<sup>22</sup> notably [Ministerial Council Decision No. 9/09 on Combating Hate Crimes](#) which calls upon OSCE participating States to “[e]nact, where appropriate, specific, tailored legislation to combat hate crimes, providing for effective penalties that take into account the gravity of such crimes”.<sup>23</sup> The [ODIHR Practical Guide on Hate Crime Laws](#) (2009)<sup>24</sup> which, although not binding, may also serve as a useful resource in the context of legislative reform pertaining to “hate crimes” and related issues.<sup>25</sup> It is crucial to note that despite the similarities, the concepts of bias-motivated crimes and extremism differ fundamentally in the values they seek to protect and in methods used – extremism focuses on ideologies of the perpetrators, whereas the hate crime model focuses on prejudicial motivation, which poses practical challenges when addressing hate crimes as part of counter-extremism efforts.
18. In relation to incitement to hatred, violence and discrimination in the Criminal Code of Moldova, ODIHR hereby refers to the recommendations made in its [2019 Opinion on the Draft Law “Hate Crimes and Holocaust Denial – Amending and Supplementing Certain Acts” of the Republic of Moldova](#),<sup>26</sup> which should be read together with the present Opinion.
19. At the OSCE level, with the 2008 Ministerial Council Decision on “Further Promoting the OSCE’s Action in Countering Terrorism”, the OSCE participating States committed to countering VERLT.<sup>27</sup> These commitments have been reaffirmed, in particular, in the [2012 OSCE Consolidated Framework for the Fight Against Terrorism](#) and the [2015 Ministerial Declaration on “Preventing and Countering Violent Extremism And Radicalization that lead to Terrorism”](#).<sup>28</sup>
20. In its current wording, the 2003 Law on Countering Extremist Activity could especially affect the exercise of the rights to freedom of thought, conscience and religion or belief, freedom of expression (Article 18 of the ICCPR and Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>29</sup> (ECHR) (Article 19 of the ICCPR and Article 10 ECHR)), freedom of association (Article 22 of the ICCPR and Article 11 of the ECHR) and freedom of peaceful assembly (Article 21 of the ICCPR and Article 11 of the ECHR). Any restriction must thus meet the three-part test i.e., be “prescribed by law”, pursue a “legitimate aim” provided by international human rights law, be “necessary in a democratic society”, and as such respond to a pressing social need, and be non-discriminatory.

<sup>22</sup> See e.g., [OSCE Ministerial Council Decision No. 4/03 of 2 December 2003](#), par 8; [OSCE Permanent Council Decision No. 621 on Tolerance and the Fight against Discrimination, Xenophobia and Discrimination](#), 29 July 2004, par 1; and [Annex to Decision No. 3/03 on the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area](#), OSCE MC.DEC/3/03 of 2 December 2003, par 9, which recommends the “[i]mposition of heavier sentences for racially motivated crimes by both private individuals and public officials”.

<sup>23</sup> See [OSCE Ministerial Council Decision No. 9/09 on Combating Hate Crimes](#), 2 December 2009, par 9.

<sup>24</sup> *Op. cit.* footnote 21 (2009 ODIHR Practical Guide on Hate Crime Laws).

<sup>25</sup> *Op. cit.* footnote 23, Preamble (OSCE Ministerial Council Decision No. 9/09 on Combating Hate Crimes). See also *ibid.* (2009 ODIHR Practical Guide on Hate Crime Laws).

<sup>26</sup> ODIHR, [Opinion on the Draft Law “Hate Crimes and Holocaust Denial – Amending and Supplementing Certain Acts” of the Republic of Moldova](#) (published on 26 April 2019).

<sup>27</sup> OSCE Ministerial Council, [“Further Promoting the OSCE’s Action in Countering Terrorism”](#), MC.DEC/10/08, 5 December 2008.

<sup>28</sup> See OSCE, [Permanent Council Decision No. 1063](#), PC.DEC/1063, 7 December 2012; and OSCE, [Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that lead to Terrorism](#), MC.DOC/4/15, 4 December 2015.

<sup>29</sup> The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “ECHR”), signed on 4 November 1950, entered into force on 3 September 1953. Moldova ratified the ECHR on 12 September 1997 and signed, on 4 November 2000, the Protocol No. 12 to the ECHR which extends the prohibition of discrimination in relation to any right set by law but has not yet ratified it.



21. All of these rights are also part of the OSCE commitments, which participating States, including Moldova, committed to adhere to. Of particular importance are paragraphs 9 and 10 of the 1990 Copenhagen Document.<sup>30</sup>

## 2. Legal Definitions of “Extremism” and Other Terms

22. As elaborated below, it is questionable whether specific legislation on countering so-called “*extremist activity*” should be retained at all, given the inherent difficulty of providing a normative definition of the term “*extremism*”, the serious human rights concerns arising from vague and overbroad legislative definitions and the substantial overlap of such legislation with other provisions, especially criminal law. **It is therefore recommended to reconsider whether the Law should be retained at all. If it is, the legal drafters should substantially revise its definitions and other substantive provisions to ensure that it fully complies with fundamental human rights principles.**
23. Article 1 of the Law provides the definitions of various terms contained in the Law, most of which are too broad, lack clarity and may open the way to different interpretations. “Extremism” is defined as “*the attitude or doctrine of certain political movements, which seek to impose their programmes, based on extreme theories, ideas or opinions, by use of violent or radical means*”. What is encompassed by the reference to “*extreme theories, ideas or opinions*” is not clear and may be interpreted in various manners. It is reiterated that freedom of expression protects all forms of ideas, information or opinions, including those that are considered “*radical*” or “*extreme*” under any definition, unless such views are linked to violence or criminal activity (see pars 15-16 *supra*). While the definition refers to violence, the formulation “*by violent or radical means*” suggests that the definition may also encompass non-violent “*radical*” activity. Furthermore, it is not clear what is meant by “*radical means*”. In fact, the current wording of “*violent or radical means*” in the Law suggests that less than violent means are sufficient to fall under “*extremism*” and **the reference to “radical” should therefore be removed from the Law.**
24. Additionally, the definition entails further very vague and unclear language such as “*certain political movements*”, which seek to impose their programmes “*based on extreme theories*”. The latter is also a circular definition, providing no clarity for individuals who seek to behave in a law-abiding manner. According to Article 10 par 2 of the ECHR, the exercise of the freedoms outlined in paragraph 1 may be subject to such formalities, conditions, restrictions or penalties as are “*prescribed by law*”. The European Court of Human Rights (ECtHR) specifies in its case-law that the law must be adequately accessible, clear and foreseeable, i.e. formulated with sufficient precision to enable the individual to regulate his or her conduct accordingly.<sup>31</sup> There must also be “*a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by the Convention*”.<sup>32</sup> In light of this, **if the Law is retained, it is**

<sup>30</sup> OSCE/CSCE, [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#); the relevant parts of paragraphs 9 and 10 state: “*everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.*” (9.1); “*the right of association will be guaranteed*” (9.3); “*In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information*” (10.1).

<sup>31</sup> ECtHR, [The Sunday Times v. the United Kingdom \(no. 1\)](#) (Application no. 6538/74, judgment of 26 April 1979), par 49; and [Shvydka v. Ukraine](#) (Application no. 17888/12, judgment of 30 October 2014), par 39.

<sup>32</sup> ECtHR, [Malone v. the United Kingdom](#) (Application no. 8691/79, judgment of 2 August 1984), par 67.

**recommended that the definition of “extremism” in Article 1 of the Law and all other definitions in the Law containing references to “extremism”/“extremist” and its manifestation, as well as the title of the Law, be amended to focus solely on violent action or behaviour.**

25. Article 1 (a) to (d) of the Law provides a broad list of the kind of behaviours that constitute “extremist activity”. According to Article 1 (a) of the Law, “*extremist activity*” includes “*activity of a public or religious organization, of a mass-media institution or of another legal entity or a natural person aimed towards planning, organising, preparing or carrying out of actions*” aiming at a variety of conducts covering, for example, “*undermining the security of the Republic of Moldova*”, “*usurping [...] the power of official positions*”, “*degrading of national dignity*”, “*propaganda of the exceptional nature, superiority or inferiority of citizens on the basis of their race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social status*”, “*provoking racial, national or religious hatred, and also social hatred by [...] inciting to carry out acts of violence*”.
26. First, the definition of “*extremist activity*” refers to a number of behaviours which may overlap to a certain extent with the definition of specific criminal offences, especially Articles 341 (Calls to Overthrow or Change by Violence of the Constitutional Order of the Republic of Moldova), 339 (Usurpation of State Power), 283 (Banditry), 340 (Armed Rebellion), 278 (Terrorist Act), 346 (Intentional Actions aimed at Enforcing National, Ethnic, Racial or Religious Dissension, Differentiation or Disunity), 285 (Mass Disorders) and 287 (Hooliganism), among others. It is not clear why the legal drafters have chosen to create an umbrella term to address behaviours which already constitute criminal offences and are as such already prohibited. Moreover, this creates a confusing legal situation where several sets of rules that are overlapping to a certain extent are applicable to the same conduct, which may give rise to questions as to whether the interferences are reasonably foreseeable.<sup>33</sup>
27. Further, as it is, some of the behaviours or activities that may fall under the label “*extremist activity*” as defined in the Law cannot be objectively identified, and are not defined as precisely as required to prevent abuses of power and avoid arbitrary decisions. For instance, the broad reference to “*undermining the security of the Republic of Moldova*” does not specify the behaviours that are contemplated, although some of them may allegedly already be addressed in criminal legislation. Such wording could cover a broad range of potential actions or threats to national security that are merely abstract or hypothetical, contrary to what is required at the international level to justify restrictive measures.<sup>34</sup> The mention of “*usurping [...] the power of official positions*” is broader than what is provided by Article 339 of the Criminal Code on the usurpation of state power and is not clearly defined. Overall, such a vague and overly broad wording is not sufficiently clear and foreseeable to comply with the principle of legal certainty, whereby legal provisions should be clear and precise so that individuals may ascertain unequivocally which rights and obligations apply to them and regulate their conduct accordingly.<sup>35</sup> Additionally, the definitions of the prohibited behaviours or actions

<sup>33</sup> See, for the purpose of comparison, ECtHR, *Rekvényi v. Hungary* [GC] (Application no. 25390/94, judgment of 20 May 1999), par 34.

<sup>34</sup> See e.g., *op. cit.* footnote 4, page 57 (2018 ODIHR *Guidelines on “Foreign Terrorist Fighters”*).

<sup>35</sup> See e.g., ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova* (Application no. 45701/99, judgment of 13 December 2001), par 109, where the Court held that the term “prescribed by law” not only requires that the said measures shall have some basis in domestic law, but also refers to “the quality of the law in question, which must be sufficiently accessible and foreseeable as to its effects, that is formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct”.

