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Impact of securitisation on the rule of law and human rights

Securitisation is a process happening across states covered in this report, as state authorities increasingly present certain national or regional developments as security issues. Often this leads to states introducing martial law or emergency legislation for unduly long periods of time, or other special measures aimed at addressing real or perceived security threats. The states' responses to threats and security risks might be lacking transparency and accountability and may have a long-term impact leading to restrictions of fundamental rights and freedoms and to violations of the rule of law principle.

Numerous ENNHRI members, including from Belgium, Denmark, Estonia, Finland, France, Georgia, Germany, Ireland, Latvia, Lithuania, Luxembourg, Poland, Romania, Slovakia, Slovenia, Spain and Sweden reported that securitisation affected the rule of law and human rights in their respective countries as well as their own work in these fields. In case of Armenia, Azerbaijan, Georgia, Moldova and Ukraine, this included the context of **conflicts**.

The securitisation narrative has resulted in the instrumentalisation of a wide variety of issues, including terrorism, organised crime, migration and the Russian war against Ukraine, as it has been pointed out, inter alia, by ENNHRI members from Estonia, Germany, Moldova, Poland and Sweden. The NHRI from Slovakia reported that all these topics are described as threats and have resulted in **anti-HRDs discourse,** calling for limiting their work and posing it as negatively affecting the security of the population. There were similar developments in Georgia, with the foreign-influence law. On the other hand, the Finnish NHRI noted that in Finland, it is the instrumentalisation of migration by Russia that has strengthened the securitisation narrative, as migration has been perceived as a threat that needs urgent responses.

Numerous ENNHRI members reported on challenges in their countries in the area of national security and **migration**. NHRIs from Finland, Slovakia and Spain reported an increase in public statements on the negative effects of irregular or instrumentalised migration. Further, the French NHRI has stressed the resultant risk of stigmatisation of the entire migrant population.

Some countries have implemented strict measures. Finland has effectively closed parts of its borders, therefore significantly limiting the right to seek international protection. Latvia has triggered the border guards' legislation with the aim of strengthening national border security and curbing irregular

migration, but, as a result, also limiting access to the asylum procedure. Greece, Lithuania and Poland have resorted to pushbacks of migrants, the former with express statutory authorisation. In the United Kingdom, migration legislation has been enacted, which expressly allows for measures that may breach the country's international human rights obligations.

The number of people in immigration detention has increased and the conditions of migrant accommodation have worsened, as stressed in the Belgian and Slovenian reports. The Norwegian report refers to proposals allowing for migrant detention in the national interest. One of Belgium's ENNHRI members (Myria) has drawn attention to the fact that foreign detainees without residence rights do not enjoy equal access to measures of conditional release. The Portuguese NHRI has also signalled changes in the institutional migration management set-up and in the system of residence permits. The Danish NHRI has complained about general and indiscriminate data retention. Finally, the NHRIs of Germany and the Netherlands have drawn attention to the risk of discrimination creeping into the application, respectively, of the legislation on clan crime and removal of citizenship.

ENNHRI members pointed to the impact of **anti-terrorism laws and policies** on the rule of law and fundamental rights. New legislation introduced in Germany against clan crime and in Sweden against terrorism includes broad and vague terms which might lead to disproportionate impact on fundamental rights. Changes to the criminal code in Belgium, and prospective changes to the criminal procedure in Luxembourg pursue the same securitisation logic. In Sweden, an inquiry was carried out to assess the circumstances and procedures in which it should be possible for a witness to testify anonymously. In Switzerland, the new counter-terrorism legislation also raises serious concerns over its human rights compliance.

The securitisation logic has also crept into the **regulations affecting freedom of peaceful assembly**. This is evident in the case of Armenia where martial law may provide an excuse for drastic restrictions on its exercise and in Georgia where information provided by the secret service about plans to destabilise the country was relied on to support an attempt to amend the Law on Assemblies and Demonstrations. In Ukraine, martial law also allows for limitations on the right to assembly. Statutory changes introduced in Germany to facilitate the banning of protests, especially those concerning environmental issues, were quoted by the German NHRI as a concern. In Romania, human rights violations could occur given that the draft law on public assemblies was not discussed further and it does not integrate international and regional standards in terms of public assemblies. Similar concerns led to amendments to the Georgian law on assemblies and demonstrations being vetoed by the President.

The amendments to the policing legislation, which have **strengthened and**

expanded police powers, were introduced in many states, including Armenia, Bosnia and Herzegovina, Latvia, Germany, Ireland, Luxembourg, and Sweden. These concern the power to ban demonstrations and establish ad hoc stop and search zones as well as the use of new technology (including digital recording, automated recognition systems, drones and anti-drone equipment) and explosives in various police operations. In the case of Armenia, this was in the context of the restriction of freedom of peaceful assembly. In Ireland, traditional police powers to arrest, search premises and detain have been expanded.

