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# Counter-terrorism and the Arts

How counter-terrorism policies restrict the right  
to freedom of expression

A FRAMING PAPER

*censored*



**STOP  
ISLAMOPHOBIA**

**AUTHOR** Jane Kilpatrick

**EDITORS** Arun Kundnani, Niamh Ní Bhriain

**DESIGN** Karen Paalman

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A FRAMING PAPER

# Counter-terrorism and the Arts

How counter-terrorism policies restrict the right  
to freedom of expression

NOT CROSS

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Policing speech and performance is a framing paper, aiming to set out the main concerns regarding the impact of counter-terrorism policies, legislation and national security measures on freedom of expression, specifically in relation to the arts.

## Introduction

Europol's Terrorism Situation and Trend Report 2019 considers five categories of terrorism, dividing the concept into "jihadist terrorism", "ethno-nationalist and separatist terrorism", "left-wing and anarchist terrorism", "right-wing terrorism" and "single-issue terrorism".<sup>1</sup> The fear of terrorism and the "increasing polarization and rise of extremist views" has seen States amend and introduce laws on combatting terrorism or protecting victims, many of which interact directly with the right to freedom of expression by introducing restrictions to acts found to glorify or encourage terrorist offences. The 2015 Joint Declaration on Freedom of Expression and Responses to Conflict Situations warned against over-broad restrictions relating to terrorism and against the vague concepts of "glorifying", "justifying" and "encouraging" being included in definitions of terrorism-related offences in legislation.<sup>2</sup>

Misuse of anti-terror legislation can threaten freedom of expression both directly, through judicial and procedural application of the law, and via the changes in individuals' behaviour that the expectation of this can create. Laws criminalizing vaguely defined "extremist activities" or offering too wide a definition of offences "may lead to unnecessary or disproportionate restrictions on the right to freedom of expression".<sup>3</sup> Three common qualities are necessary in legislation to insure against the misuse of anti-terror legislation to restrict the right to freedom of expression:<sup>4</sup>

- Precision of national law, allowing media and individuals to reasonably foresee the consequences of any expression;
- Restrictions only strictly necessary to protect national security, proportionate to legitimate aims pursued and applied only to content or activities that directly imply the use or threat of

violence with the intention to spread fear and terror;

- No undue interference with the role of the media in imparting information of public interest, nor with individuals' right to seek and receive that information.

This paper will firstly explore the contexts of freedom of expression and counter-terrorism legislation, establishing the importance of both and their development and interaction in national and international law. Then, the application of restrictions to freedom of expression under counter-terror measures will be introduced and the legitimate grounds for doing so, in general and during states of emergency, will be analysed. The case studies of laws passed in Turkey, France, Spain and the United Kingdom are then briefly used to demonstrate a cross section of approaches to the threat of terrorism across the continent, before analysing how these approaches have impacted on freedom of expression, especially in the arts, in these and other European States. Finally, the scoping paper ends with a brief synthesis of trends and impacts across Europe, suggesting further research and recommendations.

## Freedom of Expression

The right to freedom of expression is essential to ensure the ability to secure other civil, political, economic, social and cultural rights, as it ensures that we know those rights exist and can recognize interferences with them, and agitate for improved promotion and protection of our own and others' rights. States have a positive obligation to facilitate the right to freedom of expression while also respecting the prohibition of discrimination both in the law itself and in its application;<sup>5</sup> all groups must have the opportunity to share information in any form through a diverse and free media and creative culture.<sup>6</sup> The right to freedom

of expression was codified by the Universal Declaration of Human Rights in 1948 and extended in 1966 by the ICCPR (Article 19), establishing:

*“Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice.”<sup>7</sup>*

Subsequent regional treaties, including the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the Charter of Fundamental Rights of the European Union<sup>8</sup> have upheld this protection, with broadly similar definitions and introducing similar legitimate limits to the right. ECHR Article 10, paragraph 2 expands:

*The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity and public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority of the judiciary.*

Under these and other international, regional and national codes of rights, “all forms of expression and the means of their dissemination”, including spoken, written, sign language, non-verbal expression, images, objects of art, books, newspapers, pamphlets, posters, banners, dress and legal submissions, including all audio-visual, electronic and internet-based means of expression are protected.<sup>9</sup>

