

LA LUTTE CONTRE LE TERRORISME : SES ACQUIS ET SES DÉFIS

THE FIGHT AGAINST TERRORISM: ACHIEVEMENTS AND CHALLENGES

***Liber Amicorum* Gilles de Kerchove**

Sous la direction de Christiane Höhn, Isabel Saavedra et Anne Weyembergh



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The evolution of the policy response to jihadi returnees in Europe (2012-2020)

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The mobilisation of European volunteers for the jihad in Syria was unprecedented. Europeans had travelled to fight jihad abroad before, but never in such numbers. From 2012 onwards, more than 5,000 men and women travelled from Europe to the Levant to join a jihadi group (mainly Jabhat al-Nusra and the Islamic State, ISIS). This is twice as many as all those who travelled to Afghanistan (since the 1980s), Bosnia (1990s), Somalia (since the 1990s), Iraq (2000s), and Yemen (since the 2010s) combined.⁽¹⁾

The unprecedented number of European departees inevitably resulted in an unprecedented number of returnees in Europe. In 2019, it was estimated that around 1,600 of the European foreign fighters had left the conflict zone in Syria and Iraq to return home.⁽²⁾ This represents around 30 percent of the initial contingent of foreign terrorist fighters (FTFs). It is indeed generally believed that about a third of the contingent was killed during the conflict, and the other third remains in the area – whether in detention or at large. Interestingly, the rate of returns oscillates quite significantly across countries in Europe. For instance, about half of the foreign fighters from Denmark (70/159) and the United Kingdom (450/900) have returned, whereas only 20 percent

(1) D. MALET, “The European experience with foreign fighters and returnees”, in T. RENARD and R. COOLSAET (eds), *Returnees: who are they why are they (not) coming back and how should we deal with them?*, Egmont Paper, 101, Brussels, Egmont Institute, 2018, pp. 6-18.

(2) J. KING, “Discours de clôture de Sir Julian King, Commissaire européen à la sécurité de l’Union”, in *Quelles menaces et quels enjeux après la chute du califat?*, compte-rendu de la conférence internationale sur le terrorisme, Paris, CAT and CEP, 7 November 2019, p. 44.

of those from France (290/1300) and the Netherlands (60/300) came back. In Germany (350/1050) and Belgium (135/430), the rate of return is at 30 percent.

The EU Counter-Terrorism Coordinator, Gilles de Kerchove, was among the very first to raise this issue at the European level.⁽³⁾ Despite several discussions and some early measures at national and European levels, the policy response for managing returning fighters remained limited until 2014. The terrorist attack committed by Mehdi Nemmouche in Brussels in May 2014 was a turning point in this regard. Nemmouche, a French citizen allegedly radicalised in prison, had left for Syria in late 2012, only days after his release. After spending over a year in the conflict zone, he returned to Europe via Malaysia and Singapore with the intention of plotting an attack. On 24 May 2014, he killed four people in the Jewish museum of Brussels. This was the first successful attack by a returning fighter from Syria on European soil, following at least one failed attempt in France in February 2014.⁽⁴⁾

Nemmouche's attack crystallised the threat of returnees. At that point, it became clear that at least some returning fighters could be a direct security threat to Europe, requiring not only a national response but also a European and international one given the transnational nature of the threat, as illustrated by French-citizen Nemmouche plotting an attack in Belgium. The Brussels Jewish museum attack was followed by a number of meetings at European and international levels to consider policy options to deal with foreign fighters and returnees. For instance, an informal meeting of EU Ministers of Interior (among the "most concerned countries") took place in Milan in July 2014, which led to an 'action plan' regarding (returning) foreign fighters.⁽⁵⁾ Discussions at the international level led eventually to the adoption of United Nations Security Council (UNSC) resolution 2178 regarding foreign fighters in September 2014.⁽⁶⁾

The urgency of taking measures against returnees was further reinforced following the terror attack on *Charlie Hebdo* in January 2015, involving a returnee from Yemen (Chérif Kouachi). A week later, the Belgian police dismantled a terrorist cell in Verviers constituted of returnees from

(3) J. QUATREMER, "Djihadistes européens: 'le danger est assez important pour empêcher les services de renseignements de dormir'", *Libération*, 23 November 2014.

(4) R. CALLIMACHI, "How ISIS built the machinery of terror under Europe's gaze", *New York Times*, 29 March 2016.

(5) N. NIELSEN, "EU states adopt new counter-terrorism plan", *EUObserver*, 9 July 2014.