Additional concerns affecting the **right to privacy** have been expressed in the Belgian report about the creation of a common database related to terrorism, extremism and radicalisation, the Georgian report about uncompleted investigations into allegations of illegal covert surveillance, the report from Great Britain about the increased use of facial recognition technology, the Polish report about the use of spyware Pegasus and the Cypriot NHRI report on the EU media services proposal and its provisions on monitoring software use. The Greek NHRI raised concerns over the use of technologies by intelligence services which may limit fundamental rights.

The Russian invasion of Ukraine and the means used in it, one of which is propaganda, resulted in restrictions on freedom of expression in many countries. One example is the suspension of TV channels and websites in Moldova.

Finally, the Scottish NHRI refers to an ongoing inquiry into whether the measures introduced in response to the pandemic were strictly lawful, necessary, proportionate and time limited.

The securitisation logic favours, among many things, **measures of a non-criminal law nature to secure the public order**, such as preventive surveillance and stay bans (in Sweden), orders prohibiting individuals from taking part in demonstrations (in Belgium), preventive action against road blockers (Germany), certain sports fans (in Poland) and even internment (in Belgium). In the United Kingdom, it has been proposed to transfer the power to make parole decisions for the most dangerous prisoners from the Parole Board to the Secretary of State. ENNHRI members – including those from Armenia, Belgium, Germany, Greece, Poland and Romania – reported that the securitisation context had resulted in **excessive or even abusive use of powers by police forces**.

NHRIs' actions to promote and protect fundamental rights and the rule of law in the context of national security and securitisation

Numerous ENNHRI members have addressed the above-mentioned challenges of securitisation's impact on the rule of law and fundamental rights in their work.

For instance, NHRIs increased **monitoring** of places of detention, borders and forced returns in Armenia, Portugal, Serbia and Spain. The Azerbaijani NHRI as NPM conducted visits to the detainees of Armenian origin in the context of conflict. Actions have also been taken in individual cases related to court proceedings in the context of migration, police abuse, secret surveillance and the practical difficulties related to the functioning of associations during the COVID-19 pandemic by the Polish NHRI. The Greek NHRI has a 'Recording Mechanism of Incidents of Informal Forced Returns' in place and issues reports based on data collected through interviews with victims. The NHRI from Northern Ireland regularly engages with independent monitoring mechanisms whose remit includes counter-terrorism powers. The ENNHRI members from Armenia and Scotland have intervened, on several occasions, to preserve the right to protest.

ENNHRI members have also analysed the impact of securitisation on the rule of law and human rights in their reports, **opinions** and recommendations. The NHRI from Great Britain has provided parliamentary briefings on various bills with securitisation implications. ENNHRI's members from Armenia, Georgia and Romania have adopted/commissioned opinions on the assembly laws. The Lithuanian NHRI has adopted an opinion on the protection-of-the-borders law; the French NHRI on relations between the police and the population; the Latvian NHRI an opinion on freedom of expression; the ENNHRI's member from Sweden - opinions on numerous proposed laws such as on surveillance, stay-bans, anonymous witnesses and stop-and-search zones and Belgium's NHRIs (FIRM-IFDH and Unia) - three opinions on the criminal-law changes and the common database mentioned above.

NHRIs' **recommendations** – those concerning responses to attacks on HRDs, pointing out a lack of the proportionality of measures taken, and the restructuring of the National Immigration and Borders Service - have been issued, respectively, by the Slovak and Portuguese NHRIs. The Greek NHRI addressed state authorities in relation to the informal forced returns of migrants. The German NHRI has made proposals on the federal police legislation. The Irish one has reacted to legislative proposals to reform the internal and external oversight of the Irish police force. The Norwegian has reacted to legislative proposals concerning migration detention. The NHRI of Denmark has published a brief on data retention, raising concerns over a serious interference in the right to respect for private life and the protection of personal data. The Dutch NHRI has made public statements on illegitimate protest bans and the law on removing Dutch citizenship, while the Luxembourgish NHRI has criticised the disproportionate begging ban.

NHRIs from Germany, Portugal and Slovakia have prepared **studies and reports** on the response of the police to climate protests, migration management and hate speech, respectively. The French NHRI has set up a working group on proliferation of cameras and drones for the surveillance of public spaces and the growing use of AI for image analysis. Finally, the Portuguese NHRI has organised training for prison guards on the topic of human rights of persons deprived of liberty.

By providing human rights advice, in the form of opinion, recommendations, statement or report, to those actions taken by the state authorities, ENHHRI's members aimed at emphasising the need for their compliance with human rights principles.

In general, NHRIs have stressed the importance of independent inquiries as an essential safeguard against law enforcement violence and abusive behaviour and of proper data collection as a necessary means of measuring the impact of securitisation.

The variety of responses to securitisation reflects not only differences in the challenges faced in different states but also certain divergences in the NHRIs' institutional set-up and organisational arrangements. For example, some NHRIs place emphasis on individual cases and even engage in litigation where this is allowed by their mandates. The focus of the work of others lies in monitoring activities (such as visits to places of detention or the borders); at the same time many concentrate their efforts on general recommendations, studies and awareness raising. The variety of responses can become a source of mutual learning and the exchange of good practices may lead to enhanced NHRIs' capacity to respond to the impact of securitisation on the rule of law and human rights.

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