Subject to paragraph 2 of Article 10, the right is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”.<sup>10</sup> Challenging one’s own or others’ beliefs is central to the formulation of opinion and functioning of democracy, engaging the right’s individual and collective component. The collective manifestation of each individual’s right to freedom of expression should be the functioning of informed participatory democracy. The right to freedom of expression “constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment”.<sup>11</sup>

Despite this proviso concerning offensive content, as included in the above articles the right to freedom of expression can be legitimately limited in order to promote human rights overall, but exceptions must be construed strictly. To justify limits to the right to freedom of expression in line with international human rights law, they must be set out clearly, in a validly enacted law and States must demonstrate their necessity and proportionality to protect a legitimate interest.<sup>12</sup>

Under the ECHR, limitations to the right to freedom of expression may be applied based on the limitations listed in article 10 itself, e.g. ethnic hate,<sup>13</sup> negationism and revisionism,<sup>14</sup> racial hate,<sup>15</sup> religious hate.<sup>16</sup> Hate speech is defined by the Committee of Ministers of the Council of Europe as “all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance”.<sup>17</sup>

Alternatively, the limits may be made on the basis of Article 17, the prohibition of abuse of rights.

*Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.<sup>18</sup>*



## Counter-terrorism in Europe

Rising concerns about terrorism have corresponded with the introduction and amendments of legislation on a regional and national level across European States. As well as codifying offences directly associated with committing acts of terrorism, these laws also attempt to confront communications that might make such acts more likely, engaging the right to freedom of expression.

The Council of Europe Convention on the Prevention of Terrorism defines “public provocation to commit a terrorist offence” as the “distribution, or otherwise mak[ing] available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed”.<sup>19</sup>

The element of intent is an important protection against criminalisation for recklessly or unknowingly publishing such a message. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information establish that expression must demonstrate intention, likelihood, and a direct connection with a subsequent violent offence to be truly considered a threat: expression may only be punished as a threat to national security if “the expression is intended to incite imminent violence”, “it 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”.<sup>20</sup>

The Convention on the Prevention of Terrorism acknowledges the right to freedom of expression through safeguards, including in Article 12:

- 1 *Each Party shall ensure that the establishment, implementation and application of the criminalisation under Articles 5 to 7 and 9 of this Convention are carried out while respecting human rights obligations, in particular the right to freedom of expression, freedom of association and freedom of religion, as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other obligations under international law;*
- 2 *The establishment, implementation and application of the criminalisation under Articles 5 to 7 and 9 of this Convention should furthermore be subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a*

*democratic society, and should exclude any form of arbitrariness or discriminatory or racist treatment.*

The EU Directive on Combating Terrorism established “minimum rules concerning the definitions of offences and related sanctions” in the area of terrorism, and provides an exhaustive list of the serious offences that *must* be classified as terrorist offences by Member States’ national law when they are committed or when they are threatened for a particular terrorist aim.<sup>21</sup> “Related offences” refers to acts that must be punished as criminal, even if a terrorist offence was not effectively committed, and covers, alongside offences more directly linked to intention to commit or solicit a terrorist act, the distribution – whether online or offline – of a message with the intention of inciting a terrorist offence, for example by glorifying terrorist acts. The Directive defines public provocation to commit a terrorist offence as “inter alia, the glorification and justification of terrorism or the dissemination of messages or images online and offline, including those related to the victims of terrorism as a way to gather support for terrorist causes or to seriously intimidate the population”.<sup>22</sup>

The EU Directive upholds the importance of intention, specifying that “the notion of intention must apply to all the elements constituting” criminal offences provided for.<sup>23</sup>

## Application of restrictions of the right to freedom of expression

Incitement to violence or hate speech is almost universally regarded as a prohibited form of expression, and on the surface, this would seem to fit comfortably with laws limiting freedom of expression in order to combat terrorism. However, the application of this limitation must be closely examined to truly appreciate the interaction of the two fields of law: “a law must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”.<sup>24</sup> In order for restrictions to be consistent with this principle, States must be able to demonstrate “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat”.<sup>25</sup> Additionally, it is not only the creation of new laws that needs monitoring, but the changing interpretation of existing statutes to silence opposition. For example, prosecutions for insulting the president have long been possible under Turkish laws but are only recently being used widely and systematically.<sup>26</sup>

*Pedersen and Baadsgaard v Denmark* establishes the boundaries of legitimate limits to the right to freedom of expression if proportionate and legitimate for a pressing social need, setting out the “three part test”, through which, to be legitimate, limitations must be:

- a. Prescribed by law;
- b. Pursue a legitimate purpose;
- c. Be necessary in a democratic society and proportionate to the legitimate aim pursued.