(6) United Nations Security Council Resolution 2178, adopted by the Security Council at its 7272nd meeting, New York City, United Nations Security Council, 24 September 2014.

Syria allegedly plotting a coordinated attack. In early 2015, it had become clear that Syrian returnees could not be handled in the same way as previous waves of returnees: a stronger legal and security response was needed.

I. THE THREAT FROM RETURNEES

There is no “homogenous profile”⁽⁷⁾ for returnees. The Radicalization Awareness Network (RAN) manual distinguished, for instance, between four main profiles: the disillusioned/remorseful (deceived by the experience of war, by the behaviour of jihadis, or fully traumatised); the opportunistic (still driven by ideology but seeking better life conditions); the soldier (sent back to Europe to conduct an attack or with a specific mission, such as Mehdi Nemmouche or the Abaaoud network); and the unwilling returnee (captured and repatriated).⁽⁸⁾ Of course, these profiles are ideal types that do not reflect the real-life complexity of the cases.

European intelligence services are well aware of this variety of profiles and motivations. In 2015, for instance, the head of the Belgian intelligence service (VSSE) had already specified that “not all returnees are dangerous. Of course not. Some are tormented by what they saw there [in Syria], they have seen atrocities and don’t want to hear about it anymore. There are also adventurers who didn’t find what they were looking for. But there is also a small minority, completely radicalised, coming back with a plan, with a mission. They deserve our utmost attention.”⁽⁹⁾ Similarly, the EU Counter-Terrorism Coordinator Gilles de Kerchove said in November 2014 that “we don’t know how many [fighters] will return [...] and among those who will return, we don’t know how many will engage in violent activities.” De Kerchove then speculated that it would possibly be only a fraction of all returnees, but yet a threat that is “important enough to prevent the heads of [European] intelligence services from sleeping at night.”⁽¹⁰⁾

(7) *Rapport fait au nom de la commission d’enquête sur l’organisation et les moyens des services de l’État pour faire face à l’évolution de la menace terroriste après la chute de l’État islamique*, Paris, French Senate, 4 July 2018, p. 51.

(8) Radicalisation Awareness Network (RAN), *RAN Manual: Responses to returnees: Foreign terrorist fighters and their families*. Brussels, 2017, p. 7.

(9) C. LAMFALUSSY and J. LARUELLE, “Jaak Raes (Sûreté de l’État): Savoir qui est rentré de Syrie, ce n’est pas si simple”, *La Libre*, 7 February 2015.

(10) J. QUATREMER “Djihadistes européens: ‘le danger est assez important pour empêcher les services de renseignements de dormir’”, *op. cit.*

Overall, only a small number of returnees from Syria have been involved in plots or attacks in Europe. Hegghammer and Nesser identified 11 Syrian returnees plotting an attack between 2012 and June 2015 (thus before the attacks in Paris and Brussels).⁽¹¹⁾ In a 2017 study, Vidino *et al.* identified 12 Syrian returnees involved in terrorist attacks.⁽¹²⁾ While a number of plots involving returnees may have been missed by these authors, it is still true that only a tiny portion of all 1,600 Syrian returnees have engaged in violent terrorism-related acts. Furthermore, it should be emphasised that most attacks by returnees were in fact perpetrated by “commandos” – that is, foreign fighters trained in a special unit of ISIS (called “Emni”) and sent back to Europe with the specific mission of conducting an attack.⁽¹³⁾ In contrast, there are only few plots linked to returnees that were not part of that special unit of the Islamic State. In fact, there is substantive evidence that many foreign fighters were willing to wage jihad in Syria (or elsewhere before) but are unwilling to conduct terrorist attacks in Europe.⁽¹⁴⁾

The threat from returning fighters is, of course, not limited to the risk of attacks. It also includes individuals that may engage in recruitment, training, logistical or propaganda activities, taking advantage of their charismatic position.⁽¹⁵⁾ Some of these veteran fighters could then become the hubs of the next jihadi mobilisation, as occurred before (the so-called “veteran effect”).⁽¹⁶⁾ It is also possible to consider that some disillusioned or even genuinely disengaged returnees could fall back into violent extremism in the future. Depending on the type of threat considered, and the time horizon, the number of returnees evaluated “at risk” can then vary greatly.

(11) T. HEGGHAMMER and P. NESSER, “Assessing the Islamic State’s commitment to attacking the West”, *Perspectives on Terrorism*, 2015, Vol. 9, No. 4, pp. 14-30.

(12) L. VIDINO *et al.*, *Fear thy neighbor: Radicalization and jihadist attacks in the West*, Milano, ISPI, 2017.

