



**Organization for Security and Co-operation in Europe
Office of the Representative on Freedom of the Media**

COMMENTARY

**ON SOME PROVISIONS OF THE DRAFT LAW OF THE REPUBLIC OF
UZBEKISTAN “ON COUNTERING EXTREMISM”.**

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In June 2018 the Office of the OSCE Representative on Freedom of the Media contributed to a legal review of Uzbekistan's draft law “On Countering Extremism” with an analysis of its provisions that might be affecting media freedom. This review contributed to the broad consolidated feedback on the draft law from various executive structures of the OSCE. The analysis yielded several recommendations and further assistance of the Office to the Uzbekistan authorities

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Media freedom related issues

1. International standards

The Draft Law On *Countering Extremism* of Uzbekistan (hereinafter - Extremism Law) regulates and affects a human right of freedom of expression enshrined in international treaties binding Uzbekistan: the Universal Declaration of Human Rights (UDHR) of 10 December 1948, and the International Covenant on Civil and Political Rights (ICCPR). These rights are put forward in Article 19 ICCPR and Article 19 UDHR.

Article 19 of the UDHR proclaims:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹

Article 19 of the ICCPR says:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore 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.²

In addition, part 2 of Article 20 of the ICCPR specifies that the national law should prohibit an “advocacy of national, racial or religious hatred”, but only such advocacy which constitutes “incitement to discrimination, hostility or violence”.³

The Shanghai Convention on Combating Terrorism, Separatism and Extremism of 15 June 2001 (“Shanghai Convention”)⁴, to which Uzbekistan is a Party, and the International Convention on the Elimination of all Forms of Racial Discrimination of 21 December 1965,⁵ accessed by Uzbekistan on 28 September 1995, are also of relevance.

The rights and freedoms guaranteed by Article 19 of the ICCPR and other international law are qualified and may be subject to limitations. No restrictions are permitted other than those

¹ Universal Declaration of Human Rights <http://www.un.org/en/universal-declaration-human-rights/>

² International Covenant on Civil and Political Rights
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³ *Ibid.*

⁴ Shanghai Convention on Combating Terrorism, Separatism and Extremism http://www.mid.ru/sanhajskaa-organizacia-sotrudnicestva-sos-/-/asset_publisher/0vP3hQoCPRg5/content/id/579606

⁵ International Convention on the Elimination of all Forms of Racial Discrimination
<http://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf>

expressly listed therein and such restrictions must have a legitimate aim. Even if a restriction corresponds to one of the particular reasons admitted by the international law and standards, it must also be “provided by law”, i.e. have a basis in national law, be accessible and sufficiently foreseeable. Both the nature and the quality of national legislation are important, as are the interpretation and the application of the law by independent courts and public offices.

The OSCE participating States voluntarily committed themselves that:

They will make further efforts to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and to improve the working conditions of journalists.

In this connection and in accordance with the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and their relevant international commitments concerning seeking, receiving and imparting information of all kinds, they will ensure that individuals can freely choose their sources of information.⁶

Moreover, just recently the OSCE Permanent Council reiterated that:

The efforts of the OSCE participating States in implementation of the OSCE confidence building measures in the field of security of and in the use of ICTs will be consistent with: international law, including, inter alia, the UN Charter and the International Covenant on Civil and Political Rights; as well as the Helsinki Final Act; and their responsibilities to respect human rights and fundamental freedoms.⁷

Apparently, the only definition of “extremism” contained in an international treaty binding on Uzbekistan is to be found in the Shanghai Convention:

"Extremism" is 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.

The Extremism Law has to be examined in the light of the above international law and standards.

⁶ Concluding Document of the Vienna Meeting (Third Follow-up Meeting to the Helsinki Conference), 15 January 1989, Vienna. <https://www.osce.org/representative-on-freedom-of-media/354081?download=true>

⁷ Decision No. 1106. Initial set of OSCE Confidence-Building Measures to Reduce the Risks of Conflict Stemming from the Use of Information and Communication Technologies (PC.DEC/1106) 3 December 2013, Vienna. <https://www.osce.org/representative-on-freedom-of-media/354081?download=true>

2. Analysis of the relevant norms of the Extremism Law

2.1 Definition of “extremism”

The key issue for the mass media and the journalists in the context of the draft law reviewed is under what circumstances their actions could be deemed as “extremist.”

Therefore of crucial importance for the assessment of the provisions of the draft Extremism Law is the definition of extremism (extremist activity) in Article 3 (“Basic notions”). It describes “extremism” by listing certain acts, specifically including those that may be performed by the mass media and/or journalists. In fact, according to the definition itself, public calls (including calls in the media) to all of the acts listed in the definition present in itself an extremist activity. This provision is problematic to the extent that certain of the activities listed, as pointed out below, should not fall into the category of extremist activities.