The first part, that limitations must be prescribed by law, refers not only to the existence of a law, but to the *quality* of that law, and its accessibility to the person concerned, who should reasonably be able to understand what its affects will be.<sup>27</sup> The law must be sufficiently precise for citizens “if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”.<sup>28</sup> The pursuit of a legitimate purpose relates to what motivation lies behind the restriction; the purpose (motivation) must be related to a listed provision, for example those in Article 10 ECHR (national security, territorial integrity, public safety, the prevention of disorder or crime, protection of health or morals, or the protection of the rights of others).

To be “necessary in a democratic society” means that restrictions must reflect a compromise to reach pluralism and democracy, that individuals “must sometimes agree to limit some of the freedoms they enjoy in order to guarantee greater stability of the country as a whole”.<sup>29</sup> Having established necessity, proportionality must be identified, establishing whether restrictions are “appropriate to achieve their protective functions; they must be the least intrusive amongst those which might achieve their protective function; they must be proportionate to the interest to be protected”.<sup>30</sup>

Despite the European Court of Human Rights’ role in protecting against illegitimate State interference with the right to freedom of expression, a more restrictive trend has been observed over recent years. This has raised concerns regarding the future of the protection of press freedom in Europe.<sup>31</sup> In the case of *Delfi AS v. Estonia*, for example, the final judgement seems incompatible with the Court’s earlier case law, neglecting the importance of the right to freedom of expression.<sup>32</sup> In a judgement of 2015, the Court seemed to nod towards the EU’s “margin of appreciation” when it comes to State interpretation, stating, “it is primarily for the national authorities, notably the courts, to interpret and apply domestic law”.<sup>33</sup> The Court holds

this particularly in examining restrictions based on incitement to violence.<sup>34</sup>

## States of emergency or permanent interference?

Overly broad applications of restrictions relating to terrorism, such as “glorifying”, “justifying” or “encouraging” are incompatible with international law, which requires that criminal responsibility be imposed only on those directly inciting others to terrorism.<sup>35</sup> It is not only the concept of inciting that is often applied broadly and vaguely, but that of extremism itself, which must be “defined clearly and appropriately narrowly” to be considered legitimate.<sup>36</sup> Any restrictions on freedom of expression during a crisis should only be as strictly justified by the situation at hand and compliant with human rights law regarding legitimate limits of the right as well as the legitimacy of the state of emergency. A state of crisis does not justify the use of vague and broad terms, and “incitement to violence and public disorder should be adequately and clearly defined”.<sup>37</sup> Restrictions on the right to freedom of expression must be convincingly established by the State, contribute to a pressing social need and be proportionate to this protected interest.<sup>38</sup>

States of emergency are only legitimate under international human rights law “in time of war or other public emergency threatening the life of the nation”.<sup>39</sup> To prevent abuse of states of emergency, human rights obligations may only be derogated from to a very limited extent in specific situations of acute emergency and following official notification to international bodies; they must be temporary measures aimed at returning to a non-emergency state.<sup>40</sup> However, it is a matter of concern that many such laws have been introduced and have become permanent features of national laws.

In France, the only State to have formally declared a state of emergency following terrorist acts, exceptional measures were written into law and policy, perpetuating a constant state of emergency.<sup>41</sup> Elsewhere, Turkey’s criminal code<sup>42</sup> has been before the European Court of Human Rights in numerous cases concerning speeches or publications prohibited by Turkish authorities. This Turkish legislation is cited as generating “some of the most serious violations of freedom of expression in the country”.<sup>43</sup> The extensive use of these laws to find crimes relating to terrorism or incitement to violence was “systematically interpreted in a non-human-rights-compliant manner”.<sup>44</sup>



FREE MEDIA  
CANNOT BE  
SILENCED



The French Criminal Code was amended in 2014 to include



punishable with five years in prison and a maximum fine of €75,000.