(13) M. SUC, *Les espions de la terreur*, Paris, HarperCollins, 2018.

(14) M. GREENWOOD, “When foreign fighters come home: the story of six Danish returnees”, *Perspectives on Terrorism*, 2019, Vol. 13, No. 4, pp. 27-38. See also D. BYMAN, *Road warriors: Foreign fighters in the armies of jihad*, Oxford, Oxford University Press, 2019; T. HEGGHAMMER, ‘Should I Stay or Should I Go? Explaining Variation in Western Jihadists’ Choice between Domestic and Foreign Fighting’, *American Political Science Review*, 2013, Vol. 107, No. 1, pp. 1-15.

(15) D. MILTON, “Lessons from September 11 about the post-conflict threat posed by foreign terrorist fighters”, *Journal of Policing, Intelligence and Counter Terrorism*, online, 6 February 2020; E. BAKKER and J. DE ROY VAN ZUIJDEWIJN, “Yes: Returning foreign fighters are future terrorists”, in R. JACKSON and D. PISOIU (eds), *Contemporary debates on terrorism*, London, Routledge, 2018, pp. 131-137; D. BYMAN, *Road warriors: Foreign fighters in the armies of jihad*, op. cit.

(16) D. BYMAN, *Road warriors: Foreign fighters in the armies of jihad*, op. cit.

II. DEALING WITH RETURNEES

Returnees present a multifaceted challenge (notably with social and security dimensions) as well as various dilemmas (notably ethical and legal). This section reviews some of these key challenges and dilemmas, as well as the main efforts undertaken in Europe to manage returnees, from detection efforts to prosecution, detention and post-release policies.

A. Detection and risk-assessment

Dealing with returnees implies that authorities are able to detect the return of foreign fighters, and to evaluate the risk they pose. Detection was particularly difficult in the first phase of the Syrian conflict, when many European foreign fighters were travelling back and forth to Syria in 2012-15, largely unhindered. This was due to a number of reasons, including but not limited to: European countries were not always able to identify all their foreign fighters (departees) in the first place; there was a lack of information-sharing between European countries; and, of course, the fact that many foreign fighters were coming back through indirect or even clandestine routes, making their detection all the more complicated. In the words of the head of the Belgian VSSE, in 2015: “it is not simple to know who has returned, and when.”⁽¹⁷⁾

As mentioned above, the policy response to returnees really started to take shape following the attack by Mehdi Nemmouche in 2014 and was further consolidated in the aftermath of subsequent plots and attacks. In October 2014, the EU ministers of Justice and Home Affairs discussed a number of concrete measures aimed at addressing specifically the threat from returnees, including the adoption of the EU Passenger Names Record (PNR) Directive; the strengthening of checks at the external borders of the Schengen area; or the improvement of information exchange between Member States, notably through Europol and Eurojust.⁽¹⁸⁾ Also, in late 2014, the Global Counterterrorism Forum (GCTF) agreed on ‘The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon’, which included a series of recommendations including some on the detection of returnees.⁽¹⁹⁾

(17) C. LAMFALUSSY and J. LARUELLE, “Jaak Raes (Sûreté de l’État): Savoir qui est rentré de Syrie, ce n’est pas si simple”, *op. cit.*

(18) Press release. 3336th Council meeting, Council of the EU, Justice and Home Affairs, 9-10 October 2014.

(19) The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, Global Counter-Terrorism Forum (GCTF), 2014.

The results of this policy shift were evident, albeit not immediate. The EU PNR Directive, under discussion since 2011, was adopted in 2016. It allows comparison between travellers' data and various databases, including those on foreign fighters. A regulation amending the Schengen borders code was adopted in March 2017 to reinforce checks against relevant databases at external borders (including for EU citizens, who were previously subject to minimum checks only at external borders⁽²⁰⁾), together with a handbook for border guards (the "Schengen Handbook") amended in 2016, that included risk indicators to better identify returnees.⁽²¹⁾ The exchange of information on FTFs through Europol and Eurojust databases increased significantly after 2015, particularly in the aftermath of the November 2015 Paris attacks.⁽²²⁾ Previously, EU Member States were only insufficiently using these databases, as highlighted by the EU Counter-Terrorism Coordinator,⁽²³⁾ hence limiting the capacity of European law enforcement agencies to detect suspected foreign fighters. Furthermore, since 2015, the EU has sought to increase the interoperability of its various databases in relation to the FTF threat, leading to the adoption of two regulations in this regard in May 2019.⁽²⁴⁾

All these instruments are, of course, designed to support Member States, which are at the forefront of the efforts to detect returning foreign fighters. Intelligence services and law enforcement agencies are particularly central to these efforts, notably by collecting more information on candidates to travel and on foreign fighters still abroad, via a monitoring of social media accounts or through surveillance of communication with foreign fighters' friends and families in particular. This has allowed intelligence services to anticipate the return of some fighters, not least when they announced or alluded to their intention to return in their communications. Cooperation among European intelligence services and law enforcement agencies has also increased significantly in the face of the threat of (returning) foreign fighters.

