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CRIMINALIZATION OF INCITEMENT TO TERRORISM IN LITHUANIA, GERMANY AND FRANCE

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Abstract. The growing threat of terrorism raises the question of punishing not only the perpetrators of terrorist acts, but also the instigators. This article presents a comparative analysis of criminal legislation on incitement to terrorism and its enforcement in three jurisdictions: Lithuania, Germany and France. The aim of the work is to enrich the theoretical analysis of legislation on countering incitement to terrorism, with the possibility of applying theoretical results in practice by the legislator and law enforcement. The objectives of the research are to analyse the approaches used by jurisdictions to prohibit incitement to terrorism, how exactly this legislation is applied, what problems law enforcement faces, and to formulate recommendations for solving them. The main research methods are the formal-legal method, as well as comparative legal methods. In conclusion, it can be noted that both Lithuania and France establish a special ban on incitement to terrorism (using different wording). However, while in Lithuania the article on incitement to terrorism is not applied in practice, in France it is actively applied and becomes the subject of criticism for excessive criminalisation of speech. At the same time, in Germany there is only a general ban on incitement to crime.

Keywords: Incitement to terrorism, Terrorism, Criminal law, Freedom of expression, Apology for terrorism.

Introduction

Theoretically, terrorism can be defined as "the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change" (Hoffman, 2006). International law defines a terrorist act as criminal acts "intended to cause death or serious bodily injury to civilians… with the purpose to provoke

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a state of terror in the general public or to compel a government or international organisation to do or abstract from doing any act" (UN, 2004). In 2005, the Council of Europe obliged member states to prohibit public incitement to terrorism, defining it as "the dissemination or other presentation of any message to the public with the purpose of inciting the commission of a terrorist offence, when such conduct, whether or not it directly promotes terrorist offences, creates a danger of the commission of one or more such (terrorist) offences" (Council of Europe, 2005).

The laws of different countries use different terms that can be translated into English as incitement, apology, encouragement, propaganda, calls, justification of terrorism. What all these terms have in common, however, is that they are forms of expression — words, symbols, symbolic actions — that present terrorism as a morally acceptable action to be emulated. For convenience, the term "incitement to terrorism" will be used by default in this paper.

The criminalisation of incitement to terrorism gives rise to a fundamental tension in criminal law: while states are obligated under international instruments — including UN Security Council Resolution 1624 (2005), the Council of Europe Convention on the Prevention of Terrorism (2005), and EU Directive 2017/541 — to prohibit public provocation to commit terrorist offences, the scope and manner of such prohibition vary significantly across jurisdictions. This variation raises the problem at the core of this article: despite common international obligations, EU Member States have adopted substantially divergent approaches to criminalising incitement to terrorism, resulting in significant differences in the objective and subjective elements of the relevant criminal offences, the breadth of their application, and their interaction with the protection of freedom of expression. These divergences create uncertainty as to which legislative model most effectively balances the need for security with the protection of fundamental rights — a question that has not been systematically addressed in comparative legal scholarship with respect to the specific jurisdictions examined in this article.

This article undertakes a comparative analysis of the criminal legislation on incitement to terrorism and its enforcement in three jurisdictions: Lithuania, Germany, and France. These jurisdictions were chosen because France and Germany are the largest EU countries with distinct and well-developed legal traditions representing different models of criminalisation — France through a specific offence of "*apologie du terrorisme*," Germany through general criminal law provisions applicable to terrorist contexts. Lithuania, in turn, is of scientific interest as a country that, following the period of Soviet occupation (1940–1990), re-established its independence and embarked on a path of democratic development, enshrining freedom of expression as a constitutional value. Despite its relatively recent counter-terrorism legislation, Lithuania has not developed any enforcement practice under its specific incitement-to-terrorism provision, offering a valuable case study of a "dormant" criminal norm.

The novelty of this research lies in its specific comparative focus on the structural and doctrinal differences in how Lithuania, Germany, and France criminalise incitement to terrorism — an aspect that has not been addressed in existing scholarship. While the issue of incitement to terrorism has received significant international scholarly attention, the existing research focuses predominantly on international law frameworks (Ronen 2010; van Ginkel 2011; Tao 2023), on the jurisprudence of the European Court of Human Rights in cases involving glorification of terrorist violence (Sobol 2024), or on broader comparative counter-terrorism analysis without a focused examination of the specific criminal law provisions concerning incitement (Roach 2015). At the national level, French legal doctrine has developed a substantial body of analysis on the offence of *apologie du terrorisme* and its controversial enforcement (Polloni 2023), and German scholarship has critically examined the scope of terrorism-related provisions in the StGB (Ambos 2019; Krauß 2021). However, Lithuanian legislation in this area remains virtually unexamined in academic literature. Most importantly, no comparative study has systematically analysed the constituent elements of these offences — their objective and subjective characteristics, the protected legal interests, and the patterns of judicial interpretation — across these

three specific jurisdictions. This article seeks to fill this gap by providing a detailed normative and practical comparison.

The aim of this work is to conduct a systematic comparative analysis of the criminal law provisions on incitement to terrorism in Lithuania, Germany, and France, examining the constituent elements of the relevant offences, the doctrinal approaches to their interpretation, and the available enforcement practice, in order to identify the strengths and weaknesses of each legislative model and to formulate evidence-based recommendations for legislative improvement.

The objectives of the research are: (1) to analyse the objective and subjective elements of the criminal offences related to incitement to terrorism in each jurisdiction, including their place within the broader system of terrorism-related crimes; (2) to examine the available court practice and doctrinal interpretation of these provisions; (3) to conduct a comparative analysis identifying the structural similarities and differences between the three legislative models; and (4) to formulate recommendations based on the comparative findings.

Media and press sources are used only subsidiarily in this article, primarily to document recent enforcement developments — such as ongoing prosecutions, legislative proposals, and pre-trial proceedings — where full judicial decisions or academic commentary are not yet available. The doctrinal conclusions of this article are based exclusively on legislation, case law, official documents, and criminal law scholarship.

During the preparation of this work, the authors used AI-assisted technology Google Translate and DeepL for translation purposes. After using these tools, the author/authors reviewed and edited the content as needed and take full responsibility for the publication's content, declaring adherence to the highest standards of scientific integrity.

The literature review reveals that existing scholarship on the criminalisation of incitement to terrorism is substantial at the international level — covering the scope of international prohibitions (Ronen 2010; Van Ginkel 2011), the requirements of legality for incitement offences (Tao 2023), broader comparative counter-terrorism frameworks (Roach 2015), and the ECtHR's inconsistent approach to glorification cases (Sobol 2024) — but fragmented at the national comparative level. French scholarship is the most developed, documenting the controversial enforcement of *apologie du terrorisme* (Polloni 2023; Human Rights Watch 2018); German doctrine is represented primarily by StGB commentaries and analyses of terrorism-related provisions (Krauß 2021; Cirener et al. 2021; Ambos 2019); Lithuanian academic literature specifically addressing Article 250-1 remains virtually nonexistent, necessitating reliance on broader criminal law doctrine concerning criminalisation criteria and the *ultima ratio* principle. Critically, no existing study provides a systematic comparative analysis of the constituent elements of incitement-to-terrorism offences, their doctrinal interpretation, and their enforcement practice across Lithuania, Germany, and France — three jurisdictions representing fundamentally different models of criminalisation — which is the gap this article seeks to fill.

1. Lithuania

1.1. Legislative history of Article 250-1

Incitement to terrorism is prohibited under Article 250-1 of the Criminal Code of the Republic of Lithuania (LR BK), No. VIII-1968, 2000 (further in the text Lithuanian Criminal Code). This article criminalises public encouragement or incitement to commit terrorist offences, as well as disparagement of terrorism victims. The provision was enacted by Law No. IX-2570 of November 11, 2004 (Official Gazette, 2004, No. 171-6318) after EU accession in 2004 to comply with Council of EU Framework Decision of 13 June 2002 on combating terrorism.