- generally focus on the ends to be achieved by the activity in question, rather than on the activity itself.
28. Further, some of the listed actions or behaviours do not systematically refer to violence or other criminal acts, defined in compliance with international human rights standards, as an essential element (see pars 15-16 *supra*), especially the reference to “*degrading of national dignity*” and the “*propaganda of the exceptional nature, superiority or inferiority of citizens on the basis of [various grounds]*”.
29. Also, the reference to activities aiming at “*degrading of national dignity*” in Article 1 (a) is unclear and could potentially be used to silence a broad range of opinions and activities that may otherwise be legitimate and protected by the right to freedom of expression.<sup>36</sup> As mentioned in par 25 *supra*, restrictions on Article 10 par 2 of ECHR must be “*prescribed by law*”, which means that they must be adequately accessible and foreseeable. As the Human Rights Committee stressed, “[a] law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”.<sup>37</sup> Indeed, the phrase “*degrading national dignity*” is so broad as to be almost wholly subjective in its scope. If the Law is retained, **it is therefore recommended that “degrading national dignity” be deleted from the definition of “extremist activity”.**
30. Moreover, it is equally unclear what “*propaganda of the exceptional nature, superiority or inferiority of citizens on the basis of their race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation wealth or social status*” mentioned under Article 1 (a) last indent of the Law would cover in terms of prohibited expression. Article 4 (a) of the CERD states that “*all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin*” shall be considered offences punishable by law. At the same time, Article 1 (a) goes much further and could potentially prohibit various kinds of expression or political discourse whether or not they are linked to violence or incitement to violence or to discrimination as defined in pars 15-16 *supra*. For example, Article 1 (a) of the Law could potentially proscribe religious teaching or proselytising activity aimed at convincing others of the superiority of one’s religion or beliefs to attempt to persuade them to convert, which is protected by the right to freedom to manifest one’s religion or belief.<sup>38</sup> **The reference to “propaganda of the exceptional nature [...] of citizens on the basis of [the specified grounds]” is unclear and should therefore be deleted altogether.**
31. Further, it is not clear what the relationship between “*provoking racial, national etc. hatred*” and “*propaganda of superiority etc. on the grounds of...*” is. **It seems that these formulations could potentially cover, at least partly, similar types of expression, even though both list different protected grounds, which should be clarified and streamlined in the Law.**
32. Article 1 (a) refers to “*provoking racial, national or religious hatred, and also social hatred, by carrying out acts of violence or inciting to carrying out acts of violence*”. While such a provision mentions acts of violence, it also refers as an alternative to “*inciting to carrying out acts of violence*”. As already indicated in pars 15-16 *supra* and in previous

<sup>36</sup> See ODIHR, [Opinion on Draft Amendments to the Moldovan Criminal and Contravention Codes relating to Bias-motivated Offences](#) (15 March 2016), par 68. See also *op. cit.* footnote 4, pars 11 and 38 (2011 CCPR General Comment no. 34).

<sup>37</sup> See *op. cit.* footnote 4, par 25 (2011 CCPR General Comment no. 34).

<sup>38</sup> See e.g., ECtHR, [Larissis and others v. Greece](#) (Application no. 140/1996/759/958-960, judgment of 24 February 1998), par 45.

opinions, in order to prohibit such types of discourse, the definition should expressly require an element of intentional violence or criminal activity;<sup>39</sup> otherwise, these categories of actions are too broad to be outlawed. At the international level, to avoid undue limitations to freedom of expression, incitement would only be seen as threatening national security when the following three criteria are met cumulatively: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.<sup>40</sup> Moreover, the severity threshold to amount to incitement is quite high, as emphasized in the [Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence](#), which lists six factors to determine whether the expression is serious enough to warrant restrictive legal measures. These six factors are: context, speaker (including the individual's or organization's standing), intent, content or form, extent of the speech, and likelihood of harm occurring (including imminence).<sup>41</sup> Otherwise, simply peacefully expressing views that are considered "radical" or "extreme" under any definition should never be prohibited or criminalized, unless associated with such violence or criminal activity, itself defined in compliance with international human rights standards.<sup>42</sup> Accordingly, **the legal drafters should specify that the wording "inciting to carrying out acts of violence" should address expression that is intended to incite imminent violence, is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence** (see also comments regarding the prohibition of the use of certain emblems or symbols in pars 34-35 *infra*).

33. Moreover, ODIHR notes that deliberate actions aimed at inciting national, racial, or religious hostility, discord, or differentiation, are already criminalized under Article 346 of the Moldovan Criminal Code. In that respect, amendments to this article are being considered to avoid duplication and contradiction, and to bring in in compliance with international human rights standards and ODIHR refers to the recommendations made in its [2019 Opinion on the Draft Law "Hate Crimes and Holocaust Denial – Amending and Supplementing Certain Acts" of the Republic of Moldova](#)<sup>43</sup> (Sub-Section IV.5). If the Law is retained, **its Article 1 (a) should be brought fully in line with international human**

<sup>39</sup> See the comments made on the 2003 Law by the Venice Commission in its [Joint Opinion of the Venice Commission, the Directorate of information society and action against crime and of the Directorate of Human Rights \(DHR\) of the Directorate General of Human Rights and Rule of Law \(DGI\) of the Council of Europe on the Draft Law n° 281 amending and completing Moldovan Legislation on the so-called "Mandate of security"](#), adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017), par 57. See also *op. cit.* footnote 36, par 68 (2016 ODIHR [Opinion on Draft Amendments to the Moldovan Criminal and Contravention Codes relating to Bias-motivated Offences](#)); and *op. cit.* footnote 4, pars 35-36 (2012 Venice Commission's Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation).

<sup>40</sup> See *op. cit.*, footnote 16, par 2 (d) (2016 International Mandate-holders on Freedom of Expression Joint Declaration on Freedom of Expression and Countering Violent Extremism); and Principle 6 of the [Johannesburg Principles on Freedom of Expression and National Security](#) (1995). See also *op. cit.* footnote 16, par 62 (2008 UN Secretary General's [Report on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism](#)).

<sup>41</sup> See the [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#), in the Report of the United Nations High Commissioner for Human Rights on the prohibition of incitement to national, racial or religious hatred", United Nations General Assembly, 11 January 2013, Appendix, par 29. This six-part threshold test has been endorsed by various independent experts and human rights monitoring bodies, e.g., in the [Report of the United Nations Special Rapporteur on freedom of religion or belief \(Tackling manifestations of collective religious hatred\)](#), United Nations General Assembly, UN Doc. A/HRC/25/58, 26 December 2013, par 58; and in Committee on the Elimination of Racial Discrimination, [General Recommendation 35: Combating Racist Hate Speech](#), UN Doc. CERD/C/GC/35, 12-30 August 2013, par 15.

<sup>42</sup> *Op. cit.* footnote 12, par 38 (2015 Thematic Report of the UN Special Rapporteur on counter-terrorism). See also *op. cit.* footnote 15, page 42 (2014 ODIHR's Guidebook on Preventing Terrorism and Countering VERT). It is worth noting that, with respect to the freedom of thought can never be punished or limited, in accordance with the principle *cogitationis poenam nemo patitur*, i.e., nobody endures punishment for thought.

<sup>43</sup> Available at <<https://www.legislationline.org/odihr-documents/page/legal-reviews/country/14/Moldova/show>>.

**rights standards, in accordance with related recommendations in the 2019 ODIHR Opinion.**

34. Article 1 (b) of the Law also specifies that “*extremist activity*” encompasses the “*display, manufacturing, dissemination and possession with the goal of public show of fascist, national-socialist (Nazi) emblems or symbols and of symbols of other extremist organizations*” and their stylisation. The definition of such fascist and national-socialist (Nazi) emblems and symbols is further specified by expressly naming certain specific movements/organizations, which is welcome and in line with previous recommendations made by ODIHR.<sup>44</sup> It is also welcome that Article 1 (b) of the Law includes an exception clause in cases where these symbols/emblems are used for scientific/educational purpose or during theatre/movie performance or activities of historical re-enactment. This is an important exception in order not to stifle public debate and guarantee independent academic inquiry.<sup>45</sup>
35. At the same time, Article 1 (b) of the Law also refers to the symbols and emblems of “*other extremist organizations*”, which does not circumscribe clearly the scope of the prohibition. Articles 19 of the ICCPR and 10 of the ECHR not only protect the substance of the ideas and information expressed, but also the form in which they are conveyed.<sup>46</sup> Thus, the scope of Article 10 ECHR includes nonverbal communication of ideas and impressions, notably by wearing or display of symbols<sup>47</sup> or by symbolic acts.<sup>48</sup> Generally, States are not prevented from banning, or even criminalizing, the use of certain symbols, providing that the ban is provided by a law that is accessible and formulated with sufficient precision, clearly specifying which symbols are banned, while ensuring that the ban responds to “*a pressing social need*” and is proportionate to the legitimate aims pursued.<sup>49</sup> In that respect, the expression “*emblems or symbols of other extremist organizations*” is overbroad and is not sufficiently clear and foreseeable to comply with the principle of legal certainty (see par 25 *supra*). **The reference to the symbols and emblems of so-called “other extremist organizations” should be reconsidered, or at a minimum, revised and circumscribed more strictly and clearly, e.g., by expressly stating the purpose of the movements/systems that are prohibited (such as advocacy for the violent seizure of power, the suppression of human rights and freedoms or incitement to hostility or violence against certain groups) or by expressly naming certain specific movements/organizations, which fulfil such criteria.**<sup>50</sup>
36. According to Article 1 (c) of the Law, the “*financing or any other type of contribution*” to carrying out so-called “*extremist activities*” also constitutes an “*extremist activity*”. The provision further details what is meant by “*contribution*”,<sup>51</sup> which covers a broad range of support. A parallel may be drawn here to the financing of terrorism and relevant

<sup>44</sup> See [Joint Amicus Curiae Brief for the Constitutional Court of Moldova on the Compatibility with European Standards of Law No 192 of 12 July 2012 on the Prohibition of the Use of Symbols of the Totalitarian Communist Regime and of the Promotion of Totalitarian Ideologies of the Republic of Moldova](#) (11 March 2013), pars 33-34, 60-63 and 74-78 (hereinafter “2013 ODIHR-Venice Commission Joint Amicus Curiae”).

<sup>45</sup> See ODIHR-Venice Commission, [Joint Interim Opinion on the Law of Ukraine “On the condemnation of the communist and national socialist \(Nazi\) regimes, and prohibition of propaganda of their symbols”](#) (21 December 2015), par 92.

<sup>46</sup> ECtHR, [Oberschlick v. Austria \(no. 1\)](#) (Application no. 11662/85, judgment of 23 May 1991), par 57.

<sup>47</sup> ECtHR, [Vajnai v. Hungary](#) (Application no. 33629/06, judgment of 8 July 2008), par 49, where the ECtHR found a violation of Article 10 ECHR in a case where the applicant wore a five-pointed red star; see also ECtHR, [Fáber v. Hungary](#) (Application no. 40721/08, judgment of 24 July 2012), par 36. See also Human Rights Committee, [Shin v. Republic of Korea](#), 926/2000 (2004), par 7.2.

<sup>48</sup> ECtHR, [Shvydka v. Ukraine](#) (Application no. 17888/12, judgment of 30 October 2014).

<sup>49</sup> See *op. cit.* footnote 44, par 124 (2013 Joint Amicus Curiae – Moldova); and *op. cit.* footnote 45, pars 116-117 (2015 Joint Opinion on Ukraine).

<sup>50</sup> See, for instance, the examples of the Czech Republic and Germany, *op. cit.* footnote 44, pars 33-34, 60-63 and 74-78 (2013 ODIHR-Venice Commission Joint Amicus Curiae).