## National contexts

### Turkey

A state of emergency was declared in 2016 following the attempted coup of July that year. However, interference with media freedom was already a concern before the declaration, and measures such as the closure of media companies without any judicial involvement could not be justified by the attempted coup or the particular terrorist threats faced by Turkey.<sup>45</sup> Turkey has had the highest number of cases concerning Article 10 ECHR of any State (258 by 2015, the next State had 34), reflecting persistent violation of the right to freedom of expression.<sup>46</sup> Measures taken since 2014 by Turkey have included the sentencing of two cartoonists for insulting the president, arrests of journalists, raids of media offices (Nokta and Vice News), expulsion of foreign national correspondents, media blackouts following terrorist attacks (Ankara, 2015) including social media, physical assault of journalists, removal of broadcasting platforms of channels, court-appointed trustee takeover of media outlets and the detention of academics.<sup>47</sup> These measures have contributed to an environment whereby both state censorship of the press and intimidation

of individual journalists in exercising their freedom of expression has become commonplace.

### France

The French Criminal Code was amended in 2014 to include “apology of terrorism”, punishable with five years in prison and a maximum fine of €75,000. This increases to seven years in prison and a maximum fine of €100,000 for online communications. Of 298 judicial procedures for apology of terrorism following the January 2015 Paris attacks, 96 involved minors. By the end of 2015 one third of the 385 sentences for this offence involved minors.<sup>48</sup> This figure may relate to differing choices of media for expression by different generations, as well as the means available to monitor different forms and platforms of expression, and warrants further research.

### Spain

Spain’s 2010 Criminal Code Reform reorganised and clarified the criminal law treatment of terrorist acts, including as crimes “extolling or justifying”, by whatever means of public expression, terrorist offences and the perpetration of acts that discredit, contempt or humiliate victims or their families. Provocation,



conspiracy or solicitation to commit terrorist offences and public distribution or dissemination of slogans or messages aimed at provoking, encouraging and favouring said offenses or increasing the risk of their occurring are also illegal under the Code.


Convictions based on this code have steadily increased. In 2011, three individuals were convicted, rising to 39 in 2017, and from 2018 to the present there have been nearly 70.<sup>49</sup> A provision in 2015 broadening Article 578 of the Criminal Code increased sanctions where offences were committed over the internet, raising the concern of UN experts for the potential to “criminalise behaviours that would not otherwise constitute terrorism and could result in disproportionate restrictions on the exercise of freedom of expression”, and continuing to employ an excessively vague definition of terrorist offences.<sup>50</sup> The Spanish Penal Code’s vague definition of the term “terrorist organisation” has discouraged parts of the Basque Country’s population from “openly sharing the goals of self-determination of the Basque region, or even raising what they consider to be deficiencies in the field of human rights, in particular in the context of the fight against terrorism,” because doing so “would unjustly cause them to be linked to ETA”.<sup>51</sup> This stance reflects an effect of counter terror legislation that is complicated to quantify; its impact on individuals’ expression, self-censorship, and the subsequent stifling of conversation. An independent review of the Penal Code reform found that its broad and ambiguous definitions “pave the way for disproportionate or discretionary enforcement of the law by authorities”.<sup>52</sup>

### The UK

The European Convention on Human Rights is transposed into UK law by the Human Rights Act 1998 and protects freedom of expression in its Article 10.<sup>53</sup> The Terrorism Act 2000, as amended by Section 34 of the Terrorism Act 2006, establishes the offence of “publishing (or causing to be published) a statement directly or indirectly encouraging or otherwise inducing terrorism or disseminating a publication containing such a statement. For the purpose of these offences, indirect encouragement includes the “glorification of terrorism now or in the past”.<sup>54</sup> However, terrorism itself is not precisely defined by the Act, and the offences referred to are consequently vague and unclear.

The Counter-Terrorism and Border Security Act 2019 has also raised concerns in front of the Council of Europe Platform by media advocates, due to its criminalization of “online content that is likely to be helpful for terrorism, without terrorist intent being required”.<sup>55</sup> The wording of the Act removes the requirement of terrorist intent to engage criminal

restrictions on posting or accessing content that “is likely to be helpful for terrorism”.<sup>56</sup> The UK’s Permanent Representative to the Council of Europe’s Committee of Ministers defended the wording of the Act on the basis of the words “reasonable suspicion” that the publisher of or person accessing content is a member or supporter of a terrorist organisation.<sup>57</sup> However, the prosecution of individuals watching online content without criminal intent risks violating Article 10 ECHR—the right to receive information.<sup>58</sup> While the UK argued that restrictions to Articles 8, 9 and 10 ECHR were justified, the “chilling effect” was noted not only for public interest speech but also for “the inquisitive and foolish mind”, which may need to experience varied expressions to form an opinion.<sup>59</sup>



the “chilling effect” was noted not only for public interest speech but also for “the inquisitive and foolish mind”