The original 2004 draft, titled "Terrorism Propaganda," defined as punishable the public dissemination of information, whether orally, in writing, or otherwise, that promotes, supports, justifies, or incites terrorist activities, groups, or individuals involved in terrorism, or that degrades its victims. This wording faced criticism: the Center for Legal Projects and Research argued that criminalising information dissemination violates the Constitution, as the information could be factual. The criminalisation of humiliating terrorism victims was also deemed excessive without similar provisions for victims of other crimes (Republic of Lithuania Seimas, 2004, p. 3). The Ministry of Justice opposed criminalising the justification of terrorism, citing risks of overly broad interpretations that could encompass research into terrorism's causes or media propaganda. Provisions encouraging terrorist groups or individuals were ultimately removed as redundant.

In its final 2004 form, renamed "Incitement to Terrorism," the article penalised public incitement to terrorist acts or related crimes, or insulting victims through public statements. By 2013, the article was refined, removing references to specific dissemination methods and replacing "terrorist acts and related crimes" with "terrorist crimes," encompassing, per Article 252-1, terrorist acts (Article 250), threats of such acts (Article 250-3), hijacking of aircraft or ships (Article 251), and hostage-taking (Article 252). These changes aimed to enhance legal precision.

1.2. Normative analysis of Article 250-1

The criminalisation of incitement to terrorism in Lithuania must be assessed in the context of the broader doctrinal framework governing the expansion of criminal liability. Pakštaitis (2016), in the most comprehensive Lithuanian-language analysis of the criminalisation of terrorism, has observed that the 2013 reform of the Criminal Code's terrorism provisions was driven by the need to comply with international obligations rather than by domestic enforcement needs. He notes that the broadening of criminalisation — including the introduction of Article 250-1 — reflects an international trend toward expanding the boundaries of criminal liability into the preparatory stages of terrorist activity, criminalising conduct that is increasingly remote from the actual commission of a terrorist act (Pakštaitis 2016, pp. 60–62).

Article 250-1 is located in Chapter XXXV ("Crimes against Public Security") of the Lithuanian Criminal Code, within the system of terrorism-related offences that includes the act of terrorism (Article 250), creation of terrorist groups (Article 249-1), threats to commit terrorist acts (Article 250-3), financing of terrorism (Article 250-4), and training for terrorism (Article 250-5).

The object of the offence — i.e., the protected legal interest — is public security, specifically the prevention of conditions that may facilitate the commission of terrorist crimes through the dissemination of ideas that encourage or normalise such acts.

The objective element (*actus reus*) consists of two alternative forms of conduct. The first — "public solicitation or instigation to commit terrorist crimes" — encompasses both direct calls to commit specific terrorist offences and broader encouragement of such conduct, provided it is performed publicly. The term "terrorist crimes" is defined by reference to Article 252-1, which encompasses terrorist acts (Article 250), threats of such acts (Article 250-3), hijacking of aircraft or ships (Article 251), and hostage-taking (Article 252). Notably, Article 250-1 does not require that the incitement produce any concrete result — it is a formal offence (*delictum formale*) that is completed upon the public act of solicitation itself. This observation is significant: as Pakštaitis (2016) notes, such formal offences reflect the international trend toward criminalising conduct increasingly remote from the actual harm, raising questions about proportionality and the *ultima ratio* principle.

The second alternative — "expression of contempt for victims of terrorist crimes" — criminalises speech that degrades or humiliates individuals who have suffered from terrorist acts. This element has no direct analogue in German criminal law, and in French law, the comparable concept of "apologie" is constructed differently, focusing on the endorsement of the act rather than the degradation of victims.

The subjective element (*mens rea*) requires direct intent (tiesioginė tyčia). The perpetrator must be aware that their public statements constitute solicitation to commit terrorist crimes or contempt for victims, and must desire such an outcome. Negligent commission of this offence is not punishable.

The penalty is arrest or custodial sentence of up to four years. Legal entities may also be held liable under paragraph 2.

From the perspective of the General Part of Lithuanian criminal law, the relationship between Article 250-1 and the general provisions on complicity (bendrininkavimas) deserves analysis. Article 24(5) of the Criminal Code defines an "abettor" (kurstytojas) as a person who incites another to commit a criminal act. As Piesliakas (2006) has explained, the general rule of abetment requires that the incitement be directed at a specific person and relate to a specific offence. Article 250-1 represents a departure from this general framework: it criminalises public incitement addressed to an indefinite audience, thereby extending criminal liability beyond the traditional boundaries of complicity doctrine. This structural parallel to §111 of the German Criminal Code — which similarly extends the general complicity rule (§26) to public incitement — confirms that the Lithuanian legislature consciously adopted a model of abstract endangerment (abstrakčios grėsmės deliktas), in which the danger to the protected legal interest is presumed from the nature of the conduct itself, rather than established in each individual case.

1.3. Non-application of Article 250-1

Despite its existence, Article 250-1 of the Lithuanian Criminal Code has never been applied in judicial practice. Only one known case, in 2020, involved initiating a criminal case under this article for preparing a terrorist act (LRT 2020). However, rising global tensions, the increasing prevalence of terrorist activities and ideologies in Europe, and the current geopolitical climate heighten the risk of terrorist attacks, including in Lithuania.

The non-application of Article 250-1 requires a nuanced assessment. It is essential to recognise that the mere fact that a legal provision has not been applied in practice does not, in itself, justify the conclusion that the provision is inadequate, deficient, or otherwise unsuitable. Several alternative explanations must be considered.

First, the objectively low level of terrorist threat in Lithuania — a country that has not experienced a significant terrorist attack — substantially reduces the likelihood of conduct falling within the scope of the provision. The Lithuanian State Security Department's annual threat assessments have consistently characterised the terrorist threat level as low, although noting an increase in hybrid threats and activities against the state in recent years (VSD 2024). In this context, the non-application of Article 250-1 may simply reflect the absence of the underlying phenomenon rather than any structural deficiency of the norm.

Second, the existence of alternative legal provisions — particularly Article 170 (incitement to hatred) and Article 170(2) (public approval of international crimes, crimes of the USSR or Nazi Germany) — may channel prosecutorial attention toward these more established and judicially interpreted norms. When speech endorsing political violence is directed against specific national, racial, or ethnic groups, prosecutors may prefer to rely on Article 170, which benefits from a developed body of Supreme Court jurisprudence, rather than on the untested Article 250-1.

Third, the structure of the norm itself may present prosecutorial challenges: the requirement of proving direct intent to "solicit or instigate" the commission of specifically enumerated terrorist crimes creates a higher evidentiary threshold than, for example, the French requirement of general intent to make a statement constituting *apologie*.

Fourth, the non-application may reflect a deliberate prosecutorial policy of restraint in cases involving expression — a policy consistent with the principle of *ultima ratio* emphasised in Lithuanian criminal law doctrine (Fedosiuk 2012; Švedas 2012). In the absence of a concrete and demonstrated danger that inciting speech may lead to a terrorist act, prosecutors may reasonably conclude that criminal prosecution is not warranted.

However, while the non-application does not necessarily indicate a deficiency of the norm, it does create practical uncertainty: in the absence of judicial interpretation, the precise meaning of key terms — "solicitation," "instigation," "contempt for victims" — remains untested. Should circumstances require the provision's application, Lithuanian courts would face the challenge of interpreting these terms without the benefit of established precedent, potentially leading to inconsistencies in judicial practice. This practical concern — distinct from a judgment about the norm's theoretical adequacy — supports the recommendation that the legislature consider supplementing the provision with an explicit "danger" requirement, which would provide an additional interpretive criterion for future application.

1.4. Court practice under analogous provisions

Although no judicial practice exists under Article 250-1 itself, the application of structurally similar provisions of the Lithuanian Criminal Code — particularly Articles 170 and 170(2) — provides relevant insights into how Lithuanian courts interpret the elements of public incitement offences. Article 170 criminalises incitement against national, racial, ethnic, religious, or other groups of persons, including through public statements, media, or the internet. The Supreme Court of Lithuania has developed several interpretive principles in this context that could be analogically applicable to Article 250-1.

