

## From Radicalisation to De-radicalisation: A Judicial Response to Foreign Terrorist Fighters

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European Judicial Training Network (EJTN)

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Raf VAN RANSBEECK, Director, Judicial Training Institute of Belgium:

It has been very important to meet each other since the Paris attacks. There are an important number of **FTF** who left **Belgium**, the **highest in Europe on percentage population**. A program on De-Radicalisation is an absolute priority.

Wojciech POSTULSKI, Secretary-General, European Judicial Training Network (EJTN):

EU is going to adopt a **Directive on Counter terrorism**, a new instrument with a central role of judiciary in the case of terrorist offences which is a new phenomenon (less for UK and Spain).

Three pillars of the project seminar: radicalization and **legal challenges**; data base for all national judicial training providers on how to **train at a national level**; and **exchange between judiciary and prosecutors** of Member States specialized in this area. In general, outline **what is needed at EU level** on how judiciary shall respond to foreign terrorist fighters phenomenon, but specifically on their **return to EU countries**.

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### **PART I – The Foreign Terrorist Fighters (FTF) Challenge in Europe**

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#### **The Challenge of FTFs in France and Belgium**

Pieter DE COSTER, Strategic Analyst, Belgian State Security Service:

General **characteristics** FTF: **volunteers** (no mercenaries, unpaid), mainly not driven by financial rewards (not make a fortune with it), mostly **without** any previous **military training** but most of them have a **background in criminality**.

**Recruitment** of the three different **FTF generations**: firstly, **in radical mosques**; secondly, **via virtual social networks** (the challenge is to chart them); thirdly, **via “street dawa”** (convert people through a conversation in the street).

Once FTF are **back in EU**, we have to provide a **risk assessment** in four different levels: **individual** (trauma due to personal participation to combat); **communal** (spreading of a violent anti-Shia narrative); **technical** (usefulness in serious crime activities and urban military training); **terrorist** (knowledge and intention of committing attacks and exploiting gaps in European security system).

UCLAT, National Counter-Terrorism Coordination Unit, Ministry of the Interior, France:

There are 4 main **reasons to be a FTF**: **Simple access** to Syria through Turkey (near where jihad takes place); **legitimate combat** against oppressor of Allah, **strong attraction** of ISIS conquers and **efficient propaganda** of jihad via internet. In general, FTF die between 9 and 10 months in combat.

Case example: Lunelle is a **small town** with 25.000 habitants where 28 individuals left to join ISIS. **Everyone knows each other**, which proves that **jihadism** is like **metastasis for the mosques**.

## ROUND TABLE: Judicial Tools to Prevent Radicalised Individuals from Leaving

Hans BONTE, Mayor, City of Vilvoorde, Member of Parliament, Belgium:

Nowadays, **juvenile delinquency** approach **fails** to prevent radicalization for both, prosecution and judiciary; there is a need of a **radical revision of juvenile criminal law** for two main reasons: firstly, enormous **cultural barriers** in juvenile care; secondly, juvenile detention and prisons are **breeding grounds for radicalization**.

Highest priorities: **police forces** have to gain trust, also by making them **more diverse** with different **ethnic and religious** backgrounds. It's very difficult to gain trust of the youth not being a Muslim. We need to get **more information and trust** from **families** of the juvenile delinquents; the families have the trust to **motivate them**; but once they have already decided that they want to leave, one cannot stop them.

Conclusions: **think globally, act locally** in our cities against radicalisation. We need to look at deeper causes (iceberg effect): enormous **frustration** of a group of people in our society. **Multilateral approach** is needed, not only police or social services, but jointly with a **mobilized civil society**. We will never be successful without or against the **Muslim community**.

Simon MINKS, Senior Public Prosecutor specialized in the prosecution of war crimes and terrorism, The Hague Court of Appeals, The Netherlands:

There is a need to **define** what is exactly a **terrorist intent** and **how to prove it**, this is the most important. **Considering recruitment for terrorism** as a crime is a big problem: **FTF argue** that it is **their own will**. For example, 'recruit' as a word in **Arabic doesn't exist**. Women and young girls say that they only want to marry a FTF.

