



ARTICLE 19 Submission

Case no. 2021-006-IG-UA

Summary

In this public comment, ARTICLE 19 addresses Q1, 2, 4 and 5 posed by the Oversight Board. ARTICLE 19 has done significant work on freedom of expression in [Turkey](#), including on terrorism-related cases. In our view, Facebook’s policy on dangerous individuals or organisations should have been inapplicable in this case as it was unrelated to incitement to terrorism. In any event, the focus of human rights analysis should not be on support or praise of particular individuals or organisations per se but on incitement to commit terrorist acts. ARTICLE 19 identifies a number of other issues with Facebook’s policy in this area and draws attention to relevant international standards and case-law on incitement to terrorism.

Public comment

Q1, Q2. No. For many, Facebook is synonymous with the global public square for online political discourse. Any restriction on freedom of expression on Facebook should therefore be guided by the universal language of human rights. Under international law, it is well established that incitement to terrorism must be prohibited. However, both the UN Special Rapporteurs on freedom of expression and counter-terrorism have been clear that terms such as “praising” or “supporting” terrorism are too vague to meet the legality standard under international human rights law (e.g. [CCPR/C/GC/34](#); [A/66/290](#)). Incitement to terrorism must be narrowly defined lest it is used to chill public debate on national security issues and prevent news reporting in this area (see the [Johannesburg Principles](#)).

The European Court of Human Rights has examined several incitement to terrorism cases involving the conflict in South East Turkey. In most cases, it concluded that there had been a violation of Article 10 of the European Convention on Human Rights. In particular, the Court noted that the expressions “the leader of the Kurdish people”, “guerrilla” or references to a “national liberation struggle” did not in and of themselves amount to incitement to violence under the Convention. It has also reiterated that the public enjoyed the right to be informed of different perspectives on the situation in South East Turkey, however unpalatable to the authorities (for more info, see ARTICLE 19’s opinion in the [Demirel](#) case).

Importantly, the focus of human rights analysis is not on support or praise of particular individuals or organisations *per se* but on *incitement* to commit *terrorist acts*. There is

therefore a significant difference between the human rights approach to ‘terrorist content’ and the Facebook community standards that seem to overly focus on speakers or organisations.

The Facebook community standards on Dangerous Individuals and Organisations also fail to make allowance for public debate on those individuals or groups. To be allowed, debate must be ‘neutral’ or condemn the individual or organisations at issue. This is emphatically not what freedom of expression is about. It protects not only innocuous information or opinions but also speech that may shock, offend or disturb ([Handyside v the United Kingdom](#)). If the only possible outcome is condemnation, the debate is a foregone conclusion. It does not allow for a proper discussion of the complexity of the factors that have led to conflict, challenging received wisdom on possible solutions or a deeper understanding of the issues.

In the case at hand, there is a significant difference between discussing the prison conditions of a convicted terrorist, i.e. a matter which is clearly in the public interest and is in any event unrelated to the terrorist’s past terrorist activity, and inciting or even justifying violent acts. In our view, therefore, Facebook’s decision to remove this post is inconsistent with a) international standards on freedom of expression, b) Facebook’s own policy which should not have been applicable in this instance and c) Facebook’s stated values and human rights commitments to freedom of expression.

Q4. Facebook’s policy on dangerous organisations and individuals remains highly opaque. The list of proscribed organisations or individuals by reference to Facebook’s community standards is not publicly available. It is often unclear how those standards are applied (e.g. [Facebook v Casapound](#)) or what use is made of dangerousness as a criterion and how it is defined. To the extent that Facebook relies on UN, US or other lists of designated terrorist organisations, the company does not say so publicly in its community standards. If this kind of information is made public elsewhere, it is hard to find. While Facebook’s policy updates in its newsroom can be helpful, they soon become outdated and can be difficult to trace.

Importantly, reliance on national lists of designated terrorist organisations could raise significant concerns for freedom of expression in circumstances where opposition groups or journalists are designated as terrorists. More generally, terrorism lists are notoriously subject to significant political horse-trading. If the use of such lists is deemed necessary, it should be limited to those that have been drawn by the UN as it reflects a higher degree of consensus. At the same time, reliance on those lists should not prevent legitimate public debate on national security issues.

Q5. Under international human rights law, freedom of expression must be restricted when it is used to incite violence based on protected grounds (Article 20 ICCPR). Other types of expression may be restricted subject to the tests of legality, legitimate aim and necessity and proportionality (Article 19 (3) ICCPR). A democratic society should enable or at least tolerate discussions about dangerous individuals or organisations that are of interest to the public as long as it does not involve incitement to commit terrorist acts. If it is impossible to name a polarising figure without facing restrictions on speech - often due to inaccurate filters - public debate is stifled. Whether or not a convicted criminal has received a proportionate sanction or is treated fairly in prison should be open to discussion. Similarly, a free society

must be open to public debate about conflict situations, including with a view to finding political solutions to what are intrinsically political and societal problems (see [Joint Declaration on Freedom of Expression and responses to conflict situations](#)). Whether or not content is likely to incite violence or terrorist activity and therefore ought to be removed will often depend on the context in which the comment was made, including the political and social situation offline, who made the comment, their intent and likely reach, the words chosen to make that comment and if those comments were made at a particularly sensitive time.