In particular, the Supreme Court has held that for criminal liability under Article 170(2) to arise, it is sufficient for the person to publicly make "negative, degrading or demeaning" statements towards a defined group (Supreme Court Case No. 2K-677/2012). The Court has also established that a single public statement may be sufficient to constitute the offence, without requiring a "systematic pattern" of conduct (Supreme Court Case No. 2K-86-648/2016). This interpretation was subsequently reinforced by the European Court of Human Rights in Beizaras and Levickas v. Lithuania (2020), where the ECtHR held that inciting hatred against a specific group does not necessarily require a direct call for violence or criminality.

The Supreme Court has also developed interpretive standards concerning the threshold of severity required for criminal liability. In Case No. 2K-206-693/2017, the Court held that not every negative statement about a protected group constitutes incitement to hatred; rather, the statement must reach a threshold of intensity and hostility that is capable of provoking discriminatory or violent reactions. By analogy, this standard suggests that Article 250-1 should not be interpreted as covering any positive reference to terrorism, but only statements that reach a comparable threshold of intensity — a reading consistent with the Directive's requirement that the conduct "cause a danger" of terrorist offences.

Furthermore, the OSCE/ODIHR Opinion on Lithuanian hate crime legislation (2023) has noted that certain terms in Article 170 — such as "ridiculing" and "expressing contempt" — raise concerns regarding legal certainty and the principle of legality. Similar concerns could be raised regarding the term "expression of contempt for victims" in Article 250-1, which lacks detailed judicial interpretation.

These parallels suggest that, should Article 250-1 be applied in practice, Lithuanian courts would likely draw on the interpretive framework developed under Article 170, including the standards for assessing publicity, intent, and the severity threshold. However, the specific terrorism context would introduce additional considerations, including the need to assess the potential danger of the statement — a requirement emphasised by EU Directive 2017/541 but not explicitly reflected in the text of Article 250-1.

2.Germany

2.1. General overview

The Criminal Code of the Federal Republic of Germany (Strafgesetzbuch, hereinafter referred to as the German Criminal Code) does not contain a specific provision explicitly prohibiting public incitement to terrorism or glorification (*apologie*) of terrorist acts. Unlike France and Lithuania, which have enacted dedicated offences addressing this form of conduct, Germany addresses the issue through a combination of general criminal law provisions applicable in terrorist contexts. These provisions are dispersed across several sections of the Criminal Code and differ in their scope, structure, and the types of conduct they cover. Understanding their interrelationship within the German criminal law system is essential for assessing the extent to which they collectively cover the phenomenon of incitement to terrorism.

The relevant provisions can be grouped into two categories: (1) terrorism-specific norms — §129a (terrorist organisations) and §91 (dissemination of instructions for state-endangering acts), which are part of the special provisions on crimes against the state and public order; and (2) general norms on incitement — §26 (individual incitement as a form of complicity) and §111 (public incitement to commit offences), which are provisions of the General Part and the section on offences against public order, respectively. In addition, §130 (incitement to hatred) may overlap with terrorism-related speech in certain circumstances. Each of these provisions will be analysed below with respect to its constituent elements and its applicability to incitement to terrorism.

2.2. §129a(5): Support for a terrorist organisation

Section 129a of the German Criminal Code criminalises the formation of, membership in, and support for terrorist organisations. For the purposes of the present analysis, paragraph 5 is the most relevant, as it extends criminal liability to persons who "support" (unterstützen) a terrorist organisation or "recruit" (werben) members or supporters for it. The object of the offence is the internal security of the state and public order, protected through the suppression of organisational structures facilitating terrorism.

The objective element encompasses two alternative forms of conduct: support and recruitment. The Federal Court of Justice (Bundesgerichtshof, BGH) has interpreted "support" broadly to include not only material, technical, and financial assistance, but also propaganda activities that strengthen the organisation's internal cohesion, further its objectives, or attract new members or supporters (see Krauß, in: Leipziger Kommentar, 2021, §129a Rn. 140ff.). "Recruitment" (Werben) has been interpreted as creating a positive impression of the organisation in the minds of third parties, thereby promoting membership or support (Krauß 2021). Importantly, the BGH has distinguished between punishable "recruitment" — which requires a concrete promotional effort directed at strengthening the organisation — and the mere expression of sympathy with the organisation's ideological goals, which does not satisfy the objective element (BGH, decision of 14 August 2009, 3 StR 552/08).

The subjective element requires intent (Vorsatz), which must encompass awareness that the actions constitute support for or recruitment on behalf of a specific terrorist organisation as defined by §129a(1)–(3).

The principal limitation of §129a for the purposes of combating incitement to terrorism is its organisational nexus: it applies only to conduct directed at supporting or promoting a specific terrorist organisation. General endorsements of terrorist methods, ideological justification of terrorist violence, or support for the actions of lone-wolf terrorists who are not affiliated with any organisation fall outside its scope (Tao 2023, pp. 89–91; Ambos 2019, p. 845).

2.3. §91: Dissemination of instructions for state-endangering violent acts

Section 91 of the German Criminal Code, located in the chapter on offences against the democratic state governed by the rule of law (Straftaten gegen den demokratischen Rechtsstaat), addresses the dissemination and acquisition of instructions for committing "serious acts of violence threatening the state" (schwere staatsgefährdende Gewalttaten) as defined by §89a.

The object of the offence is the protection of the constitutional order and external security of the state against preparatory acts that facilitate violence.

The concept of "state-endangering violent acts" under §89a includes murder (§211), manslaughter (§212), offences against personal freedom (§§239a, 239b), and other violent crimes that, by their nature and manner of commission, are capable of undermining the existence or security of a state or an international organisation, or of abolishing, rendering inoperable, or undermining constitutional principles of the Federal Republic of Germany. While these acts are not formally defined as "terrorist offences," they closely correspond to the catalogue of terrorist acts in both functional and criminological terms.

The objective element of §91 consists of two alternative forms of conduct. Paragraph 1, No. 1 criminalises the dissemination or making publicly accessible of written material (Schriften) that, by its content, is suitable for serving as an instruction (Anleitung) for committing a state-endangering violent act and that is intended to encourage or increase the willingness and ability of the addressee to commit such an act. An "instruction" is understood as content that conveys specific knowledge regarding the preparation or execution of such acts — for example, bomb-making manuals or detailed attack planning guides. The suitability must be assessed considering both the content itself and the context of its dissemination: identical material may be treated differently depending on whether it appears on a publicly accessible jihadist website or in an academic publication (Krauß 2021).
Paragraph 1, No. 2 criminalises the acquisition of such instructional material by a person who intends to use it for committing a state-endangering act.

The subjective element requires intent. For the disseminator under paragraph 1, No. 1, the intent must encompass awareness of the instructional nature of the content and the purpose of encouraging the commission of state-endangering acts. For the acquirer under paragraph 1, No. 2, specific intent (Absicht) to commit such an act is required.

2.4. §111: Public incitement to commit offences

Section 111 of the German Criminal Code, located in the chapter on offences against public order, establishes liability for the public incitement to commit unlawful acts (öffentliche Aufforderung zu Straftaten).

The objective element requires: (a) a call or request (Auffordern) to commit a specific unlawful act; (b) the public nature of the call — made either at a gathering (Versammlung) or through the dissemination of content (Verbreiten von Inhalten); and (c) the specificity of the act — the call must relate to a concretely identifiable

offence, not merely to a general category of criminal activity. Under paragraph 1, if the incitement is successful (i.e., the called-for offence is committed), the inciter is punished as an instigator (Anstifter) under §26. Under paragraph 2, if the incitement is unsuccessful, the penalty is imprisonment for up to five years or a fine.

The subjective element requires intent, encompassing the awareness of the public nature of the call and the desire that the addressees commit the specified unlawful act.

