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Assessing the threat of terrorist recidivism: a legislative perspective

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1. Despite the territorial defeat of the Islamic State in March 2019¹, the evolving threat of terrorism posed by ISIL, and its supporters, continues to present a number of security challenges. While thousands of ISIL fighters and their families remain in detention in Syria and Iraq, and others have relocated elsewhere undetected, there is also a large group of ISIL survivors, supporters and sympathizers which are going through the criminal justice system in many non-conflict affected countries.
2. The latest UN report on the threat posed by ISIL, released in August 2020, asserts that “radicalization and failed rehabilitation in prisons, and the imminent release of dangerous inmates with a terrorism background or connections, remain acute concerns for Member States in the region (Europe)”². These concerns are also shared by PAM member countries.
3. The terrorist attack which took place in Vienna on 2 November 2020 was carried out by a young man previously sentenced for having tried to join ISIL in Syria, who participated in de-radicalization programs while in prison, and who was released early in December 2019³ in accordance with national law. This event highlights the urgency of assessing and addressing the threat posed by terrorist recidivism.
4. According to Europol⁴, in the EU, there have been 5,358 arrests related to terrorism between 2015 and 2019, and the vast majority of the reviewed cases resulted in convictions. As an example, only France counts over 500 convicted terrorists, alongside 900 radicalized individuals. The average prison sentence rendered for terrorist offenses in the EU, in 2019, was six years. Therefore, in the coming years, many individuals condemned for terrorist offenses will be released after having served their sentence.
5. It is crucial to understand the possible danger posed by released convicts, and to ensure that legislative frameworks provide for sufficient safeguards against the threat of terrorist recidivism.

¹ <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state>

² <https://undocs.org/S/2020/774>

³ <https://www.nytimes.com/2020/11/03/world/europe/vienna-attack-shooter.html?referringSource=articleShare>

⁴ <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-te-sat-2020>. P.34

6. One of the key challenges is to estimate the actual danger posed by released terrorist convicts. Reliable data on recidivism rates, among extremists and terrorists, tends to be scarce and varies greatly between contexts. A study issued by the Center for Analysis of Terrorism (CAT) found that around 60% of French citizens who went to join jihadist groups between 1986 and 2011 in Afghanistan, Bosnia or Iraq, reoffended upon their return. However, this study did not make distinction between convicted and non-convicted individuals. Indeed, in the case of re-offending from released prisoners, some countries in Europe have witnessed a rather low rate – such as Belgium (2.3%), England and Wales (3%), the Netherlands (5.8%)⁵.
7. Considering that re-offending rates are highly subjective and context-dependent, it is nonetheless crucial to try and minimize any potential recidivism from the next generation of prisoners that will be released. Effective legislation plays a key role in mitigating the risk of recidivism, while ensuring policies are in line with civic and human rights. However, this can be a challenging task for policymakers.
8. On the legislative side, there are different strategies, which can be adopted to respond to short, medium and long-term objectives. An immediate solution which is often implemented, including by several Mediterranean States, is the system of increased sentencing - that is extending the detention period for the individuals guilty of terrorism-related offenses compared to other crimes. In the medium-term, policymakers may decide to implement further monitoring and control measures for the convicted individuals, to prevent potential return to terrorist activity from the released prisoners. Lastly there are attempts for longer-term solutions such as deradicalization and rehabilitation programs, which aim at fully re-integrating the individuals into the society. However, the effectiveness of such efforts has shown to be doubtful and needs to be thoroughly evaluated.