# chilling effect

# Case studies of effects



## THE INTERNET AND SOCIAL MEDIA

*Operación Araña* (Operation Spider) was a Spanish initiative that searched for communications through social networks that could fall within the definition of “glorifying terrorism”.<sup>60</sup> In France, the offence of “apology of terrorism” has led to charges against hundreds of individuals, including children, for comments posted on social media, despite the fact that they did not incite violence.<sup>61</sup> Through both the use of media and the likelihood of an inquisitive mind, the effect of these measures on children and minors is of concern.

In 2013, Cassandra Vera Paz published the first in a series of tweets making jokes about the nature of the assassination of Prime-Minister Luis Carrero Blanco by Euskadi Ta Askatasuna (ETA) in 1973, and joined a five-decade thread of jokes about Carrero Blanco’s death shared socially and even publicly by comedians.<sup>62</sup> In 2016, Vera Paz was charged with “injury to victims of terrorism” for the tweets published between 2013 (when Vera Paz was 18 years of age) and 2016. In 2017 the National Court found Vera Paz guilty of humiliation of victims of terrorism and their families. Critics of the decision included Carrero Blanco’s granddaughter, who lamented that public expression, while disagreeable, could lead to a year in prison, a year’s revocation of voting rights, and seven years of *inhabilitación absoluta* – exclusion from government grants (including scholarships) and holding public sector jobs. The case was appealed at the Supreme Court in 2018, argued based on violation of the Constitution of Spain, Article 20, protecting the right to “freely express and spread thoughts, ideas and opinions through words, in writing or by any other means of reproduction”,<sup>63</sup> as well as violation of the Universal Declaration of Human Rights, Article 19, and article 11 of the Charter of Fundamental Rights of the European Union.

The Supreme Court reversed the National Court’s ruling because the tweets did not incite violence or hatred against any specific group (i.e. they were not hate speech), nor did they encourage new attacks or justify the assassination.<sup>64</sup> As the tweets did not focus on the personal or public circumstances of Carrero, they could not constitute a humiliation for his relatives.<sup>65</sup> The Supreme Court determined that the National Court had improperly applied Article 578 of the penal code (the law against praising terrorism and the humiliation of victims of terrorism), introduced by the *ley orgánica 7/2000* Dec. 222, and undue application of Article 14.3 of the penal code (feasibility of ignorance of the crime).

However, this was not the last of *Operación Araña*. Spanish artist César Strawberry was also found guilty through the initiative in 2017. The artist was handed a one-year jail sentence for glorifying terrorism and humiliating its victims for another series of tweets. The National Court acquitted him of all charges, though his case was then appealed before the Supreme Court.



“  
THE BATTLE IS NOT WON.

RUHRTRIENNALE  
FESTIVAL DER KUNSTE  
2019  
2018

EVEN IF WE DO NOT  
ENTER PRISON, WE ARE  
STILL CONDEMNED AND  
WE ARE NOT FREE”

SDB

## MUSIC AND PERFORMANCE

In February 2016, two puppeteers were arrested after a performance in Madrid in which one puppet held a banner with a slogan comparable to one used by the ETA. Following calls by some audience members to police, the puppeteers were accused of “glorification of terrorism” and incitement to hatred or violence. While the National Court dropped charges of glorification, it still examined the charge of incitement to violence.<sup>66</sup>

In 2016, 12 members of the rap group *Insurgencia* received two-year jail sentences for lyrics of one song that “glorified terrorism”. This trend continued into 2018, when the artist *Valtònyc* was jailed for three and a half years for lyrics “glorifying terrorism and insulting the monarchy”. In March that year artist Pablo Hassél was handed a two and a half year sentence and a €37,800 fine for similar charges.