Section 111 is a general provision applicable to all criminal offences, including terrorist offences. In principle, a public call to commit a terrorist act — for instance, a statement disseminated online urging attacks on specific targets — would fall within its scope. However, the requirement that the call relate to a specific, concretely identifiable offence limits its applicability to cases of abstract glorification or ideological endorsement of terrorism. A statement expressing approval of past terrorist attacks or general support for terrorist ideology — without calling for the commission of a specific new offence — would not satisfy the objective element of §111.

2.5. The question of a legislative gap and the implementation of EU Directive 2017/541

The analysis above demonstrates that German criminal law addresses various aspects of conduct related to incitement to terrorism through a combination of provisions: organisational support and recruitment (§129a), dissemination of instructions (§91), public calls to specific offences (§111), individual incitement (§26), and incitement to hatred (§130). However, this framework leaves a notable area of conduct unaddressed: the abstract glorification or general endorsement of terrorist violence that does not constitute support for a specific organisation (§129a), does not contain instructional content (§91), and does not amount to a call for a specific offence (§111). This category of speech — which might include, for example, publicly praising a completed terrorist attack, expressing ideological solidarity with terrorist perpetrators, or presenting terrorism as a legitimate form of political struggle — is precisely the type of conduct that the French offence of "*apologie du terrorisme*" targets and that the Lithuanian provision on "expression of contempt for victims" partially covers.

Whether this lacuna constitutes a genuine legal gap requiring legislative action or reflects a deliberate policy choice consistent with the German tradition of narrow criminal law interpretation is a matter of ongoing scholarly and political debate. The European Commission has explicitly identified the absence of a specific public provocation offence as a deficit in Germany's implementation of Directive 2017/541, which requires Member States to criminalise the distribution of messages to the public that, "directly or indirectly, such as by the glorification of terrorist acts," advocate the commission of terrorist offences, "thereby causing a danger that one or more such offences may be committed" (Article 5, Directive 2017/541; European Commission, COM(2020) 619 final, p. 7).

In response to these criticisms, the Federal Ministry of Justice (Bundesministerium der Justiz, BMJ) introduced a draft bill (Referentenentwurf) in November 2023, subsequently presented to the Bundestag in May 2024, proposing to amend §89a by adding a new paragraph 2b that would specifically establish liability for incitement to terrorist offences. However, this legislative proposal was not adopted before the end of the 20th legislative period (LTO.de 2024). The bill was reintroduced in July 2025 with an expanded scope, additionally addressing the sentencing framework for intelligence-related offences under §99 (KriPoZ 2025). The legislative trajectory — two successive attempts at reform — confirms that the German federal government acknowledges the implementation deficit, but that political consensus on the precise scope of the new provision has not yet been achieved.

From a doctrinal perspective, Tao (2023, pp. 89–94) observes that Germany's criminal law provisions collectively cover several dimensions of incitement to terrorism — organisational support, instructional dissemination, public calls to specific crimes, and individual incitement — but leave unaddressed the scenario

of general glorification or abstract endorsement of terrorist violence not linked to a specific organisation or instructional content. Ambos (2019, p. 845) similarly notes the tension between Germany's comprehensive counter-terrorism framework and the absence of a specific norm addressing ideological advocacy for terrorism. The EU Fundamental Rights Agency (FRA), in its 2021 report based on fieldwork in Germany, noted that German practitioners generally considered the existing framework adequate for practical enforcement purposes, although academic commentators have pointed to the formal implementation deficit vis-à-vis the Directive (FRA 2021, pp. 42–47).

It should also be noted that the absence of a specific incitement-to-terrorism provision does not mean that German law is entirely unable to address terrorism-related speech. The BGH's broad interpretation of "support" under §129a(5), the comprehensive scope of §91 regarding instructional materials, and the general applicability of §111 to public calls for any criminal offence provide a substantial — if not exhaustive — coverage. The question, ultimately, is whether the uncovered area — abstract glorification without organisational links or instructional content — poses a sufficient practical danger to justify a new criminal provision, or whether the risk of over-criminalisation associated with such provisions (as demonstrated by the French experience) counsels restraint.

3. France

3.1. General overview and historical context

Unlike Germany, which relies on general criminal law provisions, France — similarly to Lithuania — has enacted a specific provision prohibiting incitement to terrorism. Article 421-2-5 of the Penal Code of the French Republic (Code pénal, hereinafter referred to as the French Criminal Code) explicitly criminalises "direct provocation of terrorist acts and their public apology" (*apologie publique*). The concept of *apologie du terrorisme* has deep historical roots in French law and reflects a distinctive tradition of criminalising speech that endorses political violence.

The decisive transformation occurred in 2014, when provisions criminalising the apology for terrorism were transferred from the Freedom of the Press Act into the Criminal Code as Article 421-2-5, within the chapter on terrorist offences. This transfer had significant procedural consequences: offences under the Criminal Code are subject to standard criminal procedure (including expedited proceedings and pre-trial detention), whereas offences under the 1881 Freedom of the Press Act benefit from special procedural protections designed to safeguard press freedom, including shorter limitation periods and stricter procedural requirements. The reclassification thus substantially expanded the state's enforcement capacity.

3.2. Normative analysis of Article 421-2-5

Article 421-2-5 is located in Book IV, Title II, Chapter I of the French Criminal Code, within the section on terrorist offences. It criminalises two distinct forms of conduct: (1) direct provocation (provocation directe) of terrorist acts, and (2) public apology (*apologie publique*) for such acts. Both forms must be committed through a means of public communication.

The object of the offence is twofold: the protection of public security against the facilitation of terrorist acts through ideological endorsement, and — implicitly — the protection of the dignity of victims of terrorist violence and the prevention of societal normalisation of terrorism. Unlike the Lithuanian provision (Article 250-1), which separately and explicitly criminalises contempt for victims of terrorist crimes, the French offence focuses on the positive assessment of the terrorist act itself rather than the degradation of its victims — a distinction confirmed in the prosecutorial practice (see below on the Dieudonné/Foley case).

The objective element (élément matériel) requires the following: (a) a public statement or communication; (b) which directly provokes terrorist acts or presents them in a favourable light (*apologie*); and (c) is disseminated through any means of public communication, including print media, broadcast media, and online platforms.

The Constitutional Council (Conseil constitutionnel) has provided the authoritative interpretation of "*apologie*," defining it as "describing, presenting, or commenting on an offence while expressing a positive moral judgment about it" (Decision No. 2015-492 QPC, Oct. 16, 2015). The Court of Cassation (Cour de cassation) has further elaborated this standard, holding that *apologie* encompasses conduct that "glorifies one or more acts of a person who carried out terrorist acts," "encourages third parties to view terrorist acts favourably," or "shows equal regard for both victims and perpetrators of such acts" (Pourvoi n° 16-83.331, 2017; Pourvoi n° 17-83.602, 2018). These formulations establish a broad standard: it is not necessary for the statement to contain an explicit call for violence; a positive moral assessment of a terrorist act is sufficient.

Importantly, for the purposes of prosecution under Article 421-2-5, it is not required that the relevant terrorist act took place on the territory of France, nor that a court has issued a final judgment qualifying the underlying act as terrorism. This was demonstrated in the prosecutions following the Hamas attack on Israel of October 7, 2023, where charges were brought at a time when no Israeli or international court had issued a binding legal qualification of the events as a terrorist act.

The subjective element (élément intentionnel) requires general intent (dol général): the perpetrator must have deliberately made the statement with awareness of its content and its public nature. French courts have generally not required proof of specific intent (dol spécial) to incite the commission of a concrete terrorist act. This distinguishes the French approach from the standard set by EU Directive 2017/541, which requires "intent to incite the commission of one of the offences" (Article 5), and from the Lithuanian provision, which requires the intent to "solicit or instigate" the commission of terrorist crimes. The absence of a specific intent requirement under French law substantially lowers the threshold for prosecution and has been identified as a key factor contributing to the breadth of the provision's application.