Increased Sentencing

9. In many countries, pronounced sentences for terrorism remain quite short. According to Europol, among the EU States, the average length of sentences for terrorism related offences is around 5 years⁶. This trend could be explained by the type of offenses that are committed most often, many of which are non-violent. Similarly, on the southern shore of the Mediterranean, for example in Morocco, anyone who glorifies acts constituting terrorist offenses is punishable by an imprisonment from 2 to 6 years⁷.
10. However, some States have adapted their legislation and penal systems. Many of them, have chosen to introduce a system of increased sentencing when it comes to criminal acts linked to terrorism. In Morocco, if the criminal act is related to terrorism the maximum sentence can be doubled up to 30 years⁸. Similarly, in France for example, the offence of criminal association is punishable by a maximum of ten years of imprisonment, and in the case of a terrorist association, the sentence is increased to a maximum twenty years.

⁵ <https://icct.nl/app/uploads/2020/09/Re-Offending-by-Released-Terrorist-Prisoners.pdf>

⁶ <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-te-sat-2020> p.31

⁷ <http://www.ilo.org/dyn/natlex/docs/SERIAL/69975/69182/F1186528577/MAR-69975.pdf>

⁸ https://www.imolin.org/doc/amlid/Morocco/Morocco_Loi_n_03-03_relative_a_la_lutte_contre_le_terrorisme_2003.pdf

11. Moreover, this approach does not guarantee that the detainee will no longer be a danger to society once released. In some countries, there may be specific legal provisions, which might nonetheless grant an earlier automatic release of prisoners. For instance, the individual –responsible for the attack in Vienna in November 2020 – was a 20-year-old man who already had a criminal record for terrorist activities and was condemned in April 2019 with a twenty-two months prison sentence for trying to join ISIL in Syria. However, he was released earlier, in December 2019, in accordance with an Austrian law on the rights of young people⁹.
12. Some countries have chosen to limit automatic early release when it comes to terrorist convicts. Following a number of recent terrorist attacks, including those committed by released terrorists, the United Kingdom adopted an emergency law in February 2020 preventing terrorist offenders from being released before the end of their sentence without a thorough risk assessment by the Parole Board¹⁰.
13. In 2015, Egypt adopted a new anti-terrorism law, which includes the possibility of life in prison for forcing individuals to join a terrorist organization or preventing them to leave one¹¹. However, these approaches raise another issue of increased risk of spreading radicalization during prolonged detention, as reported by Norway for individuals of Somali origin. Indeed, imprisonment can create hatred and resentment and can also amplify prisoners' social, professional or mental health weaknesses¹². Prisoners may find in radicalism a sense of belonging and a structuring point of reference in this closed and isolated environment. For instance, in France in 2018, 1100 individuals were suspected of being in a process of radicalization inside the prisons because of the spread of a radical ideas from convicted terrorists¹³.

Post-release monitoring

14. Monitoring and control measures may already take place at the time of imprisonment, in order to assess the convicts' conduct. This information may indeed serve as a good basis for further measures to be implemented upon release. In Italy, for instance, judges and territorial police forces are informed of such release and are given a report on the in-prison monitoring activity in order to help police units identify the appropriate measures that need to be taken as a follow-up¹⁴.
15. States may also choose to implement additional tailored measures to monitor convicts after their release, in order to prevent potential relapse to terrorist activity. Today, there are several strategies for post-prison monitoring, such as preventive detention, probation service or electronic tags. As an example, in Algeria for individuals initially held on charges of terrorism and released after not receiving further extension, the law imposes provisional liberty. Precisely, the law consists in reporting periodically to the police station in their district, stopping professional activities related to the alleged offense committed, surrendering all travel documents, and, in some cases, residing at an agreed-upon address¹⁵.

