AMNESTY INTERNATIONAL PUBLIC STATEMENT

18 November 2020 EUR 01/3359/2020

AUSTRIA/FRANCE: MEASURES ANNOUNCED BY THE GOVERNMENTS THREATEN FREEDOM OF ASSOCIATION

Following the publication of draft legislation (*avant-projet de loi*) that the French government is expected to discuss on 9 December[1], Amnesty International is concerned that some of its provisions threaten freedom of association and may have a chilling effect on human rights defenders and civil society organizations. In particular, the draft extends the reasons that the government can invoke to dissolve an organization.

The dissolution of an organization is an extreme measure that can be justified only in very limited circumstances. For example, according to European human rights law, a dissolution may be justified in light of a close and direct connection between an organization and a crime or the engagement of an organization in activities that constitute an imminent infringement of the rights of others or that fundamentally reject democratic institutions and the rule of law.

The draft allows the government to dissolve organizations on additional vague grounds such as in instances where their "actions threaten human dignity" or if they "exercise psychological on physical pressure on others".[2]

The current French law on dissolution on organizations is already problematic as it enables the government to dissolve an organization on vague grounds and without requiring prior judicial scrutiny.[3] Under French law, the Council of Ministers can dissolve an organization by decree.[4] An organization can be shut down if, for example, it promotes armed gatherings or incites to violence, hatred and discrimination or incite to the commission of terrorist-related offences under French law. French law does not require prior judicial scrutiny on the government's decision to dissolve an organization. Once issued, any dissolution decree, which has an immediate effect, can be contested before administrative courts.[5]

Following the horrific violent attacks perpetrated in Conflans-Sainte-Honorine and Nice (France), French authorities have proceeded to dissolve a few organizations. Gérald Darmanin, the French Minister of Interior, told the media about his intention to dissolve the Collective Against Islamophobia in France (CCIF), an NGO that combats discrimination against Muslims. He has described the CCIF as "an enemy of the Republic" and a "back room of Islamism".[6]

The dissolution of the CCIF would be a blow to the right to freedom of association and have a chilling effect for all human rights defenders engaged in combating racism and discrimination. The French authorities have failed to provide to date any evidence that could justify the dissolution of the organization. Nothing shows that the CCIF is a clear and imminent danger for national security or public order, which could justify its dissolution.

Following the violent attacks in Vienna (Austria), Sebastian Kurz, the Austrian Chancellor, announced that the law on association (*Vereinsgesetz*) will be tightened, that new grounds for closing places of worship will be introduced and that a new criminal offence on "political Islam" will punish those who "are not terrorists themselves but constitute a fertile ground for terrorism".[7] These announcements raise, among others, concerns regarding the rights to freedom of association, freedom of religion and liberty and security.

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[1] Avant-projet de loi confortant les principes républicains : https://www.dalloz-actualite.fr/flash/projet-de-loi-separatisme-texte-de-l-avant-projet-de-loi#.X7Tya2j7TIU

[2] « […] dont les agissements portant atteinte à la dignité humaine » ou « qui exercent de pressions psychologiques ou physiques sur des personnes dans le but d'obtenir des actes ou des abstentions qui leur sont gravement préjudiciables »

[3] https://www.amnesty.org/download/Documents/EUR2132812020ENGLISH.PDF

[4] Article 212-1 of the Law on National Security.

[5] Under international human rights law and standards, states can criminalize preparatory acts leading to the perpetration of a crime as well as the incitement to commit a crime. The criminalization of a preparatory act must comply with the principle of legality and avoid arbitrary and discriminatory application in practice, by ensuring that any preparatory act that is to be criminalized has a sufficiently close and direct connection to the commission of a principal criminal act, with a real and foreseeable risk that the act would in fact take place. Moreover, states should prohibit only those forms of expression that genuinely amount to incitement, that is encouraging others to commit recognizable criminal acts with the intent to incite them to commit such acts and with a reasonable likelihood that they would commit such acts, with a clear and direct causative link between the statement/expression and the criminal act. See Amnesty International, Dangerously Disproportionate. The ever expanding national security state in Europe. Chapters 2 and 4, https://www.amnesty.org/download/Documents/EUR0153422017ENGLISH.PDF

[6] https://www.20minutes.fr/societe/2894171-20201027-attentat-conflans-gerald-darmanin-ccif-officine-islamiste

[7] https://twitter.com/sebastiankurz/status/1326519060922834945

The announcements made by the Austrian and French authorities have taken place in a context where European Union's member states are stepping up their counter-terrorism efforts following the recent violent attacks in Austria and France. Last week, the EU Home Affairs Ministers signed a declaration in which, among many other measures, they state that "organisations that do not act in accordance with relevant legislation and support content that is contrary to fundamental rights and freedoms should not be supported by public funding, neither on national nor on European level. Also, the undesirable foreign influencing of national civil and religious organisations through non-transparent financing should be limited."[8]

Although it is at the moment unclear how this statement will be followed-up by concrete measures, it raises concerns regarding the use of national security and public order to withdraw or restrict funding unnecessarily or disproportionately. Amnesty International has for instance highlighted how domestic criminal provisions such as "apology of terrorism" and "glorification of terrorism" are vague and can thus be used as grounds for silencing dissent and closing down associations.[9]