The sanctions range from five years' imprisonment and a €75,000 fine for offences committed through public communication services to seven years and €100,000 when committed through an online communication service — reflecting the legislator's assessment of the heightened danger of internet-based dissemination.

Article 421-2-5 has been actively enforced, particularly following the 2014 legislative reforms and the 2015 Charlie Hebdo attack (Polloni 2023). An analysis of the case law reveals several interpretive criteria that French courts consistently apply when assessing whether a statement constitutes *apologie du terrorisme*.

3.3.1. Criterion 1: Context and temporal proximity to a terrorist attack

The temporal and social context in which a statement is made is a decisive factor. This was established in the foundational case of Leroy v. France (No. 36109/03, ECHR 2008). French cartoonist Denis Leroy published a cartoon in a Basque-country newspaper depicting the World Trade Center under attack, with the caption referencing "We all dreamed of this… Hamas did it." The cartoon was published on September 13, 2001 — two days after the attacks. The French court convicted Leroy of *apologie du terrorisme*, and the European Court of Human Rights upheld the conviction, finding no violation of Article 10 ECHR. The ECtHR emphasised two key factors: the timing of the publication, when societal shock was still acute, and the fact that the cartoon and caption, taken together, constituted an endorsement of the attacks rather than a legitimate exercise of artistic or political expression. The ECtHR also noted the proportionality of the fine imposed.

3.3.2. Criterion 2: Status and personal history of the speaker

The background of the accused is relevant to the court's assessment. This criterion was illustrated in the case of Jean-Marc Rouillan, a co-founder of the left-wing terrorist group Action Directe, who was sentenced to life imprisonment in the 1980s for multiple terrorist attacks. After being released on parole, Rouillan gave an interview in 2016 in which he described the perpetrators of the November 2015 Paris attacks as "very brave" for their conduct during the police siege. The French court convicted him of *apologie du terrorisme*, imposing 10 months of probation and 8 months of imprisonment. The European Court of Human Rights, in Rouillan v. France (No. 28000/19, 2022), upheld the finding that the conviction was justified, but ruled that the sentence was disproportionate, constituting an excessive restriction on freedom of expression.

This case reveals the tension in the judicial assessment of *apologie*: an evaluation of a person's courage does not necessarily equate to an endorsement of terrorism as a method; courageous individuals may commit morally reprehensible acts. The courts, however, weighed the context — the devastating impact of the 2015 attacks and Rouillan's personal history as a convicted terrorist — in concluding that the statement carried an apologetic meaning. As Sobol (2024) has observed, the inconsistency between the ECtHR's findings in Leroy (no violation) and Rouillan (violation of proportionality) reflects the Court's deference-giving practices and the difficulty of establishing uniform standards for assessing glorification.

3.3.3. Criterion 3: Distinction between apologie *and trivialization*

However, shortly thereafter, Dieudonné was convicted of *apologie du terrorisme* for an online post reading "Know that this evening, as far as I understand, I feel Charlie Coulibaly" — a reference to Amedy Coulibaly, who perpetrated the antisemitic attack on the Hyper Cacher kosher supermarket. The court rejected his defence that the statement was humorous, drawing a distinction between humour targeting religious practices (as in Charlie Hebdo's cartoons) and the endorsement of terrorist violence, even if framed as satire (Libération 2015). This case established that the humorous or satirical framing of a statement does not preclude its qualification as *apologie* if its content conveys endorsement of a terrorist act.

3.3.4. Criterion 4: The boundary between apologie *and political assessment*

The most contentious area of the provision's application concerns statements that occupy the boundary between *apologie du terrorisme* and political commentary on complex geopolitical phenomena. This issue became particularly acute following the Hamas attack on Israel of October 7, 2023, which triggered multiple prosecutions and pre-investigation checks.

In 2024, Jean-Paul Delescaut, a trade union official of the General Confederation of Labour (CGT), received a one-year suspended sentence for distributing a leaflet stating that "the horrors of the illegal occupation have accumulated" and that Israelis "have received the responses they provoked." The court found that this text legitimised a mass attack under the pretext of historical analysis, demonised the victims, and inverted the roles of victims and perpetrators — notably in the absence of any explicit or implicit condemnation of the attack (Le Monde 2024a).

Furthermore, the prosecutor's office initiated inquiries against deputies from the La France Insoumise party over a press release describing the Hamas attack as "an armed offensive by Palestinian forces" in "the context of intensified Israeli occupation policies in Palestinian territories" (Le Monde 2024b). In response, the party proposed a bill to repeal Article 421-2-5 entirely, retaining only the relevant provision in the 1881 Freedom of the Press Act; the bill was not adopted.

The case of French researcher François Burgat, summoned for questioning on charges of *apologie du terrorisme* in connection with a social media repost, further illustrates the controversy (Libération 2024). Although the case did not proceed to court, it generated significant debate about the provision's impact on academic freedom and political discourse.

3.4. Doctrinal assessment and the risk of over-criminalisation

The scholarly literature has identified several structural features of Article 421-2-5 that contribute to the risk of over-criminalisation.

First, the low threshold for the subjective element — general intent rather than specific intent to incite a concrete terrorist act — means that a broad range of statements may satisfy the *mens rea* requirement, including political commentary, academic analysis, and satirical expression that were not intended to promote terrorism but may be interpreted as conveying a positive assessment of terrorist acts.

Second, the breadth of the concept of *apologie* — defined as any "positive moral judgment" — encompasses not only explicit endorsements of terrorism but also statements that, in context, may be perceived as minimising the gravity of terrorist acts, inverting the moral positions of victims and perpetrators, or presenting terrorism as a comprehensible response to perceived injustice.

Third, the absence of a "danger" requirement in French judicial practice is notable. While EU Directive 2017/541 requires that the proscribed conduct cause "a danger that one or more such offences may be committed," French courts have not consistently applied such a standard, focusing instead on the moral content of the statement and its public nature.

Sobol (2024) has argued that the ECtHR's inconsistent approach to glorification cases — upholding the conviction in Leroy v. France but finding a proportionality violation in Rouillan v. France — reflects the fundamental difficulty of establishing coherent standards in this area. The FRA Report (2021), based on fieldwork in France, documented the significant increase in prosecutions under Article 421-2-5 following the 2015 attacks and noted concerns expressed by French legal practitioners about the breadth of the provision's application. The Human Rights Watch report (2018) and the Council of Europe Commissioner for Human Rights have similarly warned that the provision risks being applied in an overly broad manner, capturing expression that ought to be protected under Article 10 ECHR.

At the same time, defenders of the provision argue that the specific historical experience of France — which has suffered devastating terrorist attacks killing hundreds of people in recent years — justifies a broad prohibition on speech that normalises or endorses terrorist violence, and that the courts' contextual approach provides sufficient safeguards against abuse.

3.5. Interim conclusions on the French model

The French approach represents the most expansive model of criminalisation among the three jurisdictions examined. It is characterised by a dedicated and broadly-worded offence, an active enforcement practice, a low subjective-element threshold, a well-developed body of case law, and a cascading liability framework covering all forms of media. At the same time, it carries demonstrated risks of over-criminalisation — particularly in the application of the offence to political commentary, academic discourse, and satirical expression at the boundary of legitimate free speech and punishable *apologie*. The ECtHR's case law provides an external check on the most excessive applications, but the inconsistency of its standards limits its effectiveness as a restraining mechanism.

4. Comparative Analysis

The preceding analysis of the criminal legislation of Lithuania, Germany, and France reveals three fundamentally distinct models of criminalising incitement to terrorism — models that differ not only in legislative technique but in their underlying conceptions of the permissible scope of criminal law in restricting freedom of expression. This section undertakes a systematic comparison of these models across several specific criteria derived from the normative analysis, identifies common features and structural differences, and assesses the practical implications of each approach.