<sup>51</sup> i.e., financial assistance, providing real estate, training, printing and technical-material resources, telephony, fax or other means of communication and technical-material support as well as providing support through mass-media/broadcasting institutions.

standards.<sup>52</sup> In that respect, the issue of intent becomes very relevant in regard of “*extremist financing*”. It is essential that the law make the prohibition or offense applicable only when committed wilfully, along the line of what is stated in the [International Convention for the Suppression of the Financing of Terrorism](#)<sup>53</sup> with regards to “terrorism financing”.<sup>54</sup> Moreover, considering a generally lesser degree of clarity inherent in the very notion of “*extremism*”, it is recommended that the legislation apply an even higher standard with regard to so-called “*extremist financing*,” i.e. make the applicability of the prohibition or offense contingent on the knowledge of the alleged offender that the funds will be used for “*extremist activities*” or by an organization listed as “*extremist*”.<sup>55</sup> **Should the definition of “*extremist activity*” be retained as is, the provision dealing with the financing of so-called “*extremist activities*” should specify that the prohibition only applies when committed wilfully, and, ideally, with the knowledge of the alleged offender that the funds will be used for “*extremist activities*” of a violent nature or by “*extremist organizations*” applying or instigating violence.**

37. The definitions of “*extremist organization*” and “*extremist materials*” in Article 1, since they cross-refer to “*extremist activities*”, also suffer from the same lack of clarity,<sup>56</sup> which could lead to too wide discretion in its interpretation and application. It is important to recall that “[w]here definitions are lacking the necessary precision, a law such as the *Extremism Law* dealing with very sensitive rights and carrying potential dangers to individuals and NGOs can be interpreted in harmful ways”.<sup>57</sup> Moreover, the definition of “*extremist materials*” also covers documents or information which have the purpose of “*justifying the practice of committing war crimes or other crimes aimed at total or partial extermination of any ethnic, social, racial, national or religious group*”. As such, this provision overlaps with the new draft Article 135<sup>2</sup> Criminal Code on propaganda of genocide or of crimes against humanity that is currently being discussed (see [2019 ODIHR Opinion](#)).<sup>58</sup>
38. Given the concerns raised regarding the inherent difficulty of providing a normative definition of the term “*extremism*”, and as already set out earlier, **it is questionable whether such legislation should be retained at all. If it is, the legal drafters should substantially revise the definitions to ensure that they comply with the principle of legal certainty.** This is all the more important since other provisions of the Law specify that carrying out so-called “*extremist*” activities will trigger criminal liability (see e.g.,

<sup>52</sup> Financial Action Task Force on Money Laundering (FATF), [FATF Recommendations 2012 - International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation](#), as last updated in October 2018.

<sup>53</sup> UN, [International Convention for the Suppression of the Financing of Terrorism](#), adopted on 9 December 1999. The Republic of Moldova ratified this Convention on 10 October 2002. Article 2 states: “Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and **wilfully**, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such 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.” [Emphasis added.]

<sup>54</sup> See also e.g., UNODC, [Handbook on Gender Dimensions of criminal Justice Responses to Terrorism](#) (2019), pages 41-42, which notes that a broad definition of the *mens rea* of support offences may in practice have a potentially discriminatory impact on women.

<sup>55</sup> See ODIHR, [Comments on the Draft Laws of the Republic of Kazakhstan “On counteractive measures against extremist activities” and “On amendments to several legislative acts with regard to counteractive measures against extremist activities”](#), 11 February 2005, par 49.

<sup>56</sup> The Venice Commission reached the same conclusion when reviewing the 2003 Law in *op. cit.* footnote 39, pars 56-58 (2017 [Joint Opinion on the Draft Law n° 281 amending and completing Moldovan Legislation on the so-called “Mandate of security”](#)).

<sup>57</sup> See *op. cit.* footnote 4, par 75 (2012 Venice Commission’s, Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation).

<sup>58</sup> *Op. cit.* footnote 26, pars 45-50 (2019 ODIHR Opinion on Moldova).

Article 10 (6) and Article 12 (1)).<sup>59</sup> In that respect, it is acknowledged by various international human rights bodies that “*all criminal restrictions on content [of speech] – including those relating to hate speech, national security, public order and terrorism/extremism – should conform strictly to international standards, including by [...] not employing vague or unduly broad terms [...]*”.<sup>60</sup> Although there is no criminal offence of “extremism” *per se* in the Criminal Code of Moldova, should the provisions of the 2003 Law entail criminal liability, the existing formulation poses problems with respect to the principles enshrined in Article 7 of the ECHR, in particular those specifying that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*).<sup>61</sup> This principle implies that criminal offences and the relevant penalties must be clearly defined by law, meaning that an individual, either by himself/herself or with the assistance of a legal counsel, should know from the wording of the relevant provision which acts and omissions will make him/her criminally liable and what penalty he or she will face as a consequence.<sup>62</sup> If the conducts set out in Article 1 of the 2003 Law are intended to trigger criminal liability, then its wording would appear to be too imprecise to satisfy the conditions set out by Article 7 of the ECHR.

39. It should be emphasized in this respect that the ECtHR has acknowledged the “*impossibility of attaining absolute precision in the framing of laws*” “*even in cases in which the interference with the applicants’ right to freedom of expression had taken the form of a criminal ‘penalty’*”, noting that in this field, the situation changes according to the prevailing views of society.<sup>63</sup> Further, when drafting legislation in this field, the factors considered by the ECtHR when assessing whether a given conviction for calls to violence and “*hate speech*” constitutes an interference with the exercise of the right to freedom of expression in specific cases could provide valuable guidance. These include the following: whether the statements were made against a tense political or social background; whether such statements, being fairly construed and seen in their immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance; the manner in which the statements were made; their capacity – direct or indirect – to lead to harmful consequences; and the proportionality of sanctions.<sup>64</sup>

### **3. Fundamental Principles and Directions of Counteracting “Extremist Activity”**

40. Article 2 of the Law lists the principles guiding the fight against extremism, which refer among others to the principles of legality and transparency (Article 2 (b) and (c)), respect and protection of human rights and freedoms (Article 2 (a)) and the focus on prevention (Article 2 (e)).
41. It is welcome that these principles are explicitly included in the Law. However, it is questionable whether the reference to these principles will be effective given that the Law

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<sup>59</sup> Article 10 (6) of the Law states that persons responsible for establishing, managing or organizing a so-called “extremist organization”, or persons adhering or participating as members of such organizations shall be held criminally responsible. Article 12 (1) further states that individuals may be held criminally liable for carrying out extremist activities.

<sup>60</sup> See International Mandate-Holders on Freedom of Expression, [2015 Joint Declaration on Freedom of Expression and Responses to Conflict Situations](#) (4 May 2015), par 3 (a) and (b).

<sup>61</sup> See e.g., ECtHR, [Kokkinakis v. Greece](#) (Application no. 14307/88, judgment of 25 May 1993), par 52.

<sup>62</sup> See e.g., ECtHR, [Rohlena v. the Czech Republic](#) [GC] (Application no. 59552/08, judgment of 27 January 2015), pars 78-79.

<sup>63</sup> ECtHR, [Perinçek v. Switzerland](#) [GC] (Application no. 27510/08, judgment of 15 October 2015), par 133.

<sup>64</sup> *ibid.* pars 204-208 (2015 ECtHR [Perinçek v. Switzerland](#)). See also, regarding the content of books deemed “extremist” and banned as a consequence, ECtHR, [Ibragim Ibragimov and Others v. Russia](#) (Applications nos. 1413/08 and 28621/11, judgment of 28 August 2018), especially pars 98-99 and 115-124; and regarding so-called “extremist” statements, ECtHR, [Stomakhin v. Russia](#) (Application no. 52273/07, judgment of 9 May 2018).

in itself fails to comply with the principle of legal certainty (see Sub-Section 2 *supra*) and several of its provisions have the potential to encroach on human rights and fundamental freedoms, especially the rights to freedom of thought, conscience and religion or belief, freedom of expression, freedom of association and freedom of peaceful assembly (see Sub-Sections 4 to 8 *infra*).

42. While it is not uncommon for human rights and security to be conceptualised in an inverse relation to each other – i.e. in order to increase security one must reduce human rights – this assumption has been consistently challenged. UN Secretary Generals from Kofi Annan<sup>65</sup> to Ban Ki-Moon have repeatedly stressed that human rights and security are complementary, rather than competing goals.<sup>66</sup> This has likewise been recognized by the UN General Assembly with the adoption of the UN Global Counter-Terrorism Strategy in 2006.<sup>67</sup> This understanding is also enshrined in the terrorism-related commitments of the OSCE and is the very essence of the OSCE’s comprehensive concept of security. Indeed, human rights violations can create conditions that perpetuate and increase, rather than reduce the causes of violent extremism and the related phenomenon of terrorism.<sup>68</sup> For example, the UN Human Rights Council has noted that “*while there can be no excuse or justification for violent extremism, abuses and violations of human rights may be among the elements that contribute to creating an environment in which people, especially youth, are vulnerable to radicalization that leads to violent extremism and recruitment by violent extremists and terrorists*”.<sup>69</sup>
43. This risk is particularly acute as broadly defined laws to counter terrorism or violent extremism, which confer excessive discretionary power on decision-makers, may have a discriminatory impact, result in the creation of “*suspect communities*” and therefore have deleterious impact on relations between these communities and state institutions, thus fuelling rather than reducing terrorism and violent extremism.<sup>70</sup>
44. That stated, while human rights are a recognised principle in Article 2 of the Law, Article 2 (e) refers to “*priority of measures aimed at preventing extremist activity*”. This may be misconstrued to suggest that Article 2 prioritizes security over human rights, thus reflecting the arguably mistaken inverse relation between security and liberty. In light of the aforementioned remarks concerning the mutually reinforcing relationship between security and human rights, **it is recommended that Article 2 (e) of the Law be deleted.** As “*ensuring the security of the Republic of Moldova*” is still a fundamental principle recognised by Article 2 (d), it is assumed that this will not adversely affect the legitimate aim of protecting the security of the state and its people.
45. Article 2 (g) refers to the “*inevitability of punishment of extremist activity*”, which seems to run counter to the objective of prevention. Moreover, the fact that the punishment is inevitable would somewhat seem to leave no discretion to the judge/court to decide alternative, not necessarily criminal, sanctions and thus has the potential to impinge upon

<sup>65</sup> UN Secretary- General, Kofi Annan, [Statement to the Security Council](#) on 18 January 2002.

<sup>66</sup> UN Human Rights Council, [Report on Best Practices and Lessons Learned on How Protecting and Promoting Human Rights Contribute to Preventing and Countering Violent Extremism](#), A/HRC/33/29, 21 July 2016, par 2.

<sup>67</sup> See UN General Assembly Resolution 60/288 ([The United Nations Global Counter-Terrorism Strategy](#)), A/RES/60/288, 20 September 2006, Preamble; and e.g., the Preamble to [UN Security Council Resolution 2178 \(2014\)](#).

<sup>68</sup> *ibid.* The *UN Global Counter Terrorism Strategy* comprises four pillars, which include measures to address the conditions conducive to the spread of terrorism (pillar 1) and measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism (pillar 2).

<sup>69</sup> UN Human Rights Council, [Resolution](#) adopted on 2 October 2015, A/HRC.RES/30/15, Preamble.