DISSOLUTION OF ORGANIZATIONS: ONE OF THE SEVEREST RESTRICTIONS OF FREEDOM OF ASSOCIATION

Under International human rights law and standards, states can restrict the rights to freedom of association and freedom of religion or belief but any such restrictions must be prescribed by law and necessary in the interests of national security or public safety, public order, protection of national security, public health or the rights of others. Any such restriction must also be necessary and proportionate to the aim that they intend to achieve.[10]

The dissolution of an association represents one of the severest restrictions of the right to freedom of association. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized that the dissolution of an association is permissible only when there is a clear and imminent danger resulting in flagrant violation of national law, in accordance with human rights law. The Special Rapporteur has indicated that, as best practice, any dissolution should be decided by a court.[11]

The Special Rapporteur stressed that the dissolution of an association is a measure of last resort and constitutes a proportionate restriction of the right to freedom of association only in extreme cases, such as those in which an organization promotes racial hatred and engages in harassment and intimidation of minorities (e.g in the ECtHR judgment in the case Vona v Hungary).[12] Indeed, the Human Rights Committee of the UN has found violations of the right to freedom of association in instances where insufficient reasons were provided by the authorities to justify dissolution.[13]

The joint OSCE/ODHIR and Venice Commission Guidelines on freedom of association emphasize that an organization can be dissolved only after the decision of an independent and impartial court.[14] International labor law, which applies more specifically to the right of freedom of association of workers and employers, clearly prohibits the administrative dissolution of workers' and employers' organizations.[15]

DISSOLUTION OF ORGANIZATIONS IN OTHER EU COUNTRIES

The European Court of Human Rights has repeatedly emphasized that the dissolution of an organization is a harsh measure which can be taken only in the most serious cases.[16] The Court has highlighted that any dissolution measure that is not based on acceptable and convincing reasons "is liable to have a chilling effect on the applicant association and its individual members as well as on human rights organisations generally".[17]

The Court has applied a high threshold in deciding whether the dissolution of a party or a civil society organization is proportionate and necessary in a democratic society. For example, the Court has concluded that the dissolution of an

[8] https://www.consilium.europa.eu/media/46793/st12364.pdf
[9] https://www.amnesty.org/download/Documents/EUR0153422017ENGLISH.PDF, chapter 4.
[10] The right to freedom of association is protected by article 22 of the International Covenant on Civil and Political Rights (ICCPR), article 11 of the European Convention of Human Rights (ECHR). The right to freedom of religion or belief is protected by article 18 of the ICCPR and article 9 of the ECHR and article 5 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).
[11] https://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session20/a-hrc-20-27_en.pdf, paras. 75 and 76
[12] https://www.ohchr.org/Documents/Issues/FAssociation/A-HRC-26-29_en.pdf, para. 51, https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13584&LangID=E
[13] Kalyakin v. Belarus (CCPR/C/112/D/2153/2012)
[14] https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e, para. 244
[15] Article 4, ILO Convention No. 87
[16] Association Rhino and Others v. Switzerland, para. 62, 11 October 2011; Vona v. Hungary, para. 58; Les Authentiks and Supras Auteuil 91 v. France, para. 84
[17] Adana Tayad v Turkey, para. 36, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-204123%22]}

organization in Hungary that organized anti-Roma rallies and paramilitary activities that intimidated and harassed Roma people was proportionate and necessary as its activities constituted a sufficiently imminent prejudice to the rights of others that threatened to undermine the fundamental values of a democratic society, which included the possibility for everyone to live free from racial segregation.[18]

The right to freedom of association is also protected by the EU Charter of Fundamental Rights (Article 12), which is legally binding for all institutions and bodies of the European Union as well as national authorities when they implement EU law. Last June, the Court of Justice of the European Union has found that rules regarding financing organizations by people residing abroad restricted the right to freedom of association in Hungary.[19]

The European Court of Human Rights has also found that the dissolution of organizations that strove for the establishment of Sharia and the rejection of democratic principles was not incompatible with article 11 of the Convention (the right to freedom of assembly and association).[20] In one such case, the Court held that the German Federal Administrative Court had conducted a detailed analysis of the reasons behind the decision to dissolve the organization, which included its rejection of democracy and the rule of law as shown by the conduct and the statements of the members and the president.[21]

The European Court has found that the dissolution of a political party was justified in instances where domestic authorities had established the link between such party and what the court deemed to be a terrorist organization. More specifically, the Court found that Spanish courts had established that Harri Batasuna and Batasuna were "instruments of ETA's terrorist strategy" for reasons that went far beyond the fact that the political parties "had not condemned the attacks committed by ETA".[22]

[18] Vona v Hungary, para. 57
[19] https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf
[20] Refah Partisi and others v Turkey, para 123, http://hudoc.echr.coe.int/eng?i=001-60936
[21] Kalifatstaat v Germany, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-78869%22]}
[22] Herri Batasuna and Batasuna v Spain, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-93475%22]}, para. 85