⁹ <https://www.cbsnews.com/news/vienna-shooting-terror-attack-death-toll-rises-massive-manhunt/>

¹⁰ <https://www.gov.uk/government/news/end-to-automatic-early-release-of-terrorists>

¹¹ <https://www.atlanticcouncil.org/blogs/menasource/egypt-s-new-anti-terror-law-an-in-depth-reading/>

¹² https://orbi.uliege.be/bitstream/2268/236466/1/S%3a9curite%20et%20strat%3a9gie%20142_D%3a9radicalisation_Andr%3a9Dumoulin.pdf

¹³ <https://www.ouest-france.fr/monde/djihadisme/43-djihadistes-vont-etre-liberes-en-2020-annonce-la-ministre-de-la-justice-6750829>

¹⁴ https://www.giustizia.it/resources/cms/documents/anno_giudiziario_2020_dap.pdf

¹⁵ <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/algeria/>

16. However, these measures can at times raise critical constitutional and international legal issues, as well as imply important costs and management considerations. From a national legislative point of view, post-prison monitoring may often be “constitutionally-sensitive”. Indeed, control measures can at times clash with constitutional and civil rights, since they may often impose restrictions on fundamental, individual rights, such as freedom of movement and individual liberty, right to privacy, freedom of expression, etc.
17. A recent example of these difficulties was recently observed in France. In July 2020, the French Parliament tried to pass a bill, which would have increased control measures on terrorists after their release. In particular, the released convicts would have been obliged to go through a special evaluation before leaving jail. Moreover, they would not have been allowed to change their home address or place of work without the permission of a judge; and they could have been obliged to sign-on at a local police station up to three times each week, and to eventually wear an electronic bracelet. This bill was deemed unconstitutional by the French Constitutional Council in August 2020 for being disproportionate and depriving citizens of basic civil rights¹⁶.
18. Moreover, implementation of post-prison monitoring must take into consideration international legal standards and respect universal human rights principles. Hence, even if a bill is successfully ratified and implemented, it can still receive national or international condemnation by relevant human rights institutions. For instance, in 2017 the Netherlands approved a “Temporary Administrative Powers Counter-Terrorism Act” bill, which, among its provisions, granted the Ministry of Security and Justice the power to impose several restrictions on the freedom of movement and liberty of an individual suspected to commit a terrorist act or join a terrorist organization¹⁷. This bill was deemed by Amnesty International as “in clear violation of the European Convention on Human Rights”¹⁸. Other actors as well, including the Council of Europe Commissioner for Human Rights, criticized the bill based on human rights concerns¹⁹.
19. Another element to consider is that while some studies show that monitoring measures can divide the rate of criminal recidivism by half²⁰, these measures do not always and completely nullify such risks. For instance, one of the two terrorists of the London bridge attack in 2019 was wearing an electronic bracelet when he committed the assault²¹. The same issue occurred in a 2016 attack in Saint-Etienne-du-Rouvray in France, where one of the attackers was also wearing a bracelet²².
20. Both the French and UK examples stress two issues which may arise following the implementation of monitoring measures. Firstly, these types of measures can at times play against the rehabilitation process, by isolating the released convicts and further feed their hatred against society²³. Secondly, as

¹⁶ <https://www.rfi.fr/en/france/20200808-french-constitutional-body-rejects-security-law-on-terrorist-prisoners>

¹⁷ https://www.eerstekamer.nl/behandelings/20160517/gewijzigd_voorstel_van_wet

¹⁸ <https://www.amnesty.org/download/Documents/EUR3554322017ENGLISH.pdf>

¹⁹ <https://www.coe.int/en/web/commissioner/-/the-netherlands-urged-to-strengthen-human-rights-safeguards-in-its-response-to-terrorism?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fthematic-work%2Fcounter-terrorism>

²⁰ https://www.interieur.gouv.fr/content/download/106484/844483/file/Benjamin%20Monnery_avril2017.pdf

²¹ <https://www.theguardian.com/uk-news/live/2019/nov/29/london-bridge-incident-police-city>

²² <https://www.franceinter.fr/justice/st-etienne-du-rouvray-quand-la-justice-doute-du-bracelet-electronique>

²³ https://www.lemonde.fr/societe/article/2020/06/23/l-assemblee-donne-son-feu-vert-a-des-mesures-de-surete-pour-les-terroristes-sortant-de-prison_6043804_3224.html

also highlighted by a recent UK study, States can over-focus on the impact of restrictions to avoid possible court appeals, and risk overlooking important characterizations of violence and overall risk of recidivism by the released convict²⁴.