The so-called **soft approach** endorses **cooperation** with all partners; the main aim is to **avoid prosecution**. His **recommendation** is to **gather information** connected to **radicalization** and **analyze** it with the local police officer, but not in immediately as a **criminal matter**, only when there is no other alternative, **as a last resort**.

Hélène BRONNENKANT, Judge, Administrative Court of First Instance of Strasbourg, France:

Jihadist terrorists are part of a **community** composed by **believers** who have pledged allegiance to the Caliph Al Baghdadi, independent of their nationality. According to them, any jurisdiction that does not live under the **Sharia law** is deemed **jihad land**.

The **state of emergency** in France is looking for an **immediate destabilization** of foreign fighters with various measures such as closing of places of radicalization and expulsion of non-nationals.

Els TRAETS, Prosecutor specialized in youth matters, Prosecutor's Office of the Court of First Instance of Brussels, Belgium:

Nowadays there only **few ways or instruments to de-radicalise**. We must **prevent**, specifically **with plans for minors** whose parents are radicalized, because they will leave together. We have an **international obligation** to avoid armed struggle. Very **difficult to distinguish** between the ones who leave to fight and the ones who just want to live in Caliphate.

## **PART II – A Judicial Response to Returning Foreign Terrorist Fighters**

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Christiane HÖHN, Legal Adviser to the European Counter Terrorism Coordinator, European Council, Brussels:

**Eurojust** is not much used, but it can be a very **useful platform**. Member States don't share enough information. More **information must be shared**, for a better understanding and analysis.

**EU Council** wants the MS to work on **rehabilitation** in areas **outside of prison** and on **exchange of information** between stakeholders, focusing on probation and rehabilitation (which can be financed by the European Commission). Europol Counter Terrorism Center shall work with Eurojust on relevant prosecutions and sharing information. There is a need of an **EU legislation to share data and information**. For example, in order to make a **separation between FTF and refugees**, who are receiving security checks while entering EU.

## **Part III – Incarceration and Radicalisation**

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### **ROUNDTABLE: The Role of Sentencing and Prison Regimes in Preventing Radicalisation and Promoting De-Radicalisation**

#### **An Overview of Sentencing Practices and Prison Regimes Across the EU**

Andrew SILKE, Head of Criminology, Director of Terrorism Studies, University of East London, United Kingdom:

Some EU countries are very experienced in counterterrorism and some of them not at all.

**United Kingdom:** **Jihadists prisoners** don't have a structure or cohesion, they are much more a **collection of individuals**. They are kept in **category A** (the highest security standards) for terrorist and violent extremist prisoners with a **disperse policy**. UK has been very innovative with regard to jihadist prisoners; but to **concentrate** them will **create problems**.

**Spain:** very interesting approach which **dispersed ETA prisoners** which led to increase in prisoners leaving ETA; not dispersing Jihadi prisoners due to a **greater fears of radicalisation** among other prisoners.

**Belgium:** aims to **improve the capacity of prison officers** to prevent radicalisation, they have the skills but they just need more confidence. The way to do it is through training programs like CoPPRa.

**De-radicalisation:** how to **change somebody's mindset**, to make them understand that their cause is **mistaken**. Mr Silke believes in disengagement but is very skeptical about de-radicalisation.

**Motivation** changes over time, is not consistent. It can **increase or decrease** (the willing to engage in illegal activity). Then, we should **plant a seed of doubt** to de-radicalise combined with disengagement.

Most of the de-radicalisation **programs are volunteer**. The ones who are **obligatory** are **not realistic** at all; the **cooperation** of the prisoner is the **most important** aspect. Attention: All terrorist lie to get out of prison. When you are assessing risk you **cannot rely on what they say** such as "I am not going to kill for the cause of terrorism".

Ludovic FRIAT, Deputy Chief of the Penitentiary Intelligence Service, Penitentiary Administration, Ministry of Justice, France:

After the Paris attacks in January 2015, the French prime minister has adopted a **series of measures against terrorism (PLAT)**, which seeks to prevent and fight against radicalization in a prison context: actions in order to **reinforce the skills** of prison officers; wider **sharing of information** through human and material means; adaptation of treatment measures in prison **“the Dedicated Units (UD)”**. Radicalisation is in constant evolution, there is a necessity to **adapt professional and legislative** answers.