(20) *The return of foreign fighters to EU soil: ex-post evaluation*, Brussels, European Parliamentary Research Service (EPRS), 2018, p. 10.

(21) *Ibid.*, p. 10.

(22) "Response to the terrorist threat and recent terrorist attacks in Europe", Council of the EU, (undated). Available online: <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/foreign-fighters>.

(23) G. DE KERCHOVE, State of play on implementation of the statement of the members of the European Council of 12 February 2015, the JHA Council Conclusions of 20 November 2015, and the Conclusions of the European Council of 18 December 2015, Note from the EU Counter-Terrorism Coordinator 6450/16, Brussels, Council of the EU, 1st March 2016.

(24) Council of the EU, "Response to the terrorist threat and recent terrorist attacks in Europe" (undated). Available online: <https://www.consilium.europa.eu/en/policies/fight-against-terrorism>.

Complementing the work of intelligence services, a number of administrative measures can be taken to complicate the travelling of returning fighters and facilitate their arrest. Many of these measures appeared in the context of the foreign fighters' threat or were systematically implemented as a result of it. They vary from one country to another, but they generally include the revocation of travel documents (passports and/or ID) and the freezing of financial assets, which together significantly complicate travel and the crossing of borders, whereas European Arrest Warrants facilitate the arrest and extradition of returnees.

The combination of all these measures, together with the erosion of the flow of foreign fighters, has contributed to a much better capacity to detect (potential) returnees. However, the system is not infallible. For instance, one of the most wanted British foreign fighters was arrested in Spain in April 2020, although it is not clear how he managed to reach the country.⁽²⁵⁾ Following the Turkish offensive in Northern Syria in October 2019, there have also been several escapes from Kurdish detention facilities, resulting in a number of European foreign fighters crossing into Turkey. While many of these individuals (mainly women and children) were then arrested or surrendered to Turkish authorities, it cannot be excluded that some foreign fighters manage to return undetected. It is also possible that some FTFs have managed to travel to other countries undetected (e.g. Turkey, Egypt, Yemen, Libya or Afghanistan), and that they could seek to return to Europe only months or years later.

B. Prosecution

There is a relatively large consensus that returnees should be prosecuted, certainly when there is evidence of a criminal offence.⁽²⁶⁾ In line with the UNSC resolution 2178 calling for the criminalisation of the travel for terrorist purposes (attacks or training), or the financing of such travel (translated into an EU Directive in 2017), there has been a strengthening of the criminal code in most European countries, with the addition of a number of new terrorist offences.⁽²⁷⁾

(25) M. CHULOV and D. SABBAGH, "Spanish police arrest former British rapper turned Isis extremist", *The Guardian*, 21 April 2020.

(26) The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, Global Counter-Terrorism Forum (GCTF), *op. cit.*; United Nations Security Council Resolution 2178, *op. cit.*

(27) EUROJUST, "Foreign Terrorist Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response: Fourth Eurojust Report", The Hague, Eurojust, 2016.

Returnees from the first “wave” (2012-14) were not always prosecuted, however, either for lack of evidence against them or because they were not considered a security threat. This included notably those that had travelled to Syria for humanitarian purposes, or clearly disillusioned individuals. Nevertheless, with the jihadi nature of the conflict becoming clearer and the threat from returnees becoming more salient, the prosecution of returnees has become progressively more systematic. In fact, since 2014-15, all returning fighters are systematically under judiciary investigation in a number of countries, including France, Belgium, and the Netherlands.⁽²⁸⁾ In Germany, a criminal investigation is opened in every case but has not necessarily led to prosecution.⁽²⁹⁾ In other countries, judiciary investigations are less systematic or more complicated for legal reasons. For instance, the UK government has said repeatedly that it would prosecute anyone who has travelled abroad to engage in terrorism, and yet at the same time, only 40 British returnees out of about 450 have so far been “successfully prosecuted.”⁽³⁰⁾ Sweden has convicted almost none of its 150 returnees, as it has not criminalised participation in a terrorist organisation.⁽³¹⁾ As a result, the rate of prosecution of returnees varies across European countries. It is estimated that 76 percent⁽³²⁾ of the French returnees were “judicialised,” and about 70 percent of the Belgian returnees were prosecuted,⁽³³⁾ whereas only 10 percent of the UK returnees were prosecuted and close to zero percent in Sweden.