In a comparable scenario, if not directly justified through counter-terrorism law, in Germany, artists who refuse to denounce the Boycott, Divestment and Sanctions (BDS) movements for Palestinian rights have been removed from festival line-ups and music residencies. In 2018 the organisers of Ruhrtriennale disinvited Scottish hip-hop group Young Fathers, because of their public support of the BDS Movement, though later (unsuccessfully) invited them back following an outcry over censorship.<sup>67</sup> In July 2019, American rapper, Talib Kweli, was disinvited from the Open Source Festival, Dusseldorf, for refusing to denounce the BDS movement, reflecting a trend of imposing political conditions on artists.<sup>68</sup> This follows a resolution passed by a cross-party alliance in the Bundestag in June 2018 condemning the BDS campaign and cutting off funding from organisations who actively support the movement.<sup>69</sup> The source of the disagreement over the BDS campaign is based in the historical context of anti-Semitic financial and cultural boycotts under Nazism; many institutions criticise the boycott campaign for “renew[ing] the construction of the enemy stereotype”.<sup>70</sup> However, to pressure artists to promote a particular political stance in order to perform seems incompatible with artistic and creative freedom, and with the sharing of different perspectives and understandings, essential for the functioning of an informed democracy.

**WHAT IS FREEDOM?  
HOW EASY  
IS IT  
TO LOSE IT?**

**HOW HARD IS IT TO  
GET IT BACK?**



**CENSOR**

## THEATRE AND ART

In the UK, the fact that no artist has yet been convicted under counter-terrorism legislation presents a false view of the impacts of such laws, and the environment that created them, on artists' freedom of expression. The Arts Council itself has, following "advice" from police, cancelled productions that dealt with issues relating to terrorism and its impact on communities. Additionally, long before any court involvement, police advice has also led to commissioners or funders cancelling work that is seen as risking protest. For example, police "advice" to foreclose the exhibition *ISIS Threaten Sylvannia* by the artist Mimsy marks a step into deciding what should not be shown to the public because of the risk of protest, rather than offering expertise on the management of protest situations.<sup>71</sup>

The Index on Censorship has also analysed the impacts of censorship on different artists due to perceptions and assumptions concerning terrorism (i.e. racism), citing "unequal access to exercising the right to artistic freedom, with artists from black and minority ethnic backgrounds encountering additional obstacles."<sup>72</sup> Comparing two dramatic works concerning the radicalisation of young Muslims in the UK, *Homegrown* by Omar El-Khairy and Nadia Latif, and *Another World: Losing our Children to Islamic State* by Gillian Slovo and Nicolas Kent, the Index on Censorship identify how work on the same topic of race and religion is more likely to be cancelled on police advice if the creative team behind it are not white.<sup>73</sup>

# HOMEGROWN - THE IMMERSIVE PLAY THAT NEVER WAS ...

Early 2015



The National Youth Theatre (NYT) approached writer Omar El-Khairy and director Nadia Latif for a project looking at the issue of "radicalisation" among young British Muslims.<sup>74</sup>

Separately, three teenage girls attending Bethnal Green Academy in London sometimes referred to as the "Bethnal Green Trio" left the UK to join ISIS.

February 2015



Homegrown, a verbatim, immersive piece of theatre with a cast of 115 young actors was announced to the press.

June 2015

## "RARE HONESTY AND POIGNANCY"

The National Youth Theatre's artistic director, **Paul Roseby** told the Guardian newspaper that the creative team had chosen a school in Bethnal Green as the show's venue to give it "rare honesty and poignancy" with a young cast that "really know what's going on and can tell the story first-hand".<sup>75</sup>

The original venue booked for the show cancelled its agreement to host the production **FOLLOWING LOCAL GOVERNMENT INTERVENTION**.<sup>76</sup> UCL Academy in North London was chosen as a new venue for the show.<sup>77</sup>



London Metropolitan Police initially denied any involvement in the play, but later revealed it had in fact met with the NYT after these meetings came to light through the publication of email correspondence. They deny pressuring the NYT to shut down the production.<sup>79</sup>

**POLICE** informed the Homegrown team that the **POLICE** would revise the script and introduce security measures including:

- Attend rehearsals
- Plant plainclothes officers in the audience
- Carry out daily sweeps of the venue by a bomb squad<sup>78</sup>

20 July 2015

Rehearsals begin with the cast of 115 15-25 year olds.<sup>80</sup>



30 July 2015

NYT's Artistic Director, **Paul Roseby** contacts the Arts Council England to express concern about Homegrown, citing what he calls the artists' "extremist agenda".<sup>81</sup>



August 2015

NYT cancels Homegrown, ten days before opening night and with no warning to El-Khairy and Latif.<sup>82</sup>