<sup>70</sup> See e.g., P. Hillyard, *Suspect Community: People’s Experiences of the Prevention of Terrorism Acts in Britain* (Pluto Press, 1993). P. A. Thomas, “*Emergency and Anti-Terrorist Powers 9/11: USA and UK*” (2003) 26 *Fordham Int’l LJ* 1193; Christina Pantazis and Simon Pemberton, “*From the “Old” to the “New” Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation*” (2009) 49(5) *British Journal of Criminology*, p. 646.



international standards on judicial independence.<sup>71</sup> It may also affect the possibility of other, non-punitive means by which extremism can be prevented or countered for example, through measures effected by public bodies when discharging their duties under Article 4 of the Law. **It is therefore recommended that Article 2 (g) be deleted.**

46. Articles 2 and 3 of the Law put emphasis on preventive measures. However, these are not defined elsewhere in the Law apart from a vague reference to “*educational and propaganda activities*” in Article 5 of the Law. In that respect, numerous publications by the OSCE and ODIHR provide guidance as to the possible preventive measures which have proven to be effective when addressing the conditions conducive to violent extremism.<sup>72</sup> It is recommended **to clarify the Law in that respect, while ensuring that such preventive measures are compliant with international human rights standards.**

#### **4. Freedom of Association**

47. Article 6 (1) of the Law prohibits the establishment of public or religious organizations or any other organizations whose purpose and actions are to carry out so-called “*extremist activities*”. Given the vague terminology used to define “*extremist activities*”, this leaves overly broad discretion on the side of the authority in registering associations and potential for arbitrary refusal. This is all the more worrying since such prohibition covers any organization, potentially ranging from religious associations to political parties.
48. The inclusion of a reference to “*religious organization*” in Article 6 of the Law raises questions as to the compliance with Article 9 of the ECHR and Article 18 of the ICCPR on the right to freedom of religion or belief. A distinction must be drawn between holding a belief and manifesting it; while the former is an absolute and unconditional right,<sup>73</sup> a state can lawfully interfere with the manifestation of this belief in public.<sup>74</sup> Article 6 of the Law focuses on manifestation and is therefore not *prima facie* in breach of Article 9 of the ECHR and Article 18 of the ICCPR. At the same time, by singling out “*religious organizations*” in relation to “*extremism*”, this runs counter to the principle underlined by OSCE participating States that “*terrorism and violent extremism cannot and should not be associated with any race, ethnicity, nationality or religion*”.<sup>75</sup> In any case, concerns remain as to whether the offence outlined in Article 6 of the Law can be considered to fulfil all the elements that the requirement “*prescribed by law*” entails.
49. Moreover, as noted in the [ODIHR-Venice Commission Guidelines on Freedom of Association](#), the legal drafters must bear in mind that the rights to freedom of expression and to freedom of association entitle associations to pursue objectives or conduct activities that are not always congruent with the opinions and beliefs of the majority or

<sup>71</sup> See e.g., UN Special Rapporteur on the independence of judges and lawyers, [Mission to South Africa: Report of the Special Rapporteur on the independence of judges and lawyers](#) (25 January 2001), E/CN.4/2001/65/Add.2, page 4. See also *op. cit.* footnote 4, page 39 (2018 ODIHR Guidelines on “Foreign Terrorist Fighters”).

<sup>72</sup> For instance, creating economic, educational and employment opportunities, promoting equality and non-discrimination, developing community policing approaches, partnering with civil society, engaging and empowering women, youth, communities and representatives from minorities or vulnerable groups in policy-making and implementation, etc. See OSCE, [Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism](#), MC.DOC/4/15, 4 December 2015; *op. cit.* footnote 4 (2018 ODIHR Guidelines on “Foreign Terrorist Fighters”); OSCE, [Understanding the Role of Gender in Preventing and Countering Violent Extremism and Radicalization That Lead to Terrorism Good Practices for Law Enforcement](#) (2019); OSCE, [The Role of Civil Society in Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Guidebook for South-Eastern Europe](#) (2018), Sub-Section 5.2; ODIHR, [Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#) (2014); ODIHR, [Final Report on Women and Terrorist Radicalization](#) (2013).

<sup>73</sup> See ECtHR, [Ivanova v. Bulgaria](#) (Application no. 52435/99, judgment of 12 July 2007), par 79.

<sup>74</sup> See ECtHR, [Eweida and Others v. United Kingdom](#) (Application no. 48420/10, judgment of 15 January 2013), par 80.

<sup>75</sup> See e.g., OSCE, [Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism](#), MC.DOC/4/15, 4 December 2015.

run precisely counter to them,<sup>76</sup> including those that may be considered as “*extreme*”. This includes imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution<sup>77</sup> or legislation by, for example, asserting a minority consciousness,<sup>78</sup> calling for regional autonomy, or even requesting secession of part of the country’s territory.<sup>79</sup> In any event, registration authorities need to avoid drawing hasty and negative conclusions about the proposed objectives of an association.<sup>80</sup> There should be a presumption in favour of the lawfulness of the objectives, goals and activities of an association.<sup>81</sup> This means that, until proven otherwise, the state should presume that a given association has been established in a lawful and adequate manner, and that its objectives and activities are lawful. Any action against an association and/or its members may only be taken where the articles of its founding instrument (including charters, statutes and by-laws) are unambiguously unlawful, such as when their aims and objectives clearly conflict with international human rights standards.<sup>82</sup> If the registration authorities are authorized to reject the application, then a clear legal basis should be provided in the legislation, with an explicit and limited number of justifiable grounds compatible with international human rights standards,<sup>83</sup> which is not the case here with the reference to broadly defined “*extremist activities*”.

50. In light of the foregoing, Article 6 (1) should not be used to refuse the registration of entities which are critical of the government, promote objectives that run counter to the opinions and beliefs of the majority of the population or otherwise pursue legitimate activities. **To avoid abuse, it is therefore recommended to delete Article 6 (1) of the Law, and ensure that the relevant legislation on registration of public associations and other (non-governmental) organizations reflect the presumption of lawfulness of the objectives and activities of an association, and only withdraw or refuse a registration when they clearly conflict with international human rights standards.**<sup>84</sup>
51. Pursuant to Article 6 (2) and (3) of the Law, should an organization carry out so-called “*extremist activities*”, the Prosecutor General or other prosecutors, the Ministry of Justice

<sup>76</sup> ODIHR and Venice Commission, *Guidelines on Freedom of Association* (2015), par 182. See also e.g., ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2010), par 72, where it is stated that “*a political party’s application for registration should not be denied on the basis of a party constitution that espouses ideas, which are unpopular or offensive*”; and ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of 13 February 2003).

<sup>77</sup> *ibid.* (2003 ECtHR *Refah Partisi (the Welfare Party) and Others v. Turkey*).

<sup>78</sup> ECtHR, *Sidiropoulos and others v. Greece* (Application no. 26695/95, judgement of 10 July 1998), pars 44–45.

<sup>79</sup> ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (Applications nos. 29221/95 and 29225/95, judgment of 2 October 2001), par 97, which states that “*the fact that a group of persons calls for autonomy or even requests secession of part of the country’s territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country’s territorial integrity and national security. [...] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means.*”

<sup>80</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey* [GC] (Application no. 19392/92, judgment of 30 January 1998). See also *op. cit.* footnote 15, page 42 (2014 ODIHR Guidebook on Preventing Terrorism and Countering VERT).

<sup>81</sup> *Op. cit.* footnote 76, par 68 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association). See also ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2010), par 43, which states that “*States should enact and implement legislation respecting the general presumption in favor of political party formation, functioning, and protection from dissolution*”.

<sup>82</sup> *ibid.* pars 68, 88 and 181 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

<sup>83</sup> *ibid.* par 154 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

<sup>84</sup> This could refer, for instance, to the following, providing that they are defined in accordance with international standards: the “*direct and public incitement to commit genocide*” (as per Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide, to which Uzbekistan acceded on 9 September 1999), the “*propaganda of war*” and the “*advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*” (Article 20 (1) and (2) of the ICCPR, as interpreted under international law), and “*all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as [...] incitement to [acts of violence] against any race or group of persons of another colour or ethnic origin*” (Article 4 (a) of the ICERD), providing that this (1) is intended to incite imminent violence; and (2) is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence; the “*incitement to terrorism or acts of terrorism*” meaning that the offence must (a) expressly refer to the intent to communicate a message and intent that this message incite the commission of a terrorist act; and (b) be limited to the incitement to conduct that is truly terrorist in nature; and (c) include an actual (objective) risk that the act incited will be committed.

or the State Service for the Religious Denominations should issue a warning/notice, which can be appealed in a court (Article 6 (4)). Failure to eliminate the said violation may ultimately lead to the ban or suspension of the organization pronounced by a court, upon the application by the same bodies. As stated in the [Guidelines on Freedom of Association](#) and [on Political Party Regulation](#), any prohibition or dissolution of an association shall always be a measure of last resort,<sup>85</sup> such as when an association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law, and shall never be used to address minor infractions.<sup>86</sup> In any case, given the vague notion of “*extremist activities*”, the ground for banning or suspending an organization fails to satisfy the requirement of legality of restrictions to the right to freedom of association.

52. Furthermore, the wording of Article 6 (5) of the Law seems to imply that a suspension or a ban of an organization *shall* be pronounced by a court, when a warning/notice has not been appealed or the court did not declare such a warning/notice as illegal on appeal and new behaviours constituting a so-called “*extremist activity*” happen within the next 12 months. This seems to leave no discretion to the court but to pronounce the ban or suspension of the targeted organization. Thus, if an organization attempts to act in good faith in response to the warning and tries to remedy the identified shortcoming though unsuccessfully, it may automatically be banned or suspended on the basis of the second warning. In principle, all restrictions must be based on the particular circumstances of the case, and no blanket restrictions shall be applied.<sup>87</sup> Moreover, the court should be able to review the circumstances of the case and evidence and not be bound by the request submitted by the prosecutors or other public authority to pronounce the ban or suspension of the organization simply because of the re-occurrence of new facts of so-called “*extremism*”. Unless an error of translation, this otherwise would seem to run counter to the principle of the independence of the judiciary. The ban of the organization should occur following a public hearing providing the possibility for the organization or individual concerned to be aware of and challenge the evidence brought against it or him/her.<sup>88</sup> This does not seem to be clearly provided for in the Law. Accordingly, **the Law should be amended in order to ensure that a suspension or ban are measures of last resort that may only be imposed in case of activities that constitute criminal offences, which are themselves compliant with international standards. Moreover, the Law should provide or refer to the procedures available in order to guarantee the effective enjoyment of the right to appeal the warning/notice issued, and the liquidation or suspension decision before an independent and impartial tribunal, which should promptly review both facts and laws and not automatically pronounce the liquidation/suspension while respecting all due process guarantees, as enshrined in Articles 14 of the ICCPR and 6 of the ECHR.**<sup>89</sup>
53. Additionally, while the duration of the suspension is variable (for a term of maximum one year) and can be used as a means to ensure proportionality, such a measure would nevertheless result in the suspension of all activities of the organization in question, including legitimate activity. This may be particularly problematic in the case of religious organizations. It is therefore **recommended to introduce the possibility of lesser, escalating sanctions (such as fines) into the law and clarify that the suspension and**

<sup>85</sup> *Op. cit.* footnote 76, pars 35, 114 and 234 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association). See also *op. cit.* footnote 81, par 51 (2010 Guidelines on Political Party Regulation); and *op. cit.* footnote 76 (2003 ECtHR case of *Refah Partisi (the Welfare Party) and others v. Turkey*); and ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgement of 9 July 2013).

<sup>86</sup> *ibid.* pars 35 and 114 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

<sup>87</sup> *ibid.* par 35 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

<sup>88</sup> See *op. cit.* footnote 4, par 61 (2012 Venice Commission’s Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation).

<sup>89</sup> *ibid.* par 61.