The Dedicated Units are the first experience which **separates** between the most radicalized prisoners from the others in order to **avoid recruitment**. UD offer an answer to radicalization which concerns only prisoners engaged in terrorist activities linked with radical Islam and radical prisoners (no terrorist background). It means **individual incarceration** in order to start a **disengagement process** and with stronger **security measures** (separate building, no possibility of communication through the windows, monitoring of group gathering...).

Luc VAN DER TAELEN, Commissioner, Belgian Federal Judiciary Police, Terrorism Unit and Community Policing and Prevention of Radicalisation (COPPra) Project, Belgium:

CoPPRa assumes that officers do not always have a good understanding of radicalization; how to **recognize the warning signs**, or understand what to do in response. This project has aimed to help fill those gaps through **the spread of knowledge and training**, which is composed of four pillars: prevent, protect, pursue and respond. The strategy is to prevent youngsters to cross the border; the best way is to **work and cooperate with** all possible **partners**. As an example, France has recently asked for CoPPRa since Paris attacks.

Nowadays terrorist are not from outside EU, they are born in EU countries. Any citizen that **detects anything suspicious** should inform the police force. We have to focus more on religious communities. Above all that, we must respect **human rights** and **avoid stigmatization**.

Katharina SCHWARZL, Department for Enforcement and Prison Supervision, Austria:

**Measures of De-Radicalisation** in Austrian Penal Services through the task Force “De-Radicalisation in Prisons”; semi-annual executive conference with all prison governors; provide support through intervention and orientation interviews, and discussion groups (“NEUSTART” and the “EUISA“-Network DERAD); accelerated training and further education of prison guards; diversity concerning staff recruiting; educational and social work and behavior therapy oriented measures; and cooperation at international level (Council of Europe, EuroPris, MECR, RAN, ICPA).

**Care Rehabilitation measures:** mandatory sentence planning; assistance to persons released from prison; DERAD - social cohesion network for dialogue, prevention of extremism and democracy; and a comprehensive counseling mode.

Michael TOPOLSKI QC who sits at The Central Criminal Court (The Old Bailey), London:

**Dangerousness:** judge is under an obligation to assess it. Taking into account all available information about the offence and the patterns of behavior (school, friends and where the offender travels).

**Significant risk** (something will occur to the public): intended or desired – difficult responsibility for the judge to take the right decision. The defendant is seen by a psychologist who makes an assessment and gives his/her recommendation to the judge. This recommendation is taken into consideration when

deciding the time to serve in prison. Mr Topolski is against forensic psychologists, believing their opinion is not reliable.

**Secret evidence in relation to deportation of terrorists:** It is really **difficult to assess safety** with only the secret information you gathered because it cannot be used against the defendant if he cannot see it and respond to it.

De-radicalisation should be a voluntary process and include prison and probation.

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## **The Council of Europe Guidelines for Prison and Probation Services facing Radicalisation and Violent Extremism**

**Francesco RAGAZZI**, *Assistant Professor of International Relations, Leiden University, The Netherlands:*

**Objective:** collect advice on how to deal **with radicalisation** in prison and probation. There has been a high **political pressure** to respond to the problem and to act.

**Terminology:** the notion of radicalization is **highly contested** in academia, it's an old discussion. There is very **little evidence** about the veracity process of **radicalization**. We must take into account that radicalization in itself is not the main problem, only if it leads to **violent extremism**.

**Disengagement:** turning into **non-violent extremism** with two objectives, sanctioning and surveillance, and rehabilitation.

**The role of probation and prison professionals** in countering radicalization process, **cannot be** the same as for **intelligence officers**, because this would negatively **impact on the relation of trust** that they need to build with prisoners. Good prison management is the most important. Be aware that islamophobia on the side of prison and probation staff can lead to radicalization of prisoners.

**Evaluation** of prison and probation work is one of the **key discussions**: states do not want to **disclose the evaluation criteria** used to assess the work of **prison and probation professionals**; constant in revision; highly contested debate if there is any relevance on assessment criteria.

Last but not least, prison and probation service should work **inside and outside** the prison, in particular on the resettlement into the communities. Also, there is only very little data of dangerousness and success, **more research is needed**. It is important to have an assessment of the **modalities of detention** that do not lead to **discrimination**.