The systematisation of the prosecution of returnees was possible in some countries because prosecutors made the specific tactical decision to go after a minimal offence. Indeed, most returnees have been convicted for their participation in a terrorist organisation, whereas only a small minority of returnees have been convicted for more serious terrorist offences

(28) T. RENARD and R. COOLSÆT, “From the Kingdom to the caliphate and back: Returnees in Belgium”, in T. RENARD and R. COOLSÆT (eds), *Returnees: who are they why are they (not) coming back and how should we deal with them?*, op. cit., pp. 19-40; *Rapport fait au nom de la commission d’enquête sur l’organisation et les moyens des services de l’État pour faire face à l’évolution de la menace terroriste après la chute de l’État islamique*, op. cit., p. 52.

(29) D. HEINKE and J. RAUDSZUS, “Germany’s returning foreign fighters and what to do about them”, in T. RENARD and R. COOLSÆT (eds), *Returnees: who are they why are they (not) coming back and how should we deal with them?*, op. cit., pp. 49-50.

(30) L. DEARDEN, “Only one in 10 jihadis returning from Syria prosecuted, figures reveal”, *The Independent*, 21 February 2019; J. DAWSON, “Shamina Begum: What powers exist to deal with returning foreign fighters?”, London, House of Commons Library, 20 February 2019.

(31) J. GRÖNVIK, “How Sweden Deals with Returning ISIS Fighters”, *Vice*, 26 March 2019; “Sweden debates fate of returned foreign fighters”, *The Local*, 24 February 2019.

(32) *Quelles menaces et quels enjeux après la chute du califat?*, op. cit.

(33) Based on the author’s own data collection. See T. RENARD, “Overblown: Exploring the Gap Between the Fear of Terrorist Recidivism and the Evidence”, *CTC Sentinel*, 2020, Vol. 13, No. 4, pp. 19-29.

committed in Syria (such as kidnapping, beheading or participation in a terrorist attack). As a result, most sentences are relatively short, in the range of three to five years. The average sentence for returnees is around six and a half years in Belgium and France,⁽³⁴⁾ and around four and a half years in Germany.⁽³⁵⁾ Strikingly, the ‘FTF law’ resulting from UNSC resolution 2178 does not seem to have been used by national prosecutors, who prefer relying on well-established and pre-existing offences, thus raising questions about the necessity of that law, at least in Europe.

This prosecutorial tactic of targeting the minimal offence has proven effective, albeit debatable from an ethical point of view. First, the generalisation of relatively short sentences for returnees may be misunderstood in large segments of the population as a form of impunity. Second, the absence of prosecution for the crimes committed in Syria and Iraq, which were serious and on a large scale, raises questions about the ability of national Courts in Europe to render justice, notably in the eyes of the many victims of terrorism, whether in Europe or in the Levant. In this regard, it is notable that Eurojust called in 2020 for EU Member States to prosecute returnees for the crimes against humanity committed in Syria and Iraq, which it considered “essential to ensure criminal responsibility of perpetrators and to deliver justice to victims.”⁽³⁶⁾ So far, only a few cases of cumulative prosecution for terrorism and international crime have been conducted in Europe.

Another prosecutorial tactic that has become more common over the years is the prosecution *in absentia* of foreign fighters, even when presumed dead.⁽³⁷⁾ France, Belgium, and Netherlands have notably started such trials in a systematic manner, which means that when these foreign fighters return (if they do) they will be arrested and jailed immediately. In contrast, trials *in absentia* are not permitted by law in Germany, although this does not prevent ongoing investigations against FTFs detained in Syria.⁽³⁸⁾

(34) *Quelles menaces et quels enjeux après la chute du califat?*, *op. cit.*; author’s own calculation (T. RENARD, “Overblown: Exploring the Gap Between the Fear of Terrorist Recidivism and the Evidence”, *op. cit.*).

(35) J. RAUDSZUS, “The strategy of Germany for handling foreign fighters”, Milano, ISPI, 9 January 2020.

(36) THE GENOCIDE NETWORK, “Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences”, The Hague, Eurojust, 2020, p. 4.

(37) “Ouverture aux assises de Paris du procès de jihadistes morts ou recherchés”, *AFP*, 6 January 2020.