**the ban should be a measure of last resort, applicable in case of the most serious violations, such as when the said activities constitute a criminal offence (itself defined in compliance with international human rights standards).**

54. Article 10 (6) of the Law provides that “*persons responsible for setting up, managing or organising of the activity of an extremist organization, persons that adhere to and participate as members of an extremist organization, or those that are responsible for the preparation, dissemination and unlawful storage of extremist materials shall be held responsible criminally*”. This provision may cover a very wide range of persons, from the founders, to the members or those only taking part in certain activities of an association since the term “adhere” is rather vague. Given its broad scope and the potential to trigger criminal liability, such provision may as a consequence have a chilling effect on people to get involved with civil society organizations, on their founders and members and serve as a deterrent to people taking an active role in organizations in general.
55. Article 12 (3) of the Law further provides that when “*a chairperson or a member of the leadership body of a public or religious association or other organization makes a public statement calling for carrying out extremist activities without indicating that this is their personal opinion and also in the event of an irrevocable conviction of this person by a court for an extremist crime*”, the said organization shall “*make a public statement of disagreement*” or “*inference as to the presence of extremist characteristics in the activity of this organization shall be drawn*”, which may ultimately lead to its ban or suspension, pursuant to Article 6 (5) of the Law. As stated in the [Guidelines on Freedom of Association](#), the individual acts of one member of an association should not impinge on the entire association, and the individual wrongdoing of founders or members of an association, when not acting on behalf of the association, should lead only to their personal liability for such acts, and not to the prohibition or dissolution of the whole association.<sup>90</sup>
56. If such a provision also applies to political parties, beyond the fact that the provision may contradict the legislation on political parties, this would also mean that the individual acts of its representative(s) could trigger the dissolution of a political party. In principle, the dissolution of a party based on the individual actions of its members would not be compatible with key freedom of association commitments and standards. The only exception is where the party leadership/members acted on behalf of the party and it can be proven that they acted as representatives of the party as a whole; for dissolution to be applicable it must be shown that it was the party’s statutory body (not individual members) who undertook objectives and activities requiring such dissolution.<sup>91</sup> Moreover, a party cannot be held responsible for the action taken by its members if such action is contrary to the party constitution or party activities.<sup>92</sup>
57. In addition, the lack of an express requirement of intent for liability under Article 6 of the Law raises the possibility of criminalisation of those who have unknowingly financed activity that is considered to be “*extremist*”. Religious or charitable organizations may be particularly vulnerable to this given the often indirect and clandestine manner in which funds, once allocated, may be used.
58. In light of the above, **Articles 10 (6) and 12 (3) of the Law should be reconsidered.**

<sup>90</sup> *Op. cit.* footnote 76, pars 236 and 254 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

<sup>91</sup> See *op. cit.* footnote 81, par 94 (2010 Guidelines on Political Party Regulation).

<sup>92</sup> *ibid.* par 94 (2010 Guidelines on Political Party Regulation).

## 5. Freedom of the Media

59. Article 7 of the Law deals with the liability of mass-media institutions for disseminating “*extremist materials*” and carrying out “*extremist activity*”, potentially leading to their ban or one-year suspension (Article 7 (4)). The power to suspend or ban mass-media institutions, and as such interrupt their activities, is an extremely severe sanction to place on a media outlet and constitutes a serious threat to the right to freedom of expression, free flow of information and public debate.<sup>93</sup> This is compounded by the vague and over-broad definition of “*extremist materials*” and “*extremist activity*” discussed above. It is worth emphasizing that any serious sanctions such as suspension and ban of mass media institutions should only be possible in the most serious situations, when the conduct constitutes a criminal offence in national law, which should itself be in compliance with the principle of legal certainty and international human rights, including freedom of expression, standards.<sup>94</sup>
60. The OSCE Representative on Freedom of the Media generally advocates for effective media self-regulation regarding “prohibited” content rather than regulation (see the *2008 Media Self-regulation Guidebook* of the OSCE Representative on Freedom of the Media).<sup>95</sup> In any case, any restriction on freedom of expression in the context of counter-terrorism and countering VERT must meet the three-part test under international human rights law, namely that it is provided for by law, it serves to protect a legitimate interest recognized under international law and it is necessary to protect that interest; in addition, the application of any measures should be overseen by an independent body.
61. It is worth noting that, in the past, the Venice Commission has criticized a similarly vague provision allowing, ultimately, for the ban of media outlets based on a broad interpretation of the notion of “*extremism*”. The Venice Commission has expressed its concerns that, “*as a result of the vagueness of the Law and of the wide margin of interpretation left to the enforcement authorities, undue pressure is exerted on civil society organizations, media outlets and individuals, which undoubtedly has a negative impact on the free and effective exercise of human rights and fundamental freedoms*”.<sup>96</sup>
62. Moreover, the ECtHR has stressed that journalists’ speech should not be subordinated to the requirement that they must systematically and formally distance themselves from the content of a quotation that might insult, provoke others, or damage their reputation as such a requirement would not be compatible with the widest possible scope of protection that should be afforded to the press.<sup>97</sup>
63. Overall, the fact that media institutions may be held liable (and suspended/banned) for the content of disseminated information constituting broadly defined “*extremist materials*”, may have a chilling effect and prevent them from fully and genuinely

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<sup>93</sup> See e.g., Venice Commission, *Compilation of Venice Commission Opinions and Reports concerning Freedom of Expression and Media*, 19 September 2016, Sub-Section 5.4.; and Venice Commission, *Opinion on Draft Amendments to the Media Law of Montenegro*, CDL-AD(2015)004, 23 March 2015, pars 17-20. See also e.g., ECtHR, *Ürper and Others v. Turkey* (Application nos. 14526/07 et al., judgment of 20 October 2009), pars 40 etc.

<sup>94</sup> See e.g., ODIHR, *Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan* (31 October 2019), par 91.

<sup>95</sup> Available at <<http://www.osce.org/fom/31497?download=true>>.

<sup>96</sup> *Op. cit.* footnote 4, par 63 (2012 Venice Commission’s Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation).

<sup>97</sup> ECtHR, *Thoma v. Luxembourg* (Application no. 38432/97, judgment of 29 March 2001) pars 58-63; DJ Harris, M O’Boyle, EP Bates and CM Buckley, *Law of the European Convention on Human Rights* (2nd ed OUP 2009) 496.

informing the public, and as such is incompatible with Article 10 ECHR.<sup>98</sup> Indeed, the ECtHR has explicitly stated that “*the nature and severity of the penalties must not be such as to dissuade the press from taking part in the discussion of matters of legitimate public concern*”.<sup>99</sup> While it is noted that the legislation in question does not provide for a custodial sentence should a media organization be liable under Article 7, the possibility of a ban or suspension for up to one year is a considerable sanction to place on a media organization. It is highly foreseeable that a suspension of any period of time may adversely impact the financial viability of the institution in question, resulting in a suspension becoming, in all practicality, a permanent ban. The proportionality of this with the legitimate aims envisaged by Article 10 of the ECHR therefore is highly questionable.

64. In light of the above, Article 7 of the Law would appear to be incompatible with Article 10 of the ECHR owing to the broad definition of extremism and “*extremist materials*” raising questions as to whether it can be considered to be “*prescribed by law*” but also in terms of its proportionality and potential chilling effect. **It is thus recommended to reconsider Article 7 in its entirety.** If some sanctions are nevertheless maintained, they “*must not be such as to dissuade the press from taking part in the discussion of matters of legitimate public concern*”.<sup>100</sup>
65. While it is noted that the lawmakers did not ostensibly authorize “*pre-publication interference*”, Article 7 of the Law still authorizes interference with journalistic material. The issuance of a ‘written notice’ by the Prosecutor General or their subordinate prosecutor will, most probably, have the effect of preventing follow up reporting or publications. This also creates a danger of over restrictive application in situations where a prosecutor would submit a first warning to a media outlet, which would choose to correct the problem and thus does not challenge the warning in court, followed by another warning within 12-month time, which would lead to the (automatic) suspension or banning of the media outlet, which is particularly problematic from a human rights perspective.<sup>101</sup>
66. According to Article 9 (2) of the Law, information materials shall be declared as “*extremist*” by court decision, on the basis of a submission by the prosecutor. While judicial involvement is welcome, if this process means that pending the decision of the court, the said material cannot be distributed/disseminated, and if such process is slow and burdensome, the judicial outcome may come too late for the material to be of any use for the purpose of publication/dissemination.
67. The relevant court decision shall then be sent to the Ministry of Justice, with a view to the inclusion of the material at issue in a *Registry of Extremist Organizations and Extremist Materials*, which is made public in the Official Gazette and in mass-media and also includes a list of so-called “*extremist organizations*”. Considering the broad and rather imprecise definition of “*extremist materials*” and “*extremist organizations*” (Article 1 of the Law), ODIHR is concerned about the absence of any criteria and any indication in the Law on how documents and so-called “*extremist organizations*” will be

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<sup>98</sup> See for example the ECtHR case *Jersild v. Denmark* where Denmark was found to have breached Article 10 ECHR for prosecuting a journalist for “aiding and abetting” an extremist organization, simply for conducting an interview with the organization, *Jersild v. Denmark* [GC] (Application no. 15890/89, judgment of 23 September 1994), pars 35-37. See also ECtHR, *Damman v. Switzerland* (Application no. 77551/01, judgment of 25 April 2006).

<sup>99</sup> See e.g., ECtHR, *Cumpana and Mazare v. Romania* [GC] (Application no. 33348/96, judgment of 17 December 2004).

<sup>100</sup> *ibid.*

<sup>101</sup> See e.g., International Mandate-holders on Freedom of Expression, *2003 Joint Declaration on the Regulation of the Media*, Sub-Section on the Regulation of the Media, 4<sup>th</sup> paragraph. See also, for the purpose of comparison, ECtHR, *The Observer and Guardian v. the United Kingdom* (Application no. 13585/88, judgment of 26 November 1991).

listed and de-listed in the Registry, which has the potential to open the way to arbitrariness and abuse. As outlined above, in the absence of clear criteria in the Law, too wide a margin of appreciation and subjectivity is left both in terms of the assessment of the organization and material and in relation to the corresponding judicial procedure.<sup>102</sup>

## **6. Public Telecommunication Networks**

68. According to Article 8 of the Law, in case public telecommunication networks are used to carry out “*extremist activity*”, “*measures envisaged in the law shall be applied, with due regard to the specific characteristic of the relations in the sphere of telecommunications stipulated in the legislation*” are taken. The provision is very vague and does not specify which legislation would be applicable and which concrete measures would be applied to public telecommunication networks. Also, it does not distinguish between cases where the public telecommunication network would be made aware of the use of its network to carry out so-called “*extremist*” activity from cases where it is unaware of such use.
69. The question of the service providers’ obligations constitutes one of the most significant issues related to the exercise of the freedom of expression on the Internet. It must be pointed out that the UN Human Rights Committee has considered that any restriction on the operation of information dissemination systems, including that of internet service providers, is not legitimate unless it conforms with the test for restrictions on freedom of expression under international law.<sup>103</sup> The UN Special Rapporteur on freedom of opinion and expression also noted how important it is for States to be transparent about the use and scope of communications surveillance techniques and powers, particularly when dealing with internet service providers.<sup>104</sup>
70. Article 8 of the Law should therefore not be interpreted as a requirement for network providers to conduct constant monitoring of all communications over the providers’ network, or to detect such illegal conduct, as this would constitute an unreasonable and costly burden for them.<sup>105</sup> In principle, no general obligation to monitor or seek facts or circumstances indicating illegal activity should be imposed on service providers.<sup>106</sup> The Law should only provide for an obligation for subsequent action or control, once they are aware of the illegal nature of the content. In that respect, the provisions of the EU Directive on electronic commerce (2000/31/EC),<sup>107</sup> for which Moldova was bound to implement certain of the provisions by August 2017 (especially regarding the stipulation that there is no general obligation for service providers to monitor) according to the Annex to the [Association Agreement](#), could serve as useful guidance. According to its provisions, service providers should not be liable for the content posted by the third party

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<sup>102</sup> See e.g., *op. cit.* footnote 4, par 49 (2012 Venice Commission’s Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation).