4.1. Legislative model: specific vs. general provisions

The most fundamental structural difference concerns the legislative techniques employed. France (Article 421-2-5 of the Criminal Code) and Lithuania (Article 250-1 of the Criminal Code) have enacted dedicated provisions specifically criminalising public incitement to terrorism. Germany, by contrast, relies on a combination of general criminal law provisions — §129a(5), §91, §111, §26, and §130 of the StGB — none of which is specifically designated as an "incitement to terrorism" offence.

This distinction has practical significance. Dedicated provisions offer the advantage of legal clarity: they signal to both citizens and law enforcement the specific conduct that is prohibited and provide a single legal basis for prosecution. However, as the French experience demonstrates, a broad specific provision may generate its own problems of legal certainty — the expansive concept of "*apologie*" has been criticised for vagueness. Germany's reliance on general provisions avoids this problem but creates a fragmented legal landscape in which the applicability of each provision depends on the specific factual configuration, and certain forms of conduct — notably abstract glorification — may fall between the gaps.

4.2. Objective element: scope of criminalised conduct

The three jurisdictions differ significantly in the breadth of conduct they criminalise.

France criminalises the broadest range of conduct. Article 421-2-5 covers both direct provocation of terrorist acts and *apologie* — defined by the Constitutional Council as "expressing a positive moral judgment" about a terrorist act. This encompasses not only explicit calls for violence but also indirect endorsement, moral approval, and — in practice — statements that invert the positions of victims and perpetrators or present terrorism as a comprehensible response to perceived injustice. Crucially, the provision does not require that the statement create a concrete danger of a terrorist act being committed.

Lithuania occupies an intermediate position. Article 250-1 criminalises public "solicitation or instigation" to commit specifically defined terrorist crimes (as enumerated in Article 252-1), as well as "expression of contempt for victims" of such crimes. The scope is narrower than the French provision in two respects: first, the "solicitation or instigation" formula implies a more direct call to action than the French concept of *apologie*; second, the provision is linked to a closed catalogue of terrorist crimes rather than a general concept of terrorism. However, the separate criminalisation of contempt for victims represents an element absent from both French and German law.

Germany criminalises the narrowest range of terrorism-related speech, but through multiple provisions covering different aspects: organisational support and recruitment (§129a), dissemination of instructional materials for state-endangering acts (§91), public calls to commit specific offences (§111), and individual incitement (§26). Each provision has its own limitations: §129a requires an organisational nexus, §91 requires instructional content, §111 requires a call to a specific offence, and §26 requires a specific addressee. The cumulative result,

as identified in the analysis, is that abstract glorification of terrorism — without organisational links, instructional content, or a call to a specific crime — falls outside the scope of German criminal law.

The following table summarises the key differences:

Criterion	Lithuania (Art. 250-1)	Germany (§§129a, 91, 111, 26)	France (Art. 421-2-5)
Direct provocation / incitement	Yes ("solicitation or instigation")	Yes (§111 — public calls; §26 — individual)	Yes ("provocation directe")
Abstract glorification / *apologie*	No	No	Yes ("*apologie publique*")
Contempt for victims	Yes (explicitly)	No	No (*apologie* ≠ contempt for victims)
Organisational support / propaganda	No (separate provisions)	Yes (§129a(5))	No (separate provisions)
Instructional materials	No (separate provisions)	Yes (§91)	No (separate provisions)
Danger requirement	Not explicit in text	Varies by provision	Not applied in practice

Table 1. Comparative overview of the objective elements

4.3. Subjective element: intent requirements

The three models also diverge on the required form of intent.

France requires only general intent (dol général) — awareness of the content and public nature of the statement. Specific intent to incite a terrorist act is not required. This is the lowest threshold among the three jurisdictions and a key structural factor in the breadth of prosecutions under Article 421-2-5.

Lithuania requires direct intent (tiesioginė tyčia), which implies both awareness and desire that the public statements constitute solicitation to commit terrorist crimes. This is a more demanding standard than the French general intent, as it requires a purposive element — the perpetrator must have intended the statement to serve as a call to terrorism, not merely to have been aware of its content.

Germany applies different intent standards depending on the provision: §129a(5) requires intent directed at supporting a specific organisation; §91(1) No. 2 requires specific intent (Absicht) to commit a state-endangering act (for the acquirer of instructional materials); §111 requires intent that the audience commit a specific offence. In each case, the subjective element is linked to a concrete object — an organisation, an act, a specific offence — rather than to a general notion of endorsing terrorism.

The practical consequence is a gradient of prosecutorial thresholds: France (lowest — general intent, no specific target) → Lithuania (intermediate — direct intent to solicit specific terrorist crimes) → Germany (highest — intent directed at specific organisations, acts, or offences, with no general glorification offence).

4.4. Enforcement practice and judicial interpretation

The most striking divergence concerns enforcement practice. The three jurisdictions represent three distinct enforcement patterns:

Active enforcement (France): Article 421-2-5 has been extensively applied, with a significant increase in prosecutions following the 2015 attacks and a further wave after October 2023. French courts have developed a substantial body of interpretive criteria — assessing context, temporal proximity, speaker status, and the overall moral tenor of statements. However, this active enforcement has also generated controversy, with prosecutions of trade union officials, political party representatives, and academic researchers raising concerns about over-criminalisation.

Non-application (Lithuania): Article 250-1 has never been applied in judicial practice. As analysed in the Lithuania section, this is attributable to a combination of factors: the objectively low level of terrorist threat, the high threshold for prosecution inherent in the norm's structure, and the availability of alternative provisions (Articles 170, 170²) for addressing related forms of harmful speech. The non-application creates uncertainty about how Lithuanian courts would interpret the provision's key terms, particularly "solicitation or instigation" and "contempt for victims", should the need arise.

Indirect application (Germany): Germany occupies an intermediate position. While there is no specific provision for incitement-to-terrorism, the related provisions — particularly §129a(5) — have generated substantial case law on the boundary between punishable organisational support and protected expression of opinion. The BGH's distinction between "recruitment" and mere expression of sympathy provides a judicially developed standard that effectively limits the scope of terrorism-related speech restrictions. At the same time, the absence of a specific provision means that abstract glorification remains formally unaddressed.

4.5. Compliance with international obligations

All three states are bound by the Council of Europe Convention on the Prevention of Terrorism (2005) and EU Directive 2017/541, both of which require the criminalisation of public provocation to commit terrorist offences. Article 5 of Directive 2017/541 specifically requires Member States to criminalise the distribution of a message to the public "with the intent to incite the commission of one of the offences," where such conduct "directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed."

France exceeds the minimum requirements of the Directive, as Article 421-2-5 covers not only conduct causing a "danger" of terrorist offences but also abstract *apologie* without a demonstrated causal link to any concrete danger.

Lithuania formally complies with the Directive through Article 250-1, although the complete absence of enforcement practice makes it impossible to assess whether the provision is applied in a manner consistent with the Directive's requirements, particularly the "danger" element, which is not explicitly reflected in the Lithuanian text.

Germany has been identified by the European Commission as having an implementation deficit, specifically regarding the absence of a specific public provocation offence (European Commission, COM(2020) 619 final). The two successive legislative proposals (2024 and 2025) to address this deficit confirm that the German government acknowledges the gap, although political consensus on the scope of a new provision has not yet been achieved.

4.6. Assessment of trade-offs

Each of the three models presents distinct advantages and risks that reflect fundamentally different balances between security and liberty.

The French model provides the most comprehensive coverage of terrorism-related speech and the most active enforcement practice. Its advantages include legal clarity (a dedicated provision), demonstrated deterrent effect, and judicial development of interpretive criteria. Its risks, equally demonstrated, include over-criminalisation of political commentary and academic speech, a chilling effect on public discourse about complex geopolitical phenomena, and tensions with the proportionality requirements of Article 10 ECHR — as evidenced by the finding of disproportionality in Rouillan v. France (2022).