(38) *The return of foreign fighters to EU soil: ex-post evaluation*, *op. cit.*, p. 44; K. ROITHMAIER, “Germany and its returning foreign terrorist fighters: New loss of citizenship law and the broader German repatriation landscape”, The Hague, ICCT, 2019.

Finally, it should be mentioned that returnees who are not ‘judicialised’, prosecuted or convicted are not necessarily left unchecked. At the very least, returnees continue to be monitored by security services. Thus, for instance, returnees in the United Kingdom or Sweden are closely monitored by intelligence services. They can also be subject to specific administrative measures, such as the ‘Terrorism Prevention and Investigation Measures’ (TPIMs) in the United Kingdom, which can include overnight residence requirements, electronic tagging or restrictions of communication.⁽³⁹⁾ Alternatively, returnees can be directed towards rehabilitation programmes (i.e. deradicalisation or disengagement).

C. Prison management

The unprecedented number of returnees in Europe, and the high rates of prosecution and conviction in some countries, has resulted in the incarceration of a significant number of returnees. Although unprecedented, the number of returnees in jail at any point in time has remained manageable, since not all returnees were convicted and those convicted were not all jailed at the same time. However, the real challenge resulted from the fact that these returnees were imprisoned in addition to an increasing number of terrorist convicts and radicalised inmates, from 2014 onwards. In 2020, there were more than 1,400 individuals in custody for terrorism-related offences in Europe, and more than 3,000 when adding individuals “radicalised” or “at risk of radicalisation,” the vast majority of whom are linked to jihadi terrorism.⁽⁴⁰⁾ While unprecedented in scope and a very serious concern, this phenomenon remains marginal overall, representing less than 1 percent of the entire prison population in Europe.⁽⁴¹⁾

While constituting only a small fraction of all terrorist convicts, returnees have been of particular concern given their profile and experience. They have essentially raised two main types of security concern. First, it was feared that returnees could use prisons to strengthen their networks with other jihadis or criminals and even plot attacks from their cells. There were, for instance, anecdotal accounts of returning fighters seeking to recreate networks among returnees in French prisons.⁽⁴²⁾ There are also a few cases of returnees attempting to engage in violent plots from prison, although these cases remain highly exceptional.

(39) J. DAWSON, “Shamina Begum: What powers exist to deal with returning foreign fighters?”, *op. cit.*

(40) R. BASRA and P. NEUMANN, *Prisons and terrorism: Extremist offender management in 10 European countries*, London, ICSR, 2020, p. 9.

(41) In 2018, there were 495,000 prisoners in the EU.

(42) D. THOMSON, *The returned*, Cambridge, Polity Press, 2018.

Second, the incarceration of returnees, together with other terrorist convicts, also led to a growing concern about radicalisation in prison. Radicalisation in prison is certainly not a new phenomenon, but it became more prominent – or at least more monitored – in the context of the threat from ISIS. In this regard, returnees were perceived as potential radicalising agents, since there are historical precedents of jihadi veterans who were relatively influential in prison. This was notably the case of Djamel Beghal (who had travelled to Afghanistan in 2000 and was arrested in 2001), who is considered, for instance, to have been the mentor of Chérif Kouachi and Amedy Coulibaly in prison, both perpetrators of the 2015 attacks against *Charlie Hebdo* and the HyperCasher.⁽⁴³⁾

These security concerns, as well as the multiplication of terrorist attacks committed by individuals suspected of having been radicalised in prison, such as Chérif Kouachi or Mehdi Nemmouche as well as Mohamed Merah before them, pushed the issue of prison radicalisation higher on the policy agenda. This led European countries to consider the management of extremist offenders in prison as a key priority, leading countries like Belgium to adopt a specific strategy to deal with radicalisation in prison in 2015.⁽⁴⁴⁾ The Council of the European Union raised on several occasions the importance of addressing radicalisation in prison, notably in its conclusions of 2015 and 2019.⁽⁴⁵⁾

Regarding the management of returnees in prison, it is not different from that of other extremist offenders. Almost every European country has opted for a mixed model in terms of detention regime, involving the concentration or isolation of the most dangerous inmates and the dispersal of the others among the regular prison population.⁽⁴⁶⁾ To implement these strategies, European penitentiary administrations have created specialised units within the prison system to deal with these individuals suspected of recruiting or radicalising others, including the so-called “D-Rad:Ex units,” established in Belgium in 2016, the “Separation Centres,” established in the United Kingdom in 2017, or the “Radicalisation Support Unit” (*Quartier de Prise en charge de la Radicalisation*, QPR) established in France in 2018. While some

(43) “L’Algérie va rejurer l’islamiste Djamel Beghal, condamné à vingt ans de prison par contumace en 2003”, *AFP*, 16 July 2018.