<sup>103</sup> See *op. cit.* footnote 4, par 43 (2011 CCPR General Comment no. 34).

<sup>104</sup> See UN Special Rapporteur on freedom of opinion and expression, [2013 Report on States’ surveillance of communications](#) (17 April 2013), pars 91-92; see also ODIHR, [Opinion on the Draft Law of Ukraine on Combating Cybercrime](#), 22 August 2014, par 58.

<sup>105</sup> This seems to be mirroring certain of the obligations provided under Article 13 of the [EU Framework Directive 2009/140/EC of 25 November 2009](#), available at, that includes an obligation for EU member States to ensure the integrity and security of public communications networks and publicly available communications services as well as the continuity of such services.

<sup>106</sup> See the Council of Europe Committee of Ministers, [Declaration on freedom of communication on the Internet](#), 28 May 2003, Principle 6. See also the Judgment of the Court of Justice of the European Union, [Scarlet Extended SA v. Société belge des auteurs, compositeurs et éditeurs SCRL \(SABAM\)](#), 24 November 2011, C-70/10.

<sup>107</sup> See also, for reference, though not binding on Moldova, the [Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market](#) (hereinafter “the 2000 Directive on electronic commerce”).

on condition that they: (a) do not have actual knowledge of illegal nature of the content or (b) upon obtaining such knowledge or awareness, they act expeditiously to remove or to disable access to the unlawful content.<sup>108</sup> In any case, **Article 8 of the Law should be clarified with due respect to the above-mentioned principles.**

## **7. Liability for Carrying out So-called “Extremist Activity”**

71. Article 12 (1) of the Law mentions that violation of the Law may trigger civil, administrative or criminal liability in conditions stipulated in the legislation. First, such a provision is extremely vague and **the drafters should refer to the specific laws that are applicable and clarify which behaviours will trigger which kind of liability.**
72. Article 12 (3) of the Law deals with the liability of the chairperson or a member of the leadership body of a public or religious association or other organization for public call inciting to carry out so-called “*extremist activity*”, and the consequences on the said organization should it fail to make a public statement disagreeing with the statement made by the said person, i.e., the inference that such an organization carries out so-called “*extremist*” activities, thus potentially leading to its suspension or dissolution pursuant to Article 6 (5) of the Law. As set out earlier in the Sub-Section 4 on freedom of association, in principle, the individual acts of one member, and *a fortiori* of the representative, of an association should not impinge on the entire association, and the member or representative should be held personally accountable.<sup>109</sup> Furthermore, the individual wrongdoing of founders or members of an association, when not acting on behalf of the association, should lead only to their personal liability for such acts, and not to the prohibition or dissolution of the whole association.<sup>110</sup>
73. Article 11 (1) of the Law states “*[s]tatements by an official holding a responsible civil service position substantiating the necessity, admissibility or opportunity of carrying out extremist activity, made publicly or while discharging their official duties, or with the indication of the post they hold, and also the failure of the official holding a responsible public position to take measures in his/her competence to suppress extremist activities, shall result in liability in compliance with the legislation*”. Like other provisions of the Law that have been discussed above, the wording of this provision is very vague and fails to define precisely the type of conduct that would trigger liability. **While Article 11 (2) of the Law makes reference to prosecution, it also does not clarify exactly which type of sanctions are applicable and should be supplemented in that respect.**

## **8. Freedom of Peaceful Assembly**

74. Article 13 (1) of the Law provides that during the holding of public assemblies, so-called “*extremist activities*” shall be prohibited, as shall the participation of “*extremist organizations, the use of their emblems and symbols, or the dissemination of extremist materials*” (Article 13 (2)). Article 13 (3) of the Law specifies that should this happen, “*the organizers of the public meeting or other persons responsible for carrying it out have the obligation to take immediate actions to eliminate the violations committed*”. Failure to do so will result in the termination of the meeting and shall trigger the liability of the organizers.

<sup>108</sup> *ibid.* Articles 12 to 14 (2000 Directive on electronic commerce).

<sup>109</sup> *Op. cit.* footnote 76, par 236 (2015 ODIHR-Venice Commission Guidelines on Freedom of Association).

<sup>110</sup> *ibid.* par 254.



75. First and foremost, as already mentioned, the terms “*extremist activities*”, “*extremist organizations*” and “*extremist materials*” are too unclear and fail to comply with the principle of legal certainty. **As such, the provision is not compliant with international standards.**
76. Moreover, the [2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly](#) (2<sup>nd</sup> Ed.) caution against the use of legislation to tackle terrorism or so-called “*extremism*” to justify arbitrary action that curtails the right to freedom of peaceful assembly.<sup>111</sup>
77. While expression should normally still be protected even if it is hostile or insulting to other individuals, groups or particular sections of society, advocacy of national, racial or religious hatred that constitutes incitement and fulfil the three cumulative requirements referred to in par 32 *supra* (intent to incite imminent violence, likelihood of such violence, direct and immediate connection to such violence) shall be prohibited by law.<sup>112</sup> Restrictions imposed on the visual or audible content of assemblies for this reason need to be necessary in a democratic society and proportionate to the legitimate aim that they pursue.<sup>113</sup>
78. Further, according to Principle 5.7 of the Guidelines, the organizers of assemblies should not be held liable for the actions of individual participants or for the actions of non-participants.<sup>114</sup> Holding the organizers of an event liable would be a manifestly disproportionate response, since this would imply that organizers are imputed to have responsibility for acts by other individuals (including possible *agents provocateurs*) that could not have been reasonably foreseen.<sup>115</sup> The organizers should not be held liable for the failure to perform their responsibilities in cases where they are not individually responsible, e.g., where property damage or disorder, or violent acts are caused by assembly participants or onlookers acting independently.<sup>116</sup> Liability will only exist where organizers have personally and intentionally incited, caused or participated in actual damage or disorder.<sup>117</sup> In particular, an organizer should not be liable for the actions of individual participants, unless, for example, he or she explicitly incited them to commit such acts (in this case the organizer would be responsible for her or his own actions (incitement) not for the action of the participants).<sup>118</sup> Imposing too much

<sup>111</sup> See ODIHR-Venice Commission, [Guidelines on Freedom of Peaceful Assembly](#), 2nd Edition (2010), pars 87 and 91.

<sup>112</sup> See the references cited under footnotes 40.

<sup>113</sup> As the UN Human Rights Committee has noted in the context of freedom of expression, “Articles 19 and 20 [ICCPR] are compatible with and complement each other. The acts that are addressed in article 20 are all subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3. What distinguishes the acts addressed in article 20 from other acts that may be subject to restriction under article 19, paragraph 3, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law. It is only to this extent that article 20 may be considered as *lex specialis* with regard to article 19. It is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions. In every case in which the State restricts freedom of expression it is necessary to justify the prohibitions and their provisions in strict conformity with article 19.” *op. cit.* footnote 4, pars 50-52 (2011 CCPR General Comment no. 34).

<sup>114</sup> *Op. cit.* footnote 111, Principle 5.7 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly).

<sup>115</sup> *ibid.* par 112 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly).

<sup>116</sup> See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and UN Special Rapporteur on extrajudicial, summary or arbitrary executions, [Joint Report on the Proper Management of Assemblies](#) (2016), A/HRC/31/66, par 26, which states: “While organizers should make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others. To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.”

<sup>117</sup> *Op. cit.* footnote 111, Principle 5.7 and pars 197-198 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly). See e.g., ECtHR, [Ezelin v. France](#) (Application no. 11800/85, judgment of 26 April 1991), par 53, where the Court found that even though the applicant had not disassociated himself from criminal acts committed during an assembly, he had not committed any of these acts himself; the imposition of the administrative fine against him was thus not necessary in a democratic society; and ECtHR, [Sergey Kuznetsov v. Russia](#) (Application no. 10877/04, judgment of 23 October 2008), pars 43-48.

<sup>118</sup> See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.34.4 (English translation): “If too great a responsibility before the activity, during it or even after the activity is laid on the organizer of the

responsibility on the organizers of assemblies may also have a chilling effect on them.<sup>119</sup> Hence, **requiring that the organizers be liable for not taking immediate actions to eliminate so-called “extremist” acts restricts their right to freedom of peaceful assembly.**

79. Further, if an assembly degenerates into serious public disorder, it is the responsibility of the state, not the organizer, representative or event stewards, to limit the damage caused.<sup>120</sup> Hence, **the obligation imposed by the Law on organizers to take action to eliminate the violations to the Law appears excessive and should be reconsidered.**
80. Finally, violations of the Law or the use of violence by a small number of participants in an assembly (including the use of language inciting hatred, violence or discrimination) does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly, which should be terminated.<sup>121</sup> The spectrum of conduct that either constitutes “*violence*”, or is regarded as capable of causing “*violence*”, should be narrowly construed, limited in principle to using, or overtly inciting others to use, physical force that inflicts or is intended to inflict injury or serious property damage where such injury or damage is likely to occur.<sup>122</sup> The fact that certain content or messages may provoke strong reactions by non-participants or may be considered “*extreme*” does not make an assembly “non-peaceful”. Law enforcement officials must differentiate between peaceful and non-peaceful participants since only those who themselves take part in violence forfeit the legal guarantee of their right to assemble.<sup>123</sup> Any state intervention should target individual wrongdoers, rather than all participants more generally.<sup>124</sup>
81. Moreover, as noted by the ECtHR, “*the possibility of extremists with violent intentions who are not members of the organising group joining a demonstration cannot as such take away [the right to freedom of peaceful assembly]*” from those who remain peaceful.<sup>125</sup> Instead, international standards provide that even if there is a real risk of an assembly resulting in disorder as a result of developments outside the control of those organizing it, this by itself does not justify the prohibition of the said assembly.<sup>126</sup> Furthermore, as stated by the ECtHR, “*an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question*

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activity ... then at other time these persons will abstain from using their rights, fearing the potential punishment and additional responsibilities.”; see also *NAACP v. Claiborne Hardware*, 458 U. S. 886, 922-932 (1982).

<sup>119</sup> See e.g., *op. cit.* footnote 111, Principle 5.7 and pars 32, 112 and Section B, Sub-Section 7 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly).

<sup>120</sup> See e.g., ODIHR, *Comments on the Draft Law on Public Assembly in the Federation of Bosnia and Herzegovina* (24 April 2018), par 68.

<sup>121</sup> See e.g., *op. cit.* footnote 111, pars 25, 164 and 167 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly).