September 2015

**Roseby's** letter is made available publicly following a Freedom of Information request. Nadia Latif responds with the statement:

“ It is clear there have been a lot of contradictions between what the National Youth Theatre has said publicly and what they are obviously discussing internally, and it is good to see that brought out into the open...I do think there is some really troubling language, particularly the use of 'extremist', in this email.<sup>83</sup> ”

April 2016

The National Theatre opened "Another World: Losing our Children to Islamic State", another verbatim play (performed by adult, professional actors), this time "attempting to investigate why young Muslims might want to join Islamic State", written by Gillian Slovo and Nicolas Kent, **neither of whom are Muslim**. Another **non-Muslim artist**, comedian Stewart Lee, had that year also focused on *contemporary attitudes to Islam* in his "BBC 2 Comedy Vehicle".<sup>84</sup>



This discriminatory effect of censorship is also a symptom of its pre-legal application, with economic factors far more likely to affect smaller or grass-roots artists. For example, police protection was offered to the Mall Gallery during the *ISIS Threaten Sylvania* exhibition, because of the possibility that protests surrounding the work may have required policing, but the cost amounted to £7,200 a day, which was unaffordable for the venue.<sup>85</sup>

The application of counter-terrorism laws and policy relating to the arts in the UK is not compliant with principles of equality or freedom of expression in practice. The UK government's *Prevent* programme for anti-radicalisation is overdue a review due to criticism that it has been applied in a way that discriminates against Muslims, and that it has been harmful to "legitimate expression".<sup>86</sup> *Prevent* focuses strongly on radicalisation among young people and in schools, requiring teachers, medical personnel and local authorities to "assess the risk of children being drawn into terrorism".<sup>87</sup> Where young people come into contact with the arts, it seems this discriminatory impact may be particularly notable due to concerns over safeguarding alongside artistic content that questions or explores the causes of radicalisation.<sup>88</sup> The creative team, Latif and El-Khairi, were accused of having an "extremist agenda", a serious allegation that, they point out, has not been faced by high profile white artists dealing with the same controversial issues.<sup>89</sup>

## Conclusions and recommendations

A consistent issue with counter-terror legislation leading to over-zealous policing of expression in the arts and media is the introduction of new laws that are not sufficiently precise to provide the foreseeability necessary to legitimately limit the right to freedom of expression. As well as expanding the remit for criminalising expressions that do not seek to contribute to a state of terror, these laws can lead to a situation of censorship imposed by police, artistic institutions or artists themselves. Criticism of Spain's legislation focuses on Article 578's vague terms for imposing fines, public sector job bans and prison sentences, affecting increasing numbers of unwitting individuals as intention does not always need to be established to count as an offence.<sup>90</sup> Particularly concerning is how laws, especially those related to publications on the internet, are affecting children, who are still using available platforms to develop and change their opinions, more so than adults might be.

It is not only criminal proceedings that silence media and artists. Financial censorship can also take on many forms, from rising costs of police protection if work might create public protest, to fines imposed for coverage not to the government's liking. In Turkey, such fines have been used to stifle critical reporting of curfews and counter-terror operations in the South East of the country.<sup>91</sup>

Case law, especially international or regional case law, is not an appropriate indicator of the situation within a state nor is the time taken for a case to work through different levels of national courts before reaching an international level. Many artistic works that are censored never actually reach legal proceedings and therefore simply analysing case law runs the risk of underestimating or misunderstanding the real threats to freedom of expression in the arts. More first-hand research is needed with artists and creatives to understand the impacts of various forms of censorship, justified by counter-terror measures, on freedom of expression and artistic creativity. Associated topics that should be researched include the surveillance of communications, the positive obligation of States to protect journalists from intimidation, harassment and attacks, and a race-aware impact assessment of legislation.

Especially pertinent to the need to look beyond case law in analysing the impact of counter-terrorism measures on the right to freedom of expression is the phenomenon of self-censorship, both as a consequence and an alleged aim of new legislation. The UK Arts Council has itself been subject to criticism based on its curtailment of artists' expression in a climate sensitive to the topic of terrorism. Self-censorship is linked to a lack of legal clarity, fermenting "the fear of causing offence, losing financial support, hostile reaction or media storm, police intervention, prejudice, managing diversity and the impact of risk aversion" because of a lack of knowledge of legal limits.<sup>92</sup> Artists have identified self-censorship, as well as censorship, as having a significant impact on their work.

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