(44) *Plan d’action contre la radicalisation dans les prisons*, Brussels, Ministry of Justice, 2015.

(45) Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism, Brussels, Council of the EU, 20 November 2015; Council conclusions on preventing and combating radicalisation in prisons and on dealing with terrorist and violent extremist offenders after release, Brussels, Council of the EU, 6 June 2019.

(46) R. BASRA and P. NEUMANN, *Prisons and terrorism: Extremist offender management in 10 European countries*, *op. cit.*

returnees have been placed in these units, this was far from systematic, and there is not enough evidence to assess whether returnees were more likely to be placed in these units compared with other terrorist offenders.⁽⁴⁷⁾ The Netherlands is perhaps the only country that has followed an alternative pathway, concentrating all its extremist offenders in two terrorist wards.

Beyond security regimes, most European countries have worked on improving their capacity to detect problematic behaviours and take appropriate measures in response. This was done notably by training the penitentiary staff, as well as setting up new specialised units within the penitentiary administration tasked with the centralisation and evaluation of information on radicalised inmates. In addition to information from penitentiary staff and intelligence services, prison authorities rely on risk-assessment tools (such as the VERA-2R or the ERG22+) to evaluate returnees and other terrorist offenders.⁽⁴⁸⁾

Various rehabilitation programmes have also been developed across Europe over the years. The content or conditions of these programmes vary widely from one country to another, but they generally appear to be closer to a form of psycho-social support and aid to reinsertion than to an attempt at so-called “deradicalisation.” Not all returnees (or terrorist offenders more broadly) have been able to participate in these programmes, however, either because they refused to take part or because they left prison before the programmes were on offer. Furthermore, it is nearly impossible to evaluate their effectiveness for those who participated.

D. Post-release

Similarly to the penitentiary approach, there is no distinction between returnees and other terrorist offenders in the post-penitentiary approach. Most European countries favour a release under probation, which permits the imposition of a series of conditions on the former inmate and maintain a form of control during a period of time. In addition, former extremist inmates will continue to be monitored at the very least by intelligence services, but also usually through multi-agency platforms that vary from one country to another. In Germany, special coordinators for returnees have been appointed to facilitate this multi-agency approach.

⁽⁴⁷⁾ In Belgium, this does not seem to be the case.

⁽⁴⁸⁾ R. BASRA and P. NEUMANN, *Prisons and terrorism: Extremist offender management in 10 European countries*, *op. cit.*

Despite existing mechanisms for post-penitentiary monitoring, European policy-makers fear recidivism among released terrorist offenders. It has become one of the main policy priorities in the area of counter-terrorism, in light of the expected release of most returnees and extremist offenders in the period leading to 2025. As a result, some countries have decided to strengthen the post-penitentiary approach. In the United Kingdom, for instance, a new law was adopted in 2020 to avoid the automatic early release of terrorist convicts and therefore ensure that they remain in jail for their whole sentence. Consequently, probation measures are no longer possible, but the new law also strengthens security measures that can be decided outside the judiciary framework, such as TPIMs (see above).⁽⁴⁹⁾ Similarly, in France, a new law was also adopted in 2020 to extend judiciary controls over released terrorist offenders, even after the end of their probation period.⁽⁵⁰⁾ Furthermore, several European countries are increasingly stripping binational terrorist convicts of their nationality, which eventually results in the expulsion of the offender at the end of the sentence, thus transferring the burden of the post-release monitoring to a third country (although in practice nothing prevents intelligence services from maintaining a form of monitoring of some of these individuals once abroad, directly or indirectly).

The common assumption behind these new laws and measures is that terrorist offenders present a high risk of recidivism. However, recent research suggests, on the contrary, that terrorist offenders would have a much lower risk of recidivism than “ordinary criminals.”⁽⁵¹⁾ While this research does not necessarily distinguish returnees from other terrorist offenders, there are good indications that a majority of returnees will not re-offend, based on evidence from the past.⁽⁵²⁾ A note from the Belgian counter-terrorism fusion centre, the Coordination Unit for the Threat Analysis (CUTA), concluded that 84 percent of the male returnees from Syria (37/44) and 95 percent of women returnees (19/20), had been showing signs of disengagement, excluding returnees still in prison (whose rate of disengagement was around 50 percent).⁽⁵³⁾

(49) J. GRIERSON, “Unconvicted terrorism suspects face indefinite controls under UK bill”, *The Guardian*, 20 May 2020.