<sup>122</sup> *ibid.* pars 72 and 86 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly). Certain forms of expression would only be seen as threatening national security when the following three criteria are met cumulatively: (1) the expression is intended to incite imminent violence; **and** (2) it is likely to incite such violence; **and** (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence. More generally, content restriction should only be possible if such content poses a threat to national security and if it is likely and intended to incite imminent violence, and there is a direct and immediate connection between the expression and the likelihood of occurrence of such violence. See *op. cit.*, footnote 16, par 2 (d) (2016 International Mandate-Holders on Freedom of Expression’s Joint Declaration on Freedom of Expression and Countering Violent Extremism); and Principle 6 of the *Johannesburg Principles on Freedom of Expression and National Security* (1995). See also *op. cit.* footnote 16, par 62 (2008 UN Secretary General’s *Report on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*).

<sup>123</sup> *ibid.* par 160 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly). See *Solomou and Others v. Turkey* (Application no. 36832/97, judgment of 24 June 2008), where the Court found a violation of Article 2 in relation to the shooting of an unarmed demonstrator. The Turkish government argued that the use of force by the Turkish-Cypriot police was justified under Article 2(2) of the ECHR. In rejecting this argument, however, the Court regarded it to be of critical importance that, despite the fact that some demonstrators were armed with iron bars, Mr. Solomou himself was not armed and behaved in a peaceful manner.

<sup>124</sup> *ibid.* par 167 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly).

<sup>125</sup> ECtHR, *Christians against Racism and Fascism v. the United Kingdom* (Application no. 8440/78, decision of 16 July 1980), pars 148-149; see also *op. cit.* footnote 117, par 41 (1991 ECtHR case of *Ezelin v. France*).

<sup>126</sup> *Op. cit.* footnote 111, pars 71 and 159 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly). See also ECtHR, *Schwabe and M.G. v. Germany* (Application nos. 8080/08 and 8577/08, judgment of 1 December 2011), par 103; and *Taranenko v. Russia* (Application no. 19554/05, judgment of 15 May 2014), par 66.

*remains peaceful in his or her own intentions or behaviour*".<sup>127</sup> Isolated incidents of sporadic violence, even if committed by participants in the course of a demonstration, are by themselves insufficient to justify extensive restrictions on assemblies and their peaceful participants.<sup>128</sup> Hence, dispersal of an assembly should be a measure of last resort, only to be considered when a less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant interests.<sup>129</sup> Neither isolated incidents of sporadic violence nor the violent acts of some participants in the course of a demonstration are by themselves sufficient to justify extensive restrictions on or even dissolutions of assemblies and their peaceful participants.<sup>130</sup> Law-enforcement officials should not, therefore, treat a crowd as homogenous in detaining participants or (as a last resort) forcefully dispersing an assembly.<sup>131</sup>

82. In light of the above, **Article 13 of the Law, especially the provisions pertaining to the liability of organizers and to the termination of assemblies, should be reconsidered in its entirety.**

## 9. International Co-operation

83. Article 14 of the Law refers to foreign public and religious associations and other foreign organizations which are "*recognized as extremist in compliance with the international law documents and with the legislation of the Republic of Moldova*". As stated in pars 13-15 *supra*, there is no legal definition of "*extremism*" agreed at the international level and therefore the assumption that the recognition of an organization as being "*extremist*" can be based on international law is thus inappropriate.

## 10. Final Comments

84. ODIHR is unaware of whether the legal drafters prepared a proper impact assessment of the draft legislation at the time of its adoption. VERLT is a complex phenomenon and various factors may lead to it, no single factor being necessary or sufficient to account for terrorist radicalization.<sup>132</sup> While there is no consistent set of factors driving terrorist radicalization, some have been identified as being particularly pertinent. Conditions conducive to terrorism recognized at the level of the UN and of the OSCE include "*prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of rule of law, violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance*".<sup>133</sup> In order for the legislation in this area to be more effective, it would be recommended to prepare an in-depth regulatory impact assessment, which should contain a proper problem analysis, using evidence-based techniques to identify the best

<sup>127</sup> See ECtHR, *Ziliberg v. Moldova* (Application no. 61821/00, judgment of 4 May 2004, admissibility). See also *Ezelin v. France* (1991), *op. cit.* footnote 117, par 53: "*the freedom to take part in a peaceful assembly - in this instance a demonstration that had not been prohibited - is of such importance that it cannot be restricted in any way, even for an avocat, so long as the person concerned does not himself commit any reprehensible act on such an occasion.*"

<sup>128</sup> *ibid.* See also *Annenkov and Others v. Russia* (Application no. 31475/10, judgment of 25 July 2017), pars 98, and 124-6); and *op. cit.* footnote 111, par 159 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly).

<sup>129</sup> *ibid.* pars 104, 159 and 165 (2010 ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly).

<sup>130</sup> *Op. cit.* footnote 117, par 50 (1989 ECtHR case of *Ezelin v. France*).

<sup>131</sup> See *op. cit.* footnote 123 (2008 ECtHR case of *Solomou and Others v. Turkey*).

<sup>132</sup> See *op. cit.* footnote 72, pages 35-39 (2014 OSCE Guidebook on Preventing and Countering VERLT).

<sup>133</sup> *ibid.*, page 36; UN General Assembly, "*The United Nations Global Counter-Terrorism Strategy*", Doc. A/ RES/60/288, 2006; OSCE Ministerial Council, "*Ministerial Statement on Supporting the United Nations Global Counter Terrorism Strategy*", Madrid, 30 November 2007.

efficient and effective regulatory option (including the “*no regulation*” option).<sup>134</sup> In the event that such an impact assessment has not yet been conducted, the legal drafters are encouraged to undertake such an in-depth review, to identify existing problems, and adapt proposed solutions accordingly. Due consideration should be given to potential factors linked to the respect for and protection of human rights, the rule of law and democracy.

85. The Law makes reference to central and local public authorities for the purpose of implementing it (see Articles 4 and 5). At the same time, courts and prosecution bodies will also be involved while public and religious organizations, other legal entities and individuals as well as mass media institutions and public telecommunication networks are expressly referred to in the Law and likely to be impacted by its implementation. As such, all these stakeholders should be involved in discussions pertaining to potential amendment to the Law. Any new proposal in this sphere should be developed and adopted through a broad, inclusive and participatory process also involving the general public, public associations,<sup>135</sup> religious and belief communities, in a timely fashion, in public discussions on any proposal.<sup>136</sup> This means that the public, including women and men, and a wide array of associations representative of various views, even those that are critical of the government/state, should be consulted in the conceptualization and implementation of the Law and potential amendments.<sup>137</sup>

[END OF TEXT]

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<sup>134</sup> See e.g., ODIHR, [Report on the Assessment of the Assessment of the Legislative Process in the Republic of Armenia](#) (October 2014), pars 47-48.

<sup>135</sup> OSCE participating States have committed to the aim of “strengthening modalities for contact and exchanges of views between NGOs and relevant national authorities and governmental institutions” (Moscow 1991, para. 43.1).

<sup>136</sup> OSCE, [MC Decision 3/13, Freedom of Thought, Conscience, Religion or Belief](#), Kyiv 2013.

<sup>137</sup> See par 18.1 of the [OSCE Document of the Moscow Meeting](#) (1991) which states that: “Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives”. See also [Vienna Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes](#) (April 2015).

**ANNEX:**

**LAW No. 54**  
of 21.02.2003

**on Countering Extremist Activity**

Published: 28.03.2003 in Official Gazette No. 56-58, art. No : 245

*AMENDED*

[\*LP128 of 09.06.16, MO184-192/01.07.16 art.399\*](#)

[\*HCC28 of 23.11.15, MO79-89/01.04.16 art.23; in force since 23.11.15\*](#)

Having as its goal to protect human rights and freedoms, and the basic precepts of the constitutional order, to ensure the integrity and security of the Republic of Moldova, to establish the organisational and legal framework of countering extremist activity and to ensure responsibility for carrying out such activity,

The Parliament adopts this organic Law.

**Article 1. Basic notions**

For the purposes of the present Law, the notions listed below shall have the following meaning:

*extremism* – the attitude or doctrine of certain political movements, which seek to impose their programmes, based on extreme theories, ideas or opinions, by use of violent or radical means;

*extremist activity*:

a) activity of a public or religious organisation, of a mass-media institution or another legal entity or a natural person aimed towards planning, organising, preparing or carrying out of actions oriented at:

- forcible change of the foundations of the constitutional system and violation of the integrity of the Republic of Moldova;

- undermining the security of the Republic of Moldova;

- usurping the state power or the power of official positions;

- setting up illegal armed forces;

- carrying out terrorist activity;

- provoking racial, national or religious hatred, and also social hatred, by carrying out acts of violence or inciting to carrying out acts of violence;

- degrading of national dignity;

- provoking mass disorders, committing acts of hooliganism or acts of vandalism, motivated by hatred or based on ideological, political, racial, national or religious enmity, and also based on hatred or enmity against a certain social group;

- propaganda of the exceptional nature, superiority or inferiority of citizens on the basis of their race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social status;

b) display, manufacturing, dissemination and possession with the goal of public show of fascist, national-socialist (Nazi) emblems or symbols and of symbols of other

extremist organisations, and also of emblems and symbols created by stylisation of fascist, national-socialist (Nazi) symbols and of emblems of other extremist organisations which could be perceived as such. The visualisation of these symbols in books/manuals or on other media of scientific/educational character shall not be considered as display, manufacturing, dissemination and possession with the goal of public show of fascist, national-socialist (Nazi) emblems or symbols and of symbols of other extremist organisations, neither the use of these symbols for an exhibition for scientific/educational purposes, nor manufacturing, possession or use of these during a theatre/movie performance or within activities of historical re-enactment in which the participants are following a plan to recreate various aspects of an historic event or period.

The notion of fascist emblems or symbols shall mean the flags, emblems (graphical elements), badges, uniforms, slogans, types of salute, and any other such symbols attributed to the National Fascist Party (Partito Nazionale Fascista – PNF, 1921–1943) and to the Republican Fascist Party (Partito Fascista Repubblicano – PFR, 1943–1945) of Italy.

The notion of national-socialist (Nazi) emblems and symbols shall mean the flags, emblems (graphical elements), badges, uniforms, slogans, types of salute, and any other such symbols attributed to the entities existing in Nazi Germany in the period of 1933–1945 and of its subordinated institutions: The National Socialist German Workers’ Party (Nationalsozialistische Deutsche Arbeiterpartei – NSDAP, 1919–1945), Protection Squadron (Schutzstaffel – SS), The SS Security Service of the Reichsführer (Sicherheitsdienst des Reichsführers SS – SD), Secret State Police (Geheime Staatspolizei – Gestapo), Storm Detachment (Sturmabteilung – SA) and Armed Forces (Wehrmacht).

The notion of emblems and symbols of extremist organisations shall mean the flags, emblems (graphical elements), badges, uniforms, slogans, types of salute, and any other such symbols attributed to the extremist organisation;

*[Art.1 indent b) as amended by the LP128 of 09.06.16, MO184-192/01.07.16 art.399]*

*[Art.1 indent b) declared as unconstitutional by the HCC28 of 23.11.15, MO79-89/01.04.16 art.23; in force since 23.11.15]*

c) financing or any other type of contribution to carrying out the activities or actions envisaged in indent a) and b), including by rendering financial assistance, by providing real estate, training, printing and technical-material resources, telephony, fax or other means of communication and technical-material support, as well as providing support through mass-media/ broadcasting institutions;

d) public calls inciting the carrying out of activities or actions set out in indent a), b) and c);

*extremist organisation* – public or religious association, a mass-media entity or another organisation, in respect of which, based on the grounds envisaged in the present Law, a court has made a final ruling that it shall cease or suspend its activity in connection with carrying out of extremist activity;

*extremist materials* – documents or information on paper or another media, including anonymous, fascist, national-socialist (Nazi) emblems or symbols, and also symbols of other extremist organisations, including the emblems and symbols, stylised as fascist, national-socialist (Nazi) emblems and symbols, or symbols of other extremist organisations, intended for public show, with the purpose of inciting to carrying out of extremist activities, substantiation or justifying the necessity to carry out such activities or justifying the practice of committing war crimes or other crimes

aimed at total or partial extermination of any ethnic, social, racial, national or religious group.