In addition, some of the listed acts are already offenses under the Criminal Code of Uzbekistan (hereinafter – the Criminal Code) (e.g., Art. 141, 156, 159).⁸ These included what might be classified as “hate speech”. Here is the translation of the current definition of extremist activities (extremism):

“extremist activities (extremism) – activities for planning, organization, preparing or committing actions, focused on:

violent change of the foundation of the constitutional system, territorial integrity and sovereignty of Uzbekistan;

justification of terrorism in public or publicly calling to engage in terrorist activities;

creating organized armed group as well as commanding the group or participating in it for extremist purposes;

organization of armed insurrection and participating in it for extremist purposes;

inciting racial, national, ethnic or religious enmity as well as social discord involving violence or call for violence;

propaganda of exclusivity, supremacy or inferiority of an individual (social group) based on his/its social, racial, national, ethnic, religious, linguistic affiliation or attitude to religion;

violation rights, freedoms and legitimate interests of an individual depending on his/her social, racial, national, ethnic, religious, linguistic affiliation or attitude to religion;

hindering legitimate activities of government authorities, civil self-governance bodies and other legal entities as well as electoral commissions, their officials (members) committed by violence or threat of violence as well as use of violence or threat of its

⁸ Уголовный Кодекс Республики Узбекистан <http://lex.uz/docs/111457#163621>

use towards the family members of aforementioned officials (members) in order to hinder their legitimate activities or force to change the nature of these activities or or revenge for its undertaking;

committing crimes motivated by political, ideological, racial, national, ethnic or religious hatred or enmity or motivated by hatred or enmity towards any social group as well as revenge for legitimate actions of other persons to order to cover up another crime or facilitate its perpetration;

production, storage and dissemination of extremist materials;

seizing or usurping government authority;

committing mass disorder, hooliganist actions and acts of vandalism motivated by political, ideological, racial, national, ethnic or religious hatred or enmity towards any social group;

creating, commanding and taking part in an extremist group or organization;

production, storage for dissemination or demonstration of attributes or symbols of extremist organizations;

publicly calling for the actions listed in the Paragraphs 2-16 of this Article.”

While parts of this definition refer to notions that are relatively well defined in the Criminal Code and other legislative acts of Uzbekistan, a number of other parts listed herein are too broad, lack clarity and may open the way to different interpretations.

The key point here is that while the definition of “extremism” provided by the Shanghai Convention, as well as the definitions of “terrorism” and “separatism”, all require *violence* as an essential element, certain of the activities defined as “extremist” in the Extremism Law seem not to require this element.

The vague parts of the definition of extremism through a list of extremist actions include activity aimed at:

- 1) *Violent change of the foundation of the constitutional system* (“насильственное изменение основ конституционного строя”).
Instead the Criminal Code (Art. 159) speaks of “public calls to unconstitutional change of the existing state system“, which seems to be more sufficiently foreseeable. The Venice Commission of the Council of Europe, when reviewing a not dissimilar law of the Russian Federation, noted on the issue that “advocacy of the right to self-determination of peoples or peacefully advocating a different territorial arrangement within a country are generally not considered to be criminal actions, and may on the contrary be seen as a legitimate expression of a person’s views.”⁹
- 2) *Justification of terrorism in public* (“публичное оправдание терроризма”).

⁹ European Commission for Democracy through Law (Venice Commission). Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012). – Para 32-33. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)016-e)

It is important to clarify in the Extremism Law that critical/scientific/academic work on the causes of terrorism could not be considered to be a "justification" of "terrorist activities".

- 3) *Propaganda of exclusivity, supremacy or inferiority of an individual (social group) based on his/its social, racial, national, ethnic, religious, linguistic affiliation or attitude to religion* (“пропаганду исключительности, превосходства либо неполноценности человека (социальной группы) по признаку его социальной, расовой, национальной, этнической, религиозной, языковой принадлежности или отношения к религии”).

In the cited view of the Venice Commission of the Council of Europe, to proclaim as extremist any religious teaching or proselytising activity aimed at proving that a certain worldview is a superior explanation of the universe, may affect the freedom of conscience or religion of many persons and could easily be abused in an effort to suppress a certain church thereby affecting not only the freedom of conscience or religion but also the freedom of association. When imposing limitations on propaganda of exclusivity or supremacy based on one's attitude to religion, such as qualification of religious texts as “extremist material”, the authorities should take into account UN Human Rights Committee's General Comment No. 22 on Article 18 (Freedom of Thought, Conscience or Religion) of the ICCPR.¹⁰ It is recommended to be clarified in legislation so as to provide additional guarantees that peaceful free expression aiming to convince others to adhere to a specific religion or other vision of life, in the absence of any direct intent or purpose of inciting enmity or strife, is not seen as extremist activities and therefore not unduly included in the scope of anti-extremism legislation.¹¹

- 4) *Violation of rights, freedoms and legitimate interests of an individual depending on his/her social, racial, national, ethnic, religious, linguistic affiliation or attitude to religion* (нарушение прав, свобод и законных интересов человека в зависимости от его социальной расовой, национальной, этнической, религиозной, языковой принадлежности или отношения к религии).