(50) N. CHAPUIS and S. AUFFRET, “La majorité veut renforcer le contrôle des détenus pour terrorisme à leur sortie de prison”, *Le Monde*, 12 March 2020.

(51) T. RENARD, “Overblown: Exploring the Gap Between the Fear of Terrorist Recidivism and the Evidence”, *op. cit.*; A. SILKE and J. MORRISON, “Re-offending by released terrorist prisoners: Separating hype from reality”, The Hague, ICCT, 2020.

(52) D. BYMAN, *Road warriors: Foreign fighters in the armies of jihad*, *op. cit.*

(53) Interview with a CUTA official, Brussels, November 2019.

Despite low rates of recidivism, released returnees and terrorist offenders remain a serious threat. Terrorism is by definition a rare occurrence in Europe, hence a low rate of recidivism among hundreds of returnees is still a threat to be closely monitored by security services. However, the necessity of security measures should be weighed against their negative impact on the chances of rehabilitation and reintegration of released offenders. In other words, policy-makers should ensure that the measures they take to decrease recidivism do not actually increase that risk by lowering an individual's chances of reintegration and increasing his frustrations, for instance. Such evaluations, however, seem absent from the decision-making process behind these recent measures.

CONCLUSION

Returning foreign fighters from Syria have presented one of the most serious security challenges faced by European countries over the past decade, triggering a major policy response that has largely redefined the contours of counter-terrorism policies in Europe. While European countries are better equipped to manage returnees in 2020 than before, and some good practices have emerged across Europe, there are still some major gaps. In terms of prosecution, for instance, the inability of some countries to prosecute returnees is troubling, whereas the inability of most countries to prosecute more serious crimes committed in Syria and Iraq is equally challenging.

Three key challenges loom ahead. First, the monitoring of returnees over the long term. Indeed, returnees could genuinely disengage for several years or simply keep a low profile and then re-radicalise or reconnect with jihadism on the next opportunity. The long-term impact of the unprecedented wave of returnees and terrorist convicts in prison remains to be assessed, notably regarding the extent to which they may have used their time in detention to establish new networks or radicalise other inmates. The risk of recidivism will also remain a long-term concern for security services, in spite of encouraging studies pointing to low rates of re-offending. There is little doubt that returnees require long-term monitoring, so European authorities must also maintain enough resources and expertise on this topic. In the post-COVID19 era, public administrations will likely be confronted with more challenges but with

fewer financial resources. In this context, avoiding another “CT fatigue,” as Gilles de Kerchove once put it in the late 2000s, will be a challenge in itself.⁽⁵⁴⁾

Second, the international dimension of returnees’ networks will further complicate the work of European security services. Returnees from different nationalities could remain in contact during years or decades, forcing European services to continue exchanging information on a regular basis. The citizenship-stripping and deportation of more returnees (or foreign fighters detained in Syria) could further strengthen the international aspects of this challenge, as these former European citizens could possibly remain in contact with friends and family in Europe, preaching hate and violence, or continuing recruiting for jihad. Adding to this, returnees to non-European countries, notably returnees in North Africa, could remain in contact with European returnees in the future, building on ties developed under the caliphate or in the Kurdish prisons, requiring a good degree of cooperation between European and North African security services.⁽⁵⁵⁾

Finally, an assessment of the proportionality and effectiveness of all measures developed over recent years to cope with (returning) foreign fighters is still lacking. It is unclear, for instance, how longer prison sentences for returnees or terrorist offenders will make Europe safer. It is equally unclear how such measures will not actually increase the existing challenge of prison radicalisation. Similarly, one can legitimately ask whether stripping foreign fighters of their nationality and expelling them abroad, at the risk of losing control over them, will effectively keep the threat offshore. Some measures adopted against returnees and terrorist offenders seem driven by fear more than evidence, as well as by an elusive quest for complete security. Meanwhile, the cost and possibly the counter-productive effect of these measures remain unassessed. As late Paul Wilkinson put it, counter-terrorism policy-making is a difficult balancing exercise between under-reaction and over-reaction, where neither of these extremes is desirable.⁽⁵⁶⁾

(54) G. DE KERCHOVE, “EU CT Strategy – discussion paper”, Brussels, Council of the EU, 26 November 2009.

(55) T. RENARD, “Returnees in the Maghreb: A European perspective”, Security Policy Brief, Brussels, Egmont Institute, 2019.

(56) P. WILKINSON, *Terrorism Versus Democracy: The Liberal State Response*, 2nd ed., Oxon, Routledge, 2006.