*[Art.1 definition as amended by the LP128 of 09.06.16, MO184-192/01.07.16 art.399]*

**Article 2. Fundamental principles of counteracting extremist activity**

The combating of extremist activity shall be based on the following principles:

- a) recognition of, respect for and protection of human rights and freedoms, and also of the legitimate interests of organisations;
- b) legality;
- c) transparency;
- d) ensuring the security of the Republic of Moldova;
- e) priority of measures aimed at preventing extremist activity;
- f) cooperation of the state with public and religious organisations, with mass-media institutions, with other organisations and natural persons aimed towards combating extremist activity;
- g) the inevitability of punishment of extremist activity.

**Article 3. The main directions of countering extremist activity**

The countering of extremist activity shall be carried out based on the following main directions:

- a) taking of preventive measures, aimed at the prevention of extremist activity, including at the identification and elimination of the causes and conditions which facilitate the carrying out of extremist activity;
- b) detection, prevention and suppression of extremist activities of public and religious organisations, of mass-media institutions and other legal entities and physical persons.

**Article 4. Bodies involved in countering extremist activity**

The central and local public authorities take part in the countering of extremist activity, within the limits of their competence.

**Article 5. Prevention of extremist activities**

For the purpose of counteracting extremist activities, the central and local public authorities shall implement, as a priority and within the limits of their jurisdiction, preventive measures and educational and propaganda activities, aimed towards the prevention of extremist activity.

**Article 6. Liability of a public or religious organisation, or of any other organisation for carrying out extremist activity**

(1) In the Republic Moldova, the setting up and activity of public and religious organisations, and of any other organisations whose purpose and actions are to carry out extremist activities, shall be prohibited.

(2) In cases when acts which may be qualified as extremist activity are noticed in the activity of a public or religious organisation or of any other organisation, including within the activity of at least one of its territorial subdivisions or any other subdivision, this organisation will receive a written notice/warning regarding the inadmissibility of carrying out such activities, which shall contain the specific grounds for issuing a warning and the committed violations. In cases when it is possible to take measures for elimination of the committed violations, the warning/notice shall contain

the period set for the removal of these violations, namely within one month from the date of issuing of the warning.

(3) The warning/notice of a public or religious organisations shall be issued by the Prosecutor General or by other prosecutors in suborder, by the Ministry of Justice or by the State Service for the Religious Denominations.

(4) The warning/notice may be appealed against in a court under the established procedure.

(5) In cases when the warning/notice has not been appealed against in a court under the established procedure, or the court did not declare it as illegal, and also in the event that the respective public or religious organisation, its territorial subdivisions or other subdivisions did not eliminate, the violations committed which served as ground for issuing a warning within the prescribed term, and if, within 12 months following the notice/warning, new facts containing elements of extremist activity have been uncovered in their activity, the Prosecutor General or other subordinate prosecutors, the Ministry of Justice or the State Service for Religious Denominations shall file an application to the court, which shall pronounce a decision to ban or suspend the activity of the respective public or religious organisations, or any other type of organisation, for a term of up to one year.

(6) In the event the court has pronounced the decision to ban or suspend the activity of the public or religious association, or any other type organisation, based on the grounds stipulated in this Law, the activity of the territorial or other subdivisions of these shall also be banned or suspended.

**Article 7.** Liability of a mass-media institution for disseminating extremist materials and carrying out of extremist activity

(1) In the Republic of Moldova, the dissemination by mass-media institution of extremist materials and carrying out of extremist activities by these shall be prohibited.

(2) In the event of dissemination by a mass-media institution of extremist materials or identification of acts in its activity containing elements of extremist activity, the competent state authority having registered this media institution or the Prosecutor General or his/her subordinate prosecutors shall issue a written notice/warning to the founder and/or the editor-in-chief of this mass-media institution regarding the inadmissibility of such activities or actions, by indicating the specific grounds which served as basis of the notice/warning and also the committed violations. If it is possible to take measures to eliminate the committed violations, the notice/warning shall contain the term for eliminating these, which shall be up to one month from the date of issuance of the notice/warning.

(3) The notice/warning may be appealed in court, under the established procedure.

(4) If the warning/notice has not been appealed against in court under the established procedure, or the court did not declare it as illegal, and also in the event that the violations committed which served as ground for issuing a warning have not been eliminated, within the prescribed term and if, within 12 months following the notice/warning, new facts containing elements of extremist activity have been uncovered in the activity of the mass-media institution, the state authority having registered this mass-media institution or the Prosecutor General or other subordinate prosecutors shall file an application to the court, which shall pronounce a decision to ban or suspend the activity of this mass-media institution for a term of up to one year.



(5) In order to impede the subsequent dissemination of extremist materials, the court may issue a ruling to suspend the sale of the respective edition of the periodical publication or of the audio and video recordings of the respective programme, or of the launch of the respective audio-visual programme, under the procedure regarding the taking of measures to secure a claim.

(6) The decision of the court shall serve as ground for seizure of the unsold part of the production of the mass-media institution which contains extremist materials from places of storage, wholesale and retail trade.

**Article 8.** Inadmissibility of using public telecommunication networks to carry out extremist activity

(1) The use of public telecommunication networks to carry out extremist activity shall be prohibited.

(2) In the event the public telecommunication networks are used to carry out extremist activity, measures envisaged in this law shall be applied, with due regard to the specific characteristic of the relations in the sphere of telecommunications stipulated in the legislation.

**Article 9.** Counteracting the dissemination of extremist materials

(1) The production and dissemination of printed, audio-visual and other extremist materials on the territory of the Republic of Moldova shall be prohibited.

(2) The informational materials shall be declared as extremist by a decision of a court, following a submission by a prosecutor.

(3) The decision of a court concerning confirmation of the informational material as extremist shall serve as ground for seizure of the unsold part of the respective production.

(4) In the event the organisation has published extremist materials twice, within a period of 12 months, the court shall issue a decision to ban its publishing activity.

**Article 10.** The registry of extremist organisations and extremist materials

(1) The Ministry of Justice shall keep a Registry of extremist organisations and extremist materials.

(2) The copy of the final judicial decision on banning or suspension of the activity of the public and religious organisations, of media outlet or of any other organisation based on the carrying out by these of extremist activity, or the copy of the final judicial decision by which the court has declared any material as extremist, shall be sent to the Ministry of Justice, which will include the respective organisation and material, by issuing an order, into the Registry of extremist organisations and extremist material.

(3) The order regarding the inclusion of the organisation of extremist materials into the Registry of extremist organisations and extremist materials shall be published in the Official Gazette of the Republic of Moldova and in the republican mass-media.

(4) The order for inclusion of the organisation or the materials into the Registry of extremist organisations or extremist materials may be appealed in court, under the established procedure.

(5) The activity of the organisations included in the Registry of extremist organisations and materials, and dissemination on the territory of the Republic of Moldova of the materials included in the aforementioned Registry shall be prohibited.

(6) Persons responsible for setting up, managing or organising of the activity of an extremist organisation, persons that adhere to and participate as members of an extremist organisation, or those that are responsible for the preparation, dissemination and unlawful storage of extremist materials, with the purpose of subsequent dissemination, shall be held responsible criminally.

*[Art.10 as amended by the LP128 of 09.06.16, MO184-192/01.07.16 art.399]*

**Article 11.** Liability of officials holding responsible civil service positions for carrying out of extremist activity

(1) Statements by an official holding a responsible civil service position substantiating the necessity, admissibility or opportunity of carrying out extremist activity, made publicly or while discharging their official duties, or with the indication of the post they hold, and also the failure of the official holding a responsible public position to take measures in his/her competence to suppress extremist activities, shall result in liability in compliance with the legislation.

(2) The competent state authorities and higher-ranked officials shall immediately take the necessary measures to prosecute the persons which committed the acts listed in par.(1).

**Article 12.** Liability of the citizens of the Republic of Moldova, foreign citizens and stateless persons for carrying out of extremist activity

(1) Citizens of the Republic of Moldova, foreign citizens and stateless persons shall be held criminally, administratively or civilly liable for carrying out of extremist activity, in conditions stipulated in the legislation.

2) In order to safeguard the public security, based on the grounds and procedure stipulated in the legislation and by a court ruling, the person that has been involved in carrying out of extremist activity may be restricted, for a term of up to 5 years, to have access to a public service position, to military conscription by contract, to service in law enforcement bodies, to a position in the education institutions and practicing of private detective and security activity.

(3) In the event the chairperson or a member of the leadership body of a public or religious association or other organisation making a public statement calling for carrying out of extremist activity, without indicating that this is their personal opinion, and also in the event of an irrevocable conviction of this person by a court for an extremist crime, the respective public or religious association or other organisation shall express a public statement of disagreement with the statements or actions of this person. If the respective public or religious association fails to make such a public statement, inferences as to the presence of extremist characteristics in the activity of this organisation shall be drawn.

**Article 13.** Inadmissibility of carrying out extremist activity during public assemblies

(1) During the holding of public assemblies, extremist activities shall be prohibited. Organisers of the meeting shall be held liable for the adherence to the provisions of Law No. 560-XIII from 21 July 1995 on the organisation and carrying out of assemblies and provisions of other normative acts regarding the inadmissibility of carrying out of extremist activity and also its timely suppression.

(2) During public assemblies, the participation of extremist organisations, the use of their emblems and symbols, or the dissemination of extremist materials shall be prohibited.

(3) In the event of revealing of circumstances stipulated in par.(2), the organisers of the public meeting or other persons responsible for carrying it out have the obligation to take immediate actions to eliminate the violations committed. Failure to discharge this obligation shall result in the termination of the meeting, at the request of representatives of the law enforcement authorities, and also shall attract the liability of the persons that have organised the public meeting, based on the grounds as provided in the legislation.

**Article 14.** International cooperation in the area of counteracting extremist activity

(1) Foreign public and religious associations, other foreign organisations and their subdivisions on the territory of the Republic of Moldova shall be prohibited to activate, when their activity is recognised as extremist in compliance with the international law documents and with the legislation of the Republic of Moldova.

(2) Within ten days following the entry into force of a court decision banning the activity of a foreign organisation, the competent state authority of the Republic of Moldova shall notify the diplomatic representation or the consular office of the respective foreign state in the Republic of Moldova about the ban or suspension of the activity of this organisation on the territory of the Republic of Moldova, about the grounds of the decision to ban or suspend the activity and also of the consequences related to this decision.

(3) The Republic of Moldova, in conformity with the international treaties to which it is a party to, will cooperate with other states in the sphere of counteracting of extremist activity, with law enforcement authorities and special services of other states and also with international organisations aiming to counteract extremism.

**Article 15.** Transitional provisions

The Government shall present proposals regarding the alignment of the legislation in force to the present law to the Parliament within a month.

**PRESIDENT OF THE  
PARLIAMENT**

**Eugenia OSTAPCIUC**

**Chisinau, 21 February 2003.  
No. 54-XV.**