Again, in the above relevant view of the Venice Commission, “if violating rights and freedoms “in connection with a personal's social, racial, ethnic, religious or linguistic affiliation or attitude to religion”, in the absence of any violent element is an extremist activity, it is clearly a too broad category”.¹²

2.2 Definition of an “extremist material”

Another problematic definition, from the freedom of expression perspective, is the notion of an “extremist material” (Article 3 of the Extremism Law). It provides that “extremist material” is a document or any other information in any form meant for dissemination calling for “extremist activities” (as defined above) or substantiating or justifying the need for these activities (“предназначенный для распространения документ или иная информация на

¹⁰ Adopted at the Forty-eighth Session of the Human Rights Committee on 30 July 1993. CCPR/C/21/Rev.1/Add.4, General Comment No. 22. (General Comments)

<http://www.refworld.org/docid/453883fb22.html>

¹¹ See European Commission for Democracy through Law (Venice Commission). Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012). – Para 37-40. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)016-e)

¹² Op.cit. – Para 41. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)016-e)

любом носителе, призывающие к осуществлению экстремистской деятельности либо обосновывающие или оправдывающие необходимость осуществления такой деятельности”).

According to Articles 7, 11, 19, 22, 24 and 28 of the Extremism Law, extremist information materials are banned in Uzbekistan for import, transfer across the national border, publication, production, storage, dissemination and exhibition. Those specifically include the relevant mass media materials and online resources.

Article 11 of the Extremism Law specifies that information materials shall be declared as extremist by a court decision, on the basis of a submission by the prosecutor “utilizing the materials of the government authorities mandated for countering extremism” (most likely the State Security Service of Uzbekistan).

In addition to “extremist material”, the Extremism Law also uses the term “materials containing extremist ideas, which may be used in extremist activities” (“материалов, содержащих идеи экстремизма, которые могут быть использованы в экстремистской деятельности”) and distinguishes one from another (e.g. Article 19, para 1, subparagraphs 8 and 9). Another norm implies, however, that there is no difference between the two, as the materials with extremist ideas shall also be recognized as extremist materials (Article 11, para 2).

In a specifically worrying case of the use of the latter term (Article 22, para 1, subpara 5), the Ministry of Justice is tasked to take actions to prevent production and dissemination by NGOs, political parties, etc. of print, audiovisual, and other materials containing extremist ideas (“принимает меры по недопущению проведения негосударственными некоммерческими организациями, в том числе религиозными организациями, политическими партиями, представительствами и филиалами международных и иностранных негосударственных (неправительственных) некоммерческих организаций мероприятий (конференций, семинаров, тренингов, собраний, акций и иных мероприятий), подготовку и распространение ими печатных, аудиовизуальных и других материалов, содержащих идеи экстремизма”). This particular norm in a way follows the definition of “extremist material” which implies that such materials are not only documents which have been published but also documents or other information that are *intended* for dissemination, which call for extremist activity. Of concern is that preventing (future) production or distribution (dissemination) of print and audiovisual materials by the state authorities may violate the ban on censorship as provided by the national Constitution in its Article 67.¹³

3. Conclusions and recommendations

In the absence of criteria and indication in the Extremism Law on how documents and information shall be classified as extremist and/or containing extremist ideas, the current state of the draft Extremism Law has the potential to open the way to arbitrariness of the law-enforcement agencies. In their decisions on classification of the materials as extremist or in appeals of the decisions of the counter-extremist agencies the courts will likely be based on “prior materials of the government authorities mandated for countering extremism”. In all these cases the Extremism Law leaves too wide a margin of appreciation and subjectivity.

¹³ The Constitution of the Republic of Uzbekistan, adopted on 8 December 1992. <http://constitution.uz/en>

As critical definitions are not explained with sufficient precision the Extremism Law will not allow an individual to regulate his or her freedom of expression or the relevant activities of an entity so as to avoid the application of counter-extremism measures. In particular that enables the authorities to issue preventive and corrective measures which do not necessarily contain *an element of violence*. Overall, the authorities could use these clauses to suppress the views of radical but legitimate political opponents.

Further work on the draft of the Extremism Law, perhaps in a more consistent and proportionate approach, should aim to avoid arbitrariness. So far, the Extremism Law has the capacity of imposing disproportionate restrictions of fundamental rights and freedoms as enshrined in the ICCPR and OSCE commitments and infringing the principles of legality, necessity and proportionality. The Office of the OSCE Representative on Freedom of the Media remains at the disposal of the Uzbekistan authorities should they require assistance.