The German model minimises the risk of infringing freedom of expression through its reliance on general provisions with relatively high thresholds and specific requirements (organisational nexus, instructional content, specific offence). Its advantages include greater respect for the principle of *ultima ratio* in criminal law and the avoidance of the over-criminalisation risks demonstrated by the French experience. Its risks include a formal implementation gap vis-à-vis EU obligations and the inability to address novel forms of abstract glorification — a concern that may grow in significance as online radicalisation increasingly relies on diffuse ideological endorsement rather than structured organisational recruitment.

The Lithuanian model occupies a structural middle ground — establishing a dedicated provision that satisfies formal compliance with international obligations — but its complete non-application creates a distinct set of risks. On the one hand, it avoids the over-criminalisation problems inherent in the French model. On the other hand, the norm's dormancy raises the question of whether it is sufficiently precise and practical for effective enforcement should the need arise, and whether Lithuanian courts and prosecutors have the interpretive tools necessary to apply it in a manner consistent with both constitutional guarantees of freedom of expression and the requirements of EU Directive 2017/541.

It bears emphasis that the absence of criticism of a legal provision — as in the case of the German approach — does not in itself constitute evidence of its superiority. The absence of criticism may equally reflect the absence of enforcement, the lower level of terrorist threat, or less academic attention devoted to the issue in a particular jurisdiction. Conversely, the presence of criticism — as in the French case — may reflect not a deficiency of the legislation, but its active application and the resulting engagement of diverse stakeholders in evaluating its effects. Conclusions about the comparative merits of different legislative models must therefore be grounded in the analysis of specific normative elements, enforcement practice, and doctrinal assessment, rather than in the mere presence or absence of public debate.

Conclusions

The comparative analysis of criminal legislation on incitement to terrorism in Lithuania, Germany, and France has revealed three structurally distinct models of criminalisation.

France, through Article 421-2-5, employs the broadest approach — criminalizing both direct provocation and abstract *apologie du terrorisme* with a low threshold of general intent, resulting in active but controversial enforcement. Lithuania occupies an intermediate position with a dedicated provision (Article 250-1) requiring direct intent, but one that has never been applied in practice. Germany relies on a combination of general provisions (§§129a, 91, 111, 26), imposing the most demanding subjective requirements but leaving abstract glorification of terrorism formally unaddressed.

This gradient in legislative scope and intent requirements — France (broadest, lowest threshold) → Lithuania (intermediate) → Germany (narrowest, highest threshold) — directly correlates with enforcement intensity and the risk of over-criminalisation. The French experience demonstrates that broad criminalisation generates tangible risks: prosecutions at the boundary of *apologie* and political commentary, and disproportionality findings by the ECtHR (*Rouillan v. France*, 2022). Lithuania's non-application reflects the low domestic threat

level and alternative provisions rather than a deficiency of the norm itself, but creates interpretive uncertainty. Germany's approach has been assessed as practically adequate (FRA 2021) yet formally deficient in implementing Directive 2017/541.

Based on these findings, the following recommendations are formulated. For **Lithuania**, the legislature should supplement Article 250-1 with an explicit "danger" requirement aligned with Article 5 of Directive 2017/541, and courts should draw on the interpretive framework developed under analogous provisions (Articles 170, 170²) for future application. For **Germany**, the adoption of a specific incitement-to-terrorism provision — as proposed in the 2024 and 2025 draft bills — is advisable to eliminate the implementation deficit, provided it requires specific intent, includes a danger requirement, and preserves exceptions for academic and journalistic expression. For **France**, raising the subjective-element threshold from general to specific intent and more consistently applying an individualized danger criterion would reduce over-criminalisation risks while maintaining the provision's deterrent function.

The comparative analysis demonstrates that each model contains both structural strengths and identifiable weaknesses. The refinement of national legislation should be informed by careful examination of the comparative experience rather than by abstract assumptions about the superiority of one approach over another.

References

20 Minutes. (2015, February 4). Dieudonné: Investigation into his statements on James Foley's beheading closed (Dieudonné: L'enquête pour ses propos sur la décapitation de James Foley a été classée). Retrieved from https://www.20minutes.fr/societe/1533699-20150204-dieudonne-enquete-propos-decapitation-james-foley-classee

Ambos, K. (2019). On the relationship between German international criminal law and counter-terrorism law. *Journal of International Criminal Justice, 21*(4), 839–865. https://doi.org/10.1093/jicj/mqad040

Beizaras and Levickas v. Lithuania (No. 41288/15). (2020). European Court of Human Rights. Retrieved from https://hudoc.echr.coe.int/eng?i=001-200344

Cirener, G., Radtke, H., Rissing-van Saan, R., Rönnau, T., & Schluckebier, W. (Eds.). (2021). *Leipzig Commentary on the Criminal Code, Volume 8: §§ 123–145d (Leipziger Kommentar zum Strafgesetzbuch, Band 8: §§ 123–145d)*. De Gruyter.

Conclusion on the Draft Law on Supplementing the Criminal Code of the Republic of Lithuania with Article 250¹ (IXP-3902) [Išvada dėl Lietuvos Respublikos baudžiamojo kodekso papildymo 250¹ straipsniu įstatymo projekto (IXP-3902)]. (2004). Republic of Lithuania Seimas. Retrieved from https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.244810?jfwid=17s1b24bns

Council Framework Decision of 13 June 2002 on Combating Terrorism (2002/475/JHA). (2002). Council of the European Union. *Official Journal of the European Union, L 164*, 3–7. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32002F0475

Council of Europe Convention on the Prevention of Terrorism (C.E.T.S. No. 196). (2005). Council of Europe. Retrieved from https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/196

Criminal Code of the Federal Republic of Germany (Strafgesetzbuch, StGB). (1998). In the version published on 13 November 1998 (Federal Law Gazette I, p. 3322), as last amended by Article 2 of the Act of 22 November 2021 (Federal Law Gazette I, p. 4906). Retrieved from https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html

Criminal Code of the Republic of Lithuania (Lietuvos Respublikos baudžiamasis kodeksas, LR BK). (2000). Law No. VIII-1968. Retrieved from https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.440075

Decision No. 2015-492 QPC of October 16, 2015 (Décision n° 2015-492 QPC du 16 octobre 2015). (2015). Conseil constitutionnel. Retrieved from https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031328732

Decision No. 2020-845 QPC of June 19, 2020 (Décision n° 2020-845 QPC du 19 juin 2020). (2020). Conseil constitutionnel. Retrieved from https://www.conseil-constitutionnel.fr/decision/2020/2020845QPC.htm

Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA and Amending Council Decision 2005/671/JHA. (2017). European Parliament and Council of the European Union. *Official Journal of the European Union, L 88*, 6–21. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017L0541

European Commission. (2020). *Report from the Commission to the European Parliament and the Council on the implementation of Directive (EU) 2017/541 on combating terrorism*. COM(2020) 619 final. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:619:FIN
European Union Agency for Fundamental Rights (FRA). (2021). *Directive (EU) 2017/541 on combating terrorism — Impact on fundamental rights and freedoms*. Luxembourg: Publications Office of the European Union. Retrieved from https://fra.europa.eu/en/publication/2021/combating-terrorism-rights-impact
Fedosiuk, O. (2012). Baudžiamoji atsakomybė kaip kraštutinė priemonė (ultima ratio): teorija ir realybė [Criminal Liability as a Last Resort (Ultima Ratio): Theory and Reality]. *Jurisprudencija, 19*(2), 715–738.
Fedosiuk, O. (2016). Dirbtinis kriminalizavimas kaip teisinės praktikos patologija [Artificial Criminalization as a Pathology of Legal Practice]. In *Baudžiamoji justicija ir verslas*. Vilnius: Vilniaus universitetas, pp. 28–47.
Hoffman, B. (2006). *Inside terrorism* (2nd ed.). Columbia University Press.
Human Rights Watch. (2018, May 30). France's creeping terrorism laws restricting free speech. Retrieved from https://www.hrw.org/news/2018/05/30/frances-creeping-terrorism-laws-restricting-free-speech
Kempf, R. (2019). *Enemies of the State: The Villainous Laws, from Anarchists to Terrorists (Ennemis d'État: Les lois scélérates, des anarchistes aux terroristes)*. La Fabrique.
KriPoZ. (2025). BMJ-Gesetzentwurf zur Umsetzung der Richtlinie (EU) 2017/541 zur Terrorismusbekämpfung und zur Anpassung des Strafrahmens bei geheimdienstlicher Agententätigkeit. Retrieved from https://kripoz.de/Kategorie/gesetzentwuerfe/terrorismusbekaempfung/umsetzung-der-eu-richtlinie-zur-terrorismusbekaempfung-gesetzentwuerfe/
Law of 29 July 1881 on the Freedom of the Press (Loi du 29 juillet 1881 sur la liberté de la presse). (1881). Retrieved from https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070721
Le Monde. (2024a, April 19). CGT official sentenced to one year suspended for "apologia of terrorism" after Hamas attack on Israel (Un responsable CGT condamné à un an de prison avec sursis, pour « apologie du terrorisme » après l'attaque du Hamas contre Israël). Retrieved from https://www.lemonde.fr/societe/article/2024/04/19/un-responsable-cgt-condamne-a-un-an-de-prison-avec-sursis-pour-apologie-du-terrorisme-apres-l-attaque-du-hamas-contre-israel_6228605_3224.html
Le Monde. (2024b, November 23). La France insoumise criticized for proposing to abolish the offense of apologia of terrorism (La France insoumise sous le feu des critiques pour avoir proposé d'abroger le délit d'apologie du terrorisme). Retrieved from https://www.lemonde.fr/politique/article/2024/11/23/la-france-insoumise-sous-le-feu-des-critiques-pour-avoir-propose-d-abroger-le-delit-d-apologie-du-terrorisme_6410789_823448.html
Leroy v. France (No. 36109/03). (2008). European Court of Human Rights. Retrieved from https://hudoc.echr.coe.int/eng?i=002-1888
Libération. (2015, March 18). Apologia of terrorism: Two months suspended sentence for Dieudonné (Apologie du terrorisme: Deux mois de prison avec sursis pour Dieudonné). Retrieved from https://www.liberation.fr/societe/2015/03/18/apologie-du-terrorisme-deux-mois-de-prison-avec-sursis-pour-dieudonne_1223213
Libération. (2024, July 9). Accused of apologia of terrorism, former CNRS researcher François Burgat questioned in custody (Accusé d'apologie du terrorisme, l'ancien chercheur au CNRS François Burgat a été entendu en garde à vue). Retrieved from https://www.liberation.fr/societe/police-justice/accuse-dapologie-du-terrorisme-lancien-chercheur-au-cnrs-francois-burgat-a-ete-entendu-en-garde-a-vue-20240709_VDBPPVVBCRBGPCNSBEOJL7GXFI
Lithuanian Centre for Human Rights. (2021). *Hate Crimes and Hate Speech: Overview of the Situation in Lithuania*. Vilnius. Retrieved from http://hrmi.lt/wp-content/uploads/2021/02/HATE-CRIMES-AND-HATE-SPEECH-OVERVIEW-OF-THE-SITUATION-IN-LITHUANIA.pdf
LRT.lt. (2020, September 18). Young man who attempted a terrorist act in Vilnius sentenced to slightly over two years (Teroro aktą Vilniuje pasikėsinusiam surengti jaunuoliui skirta kiek daugiau nei dvejų metų bausmė). Retrieved from https://www.lrt.lt/naujienos/lietuvoje/2/1222703/teroro-akta-vilniuje-pasikesinusiam-surengti-jaunuoliui-siuloma-skirti-ketverius-metus-uz-grotu
LTO.de. (2024, May 8). BMJ draft law on combating terrorism in the Criminal Code (BMJ-Gesetzentwurf zur Terrorismusbekämpfung im StGB). Retrieved from https://www.lto.de/recht/nachrichten/n/gesetzentwurf-bmj-bundeskabinett-terrorismus-bekaempfung-stgb-buschmann
OSCE/ODIHR. (2023). *Opinion on the Provisions of the Criminal Code of Lithuania on Bias-motivated Crimes and other Related Criminal Offences*. Opinion-Nr.: HCRIM-LTU/469/2023. Retrieved from https://legislationline.org/sites/default/files/2023-08/Final%20ODIHR%20Opinion%20on%20Bias-motivated%20Crimes%20and%20Related%20Criminal%20Offences%20Lithuania.pdf

Pakštaitis, L. (2016). Terorizmo kriminalizavimas Lietuvoje [Criminalization of Terrorism in Lithuania]. *Teisė, 100*, 53–67. https://doi.org/10.15388/Teise.2016.100.10246
Penal Code of the French Republic (Code pénal). (1992). Retrieved from https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719
Piesliakas, V. (2006). *Lietuvos baudžiamoji teisė. Kn. 1: Baudžiamasis įstatymas ir baudžiamosios atsakomybės pagrindai* [Lithuanian Criminal Law. Book 1: Criminal Law and the Foundations of Criminal Liability]. Vilnius: Justitia.
Polloni, C. (2023, October 18). Apologia of terrorism: An offense with a bright future ahead (Apologie du terrorisme: Une infraction qui a de beaux jours devant elle). *Mediapart*. Retrieved from https://www.mediapart.fr/journal/france/181023/apologie-du-terrorisme-une-infraction-qui-de-beaux-jours-devant-elle
Pourvoi n° 16-83.331 [Appeal No. 16-83.331]. (2017). Cour de cassation [Chambre criminelle]. Retrieved from [consult Cour de cassation database]
Pourvoi n° 17-83.602 [Appeal No. 17-83.602]. (2018). Cour de cassation [Chambre criminelle]. Retrieved from https://www.legifrance.gouv.fr/juri/id/JURITEXT000037787017
Pourvoi n° 19-80.136 [Appeal No. 19-80.136]. (2020). Cour de cassation [Chambre criminelle]. Retrieved from https://www.legifrance.gouv.fr/juri/id/JURITEXT000041482199
Resolution 1566 (2004) [on Threats to International Peace and Security Caused by Terrorist Acts]. (2004). United Nations Security Council. Retrieved from https://digitallibrary.un.org/record/532676
Roach, K. (Ed.). (2015). *Comparative Counter-Terrorism Law*. Cambridge University Press. https://doi.org/10.1017/CBO9781316106839
Ronen, Y. (2010). Incitement to terrorist acts and international law. *Leiden Journal of International Law, 23*(3), 645–674. https://doi.org/10.1017/S0922156510000275
Rouillan v. France (No. 28000/19). (2022). European Court of Human Rights. Retrieved from https://hudoc.echr.coe.int/eng?i=001-217717
Sobol, I. (2024). Glorification of terrorist violence at the European Court of Human Rights. *Human Rights Law Review, 24*(3), ngae017. https://doi.org/10.1093/hrlr/ngae017
Supreme Court of Lithuania, Case No. 2K-206-693/2017. (2017).
Supreme Court of Lithuania, Case No. 2K-677/2012. (2012). Order of 18 December 2012.
Supreme Court of Lithuania, Case No. 2K-86-648/2016. (2016). Order of 1 March 2016.
Švedas, G. (2012). Veikos kriminalizavimo kriterijai: teorija ir praktika [Criteria for Criminalization of Acts: Theory and Practice]. *Teisė, 83*, 11–27. https://doi.org/10.15388/Teise.2012.83.114
Tao, Y. (2023). *The Criminalization of Incitement to Terrorism from an International Perspective*. Springer. https://doi.org/10.1007/978-3-031-34370-4
Van Ginkel, B. (2011). Incitement to terrorism: A matter of prevention or repression? The Hague: International Centre for Counter-Terrorism (ICCT). Retrieved from https://icct.nl/sites/default/files/2023-02/ICCT-Van-Ginkel-Incitement-To-Terrorism-August-2011.pdf
VSD (Lithuanian State Security Department). (2024). *National Threat Assessment 2024*. Vilnius. Retrieved from https://www.vsd.lt/en/threats/national-threat-assessment/

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