21. Monitoring is also resource intensive. For instance, States must invest in appropriate training of staff workers for probation services and effective information gathering systems. In order to provide a correct risk-assessment performance, States must cooperate with multiple stakeholders, including: police, intelligence agencies, families, and other private actors. This proves to be challenging when families are unable to provide proper engagement, when the police cannot disclose all the information, or when private companies, such as tech and social media, do not show enough cooperative efforts.

Deradicalization and rehabilitation

22. While prolonged detention and monitoring measures may be effective for a limited time to control the actions of radicalized individuals, they are not long-term solutions to the problem of radicalization and violent extremism²⁵. Therefore, many states have developed deradicalization and rehabilitation programs in an attempt to re-integrate released individuals back into society²⁶.

23. Efforts to undertake appropriate deradicalization and rehabilitation efforts are also mandatory under international law under UN Security Council resolution 2396 (2017)²⁷. As parliaments play a key role in translating UN Security Council resolutions into national laws through their legislative capacities, it is important to consider a variety of issues in this regard.

24. Many of these programs show encouraging results in terms of low recidivism rates²⁸, while there are also many cases of failed deradicalization attempts. Different factors need to be taken into consideration, such as the political and social circumstances in which they take place, the accessibility of these programs to a wide range of prisoners or only to a few, and lack of hindsight over time to assess their effectiveness, as it can take years to properly assess the success of deradicalization.

25. The initiatives that seem to work better tend to integrate diverse actors in a pluralistic approach²⁹. As an example, a program in Denmark established a strong cooperation between organizations such as schools, local police authorities, researchers, religion experts, safety services and tutors³⁰. Consultations between all the stakeholders makes it possible to develop effective programs adjusted to each detainee's specific profile and appear to be widely accepted by the targeted individuals.

²⁴ <https://www.bbc.com/news/uk-54004808>

²⁵ [http://undocs.org/S/RES/2396\(2017\)](http://undocs.org/S/RES/2396(2017))

²⁶ https://www.iemed.org/observatori/arees-danalisi/arxius-adjunts/anuari/med.2017/IEMed_MedYearbook2017_deradicalization_europe_arab_EISaid.pdf

²⁷ [https://undocs.org/S/RES/2396\(2017\)](https://undocs.org/S/RES/2396(2017))

²⁸ <https://www.clingendael.org/sites/default/files/pdfs/Prisons-and-terrorism-15-countries.pdf>

²⁹ https://www.iemed.org/observatori/arees-danalisi/arxius-adjunts/anuari/med.2017/IEMed_MedYearbook2017_deradicalization_europe_arab_EISaid.pdf

³⁰ https://psy.au.dk/fileadmin/Psykologi/Forskning/Preben_Bertelsen/Avisartikler_radikalisering/Panorama.pdf

26. As social exclusion is one of the factors of radicalization, many programs seek to reintegrate prisoners into social networks far from extremism. As family has been identified as a crucial point, the programs in Singapore and Saudi Arabia allow families to participate in psychological counseling sessions³¹. In Denmark, prisoners are encouraged to join peaceful influence groups and to participate in cultural or social projects³². Many programs, such as those in Iraq, Saudi Arabia and Singapore, also provide vocational training.
27. Religious education is a method shared by many states such as Saudi Arabia, Singapore, Philippines, Morocco³³. The knowledge of Islam among radicalized youth is generally very limited and misinterpreted. Morocco has developed a dedicated program with theology courses given by religious clerics, which allows them to question and refute radical discourses³⁴.
28. Credible interlocutors or tutors who can identify with the personal and psychological needs of prisoners also play an important role. A program established in Germany connects radicalized individuals with Muslim tutors³⁵. They are generally from the same generation as the radicalized youth, and share the same culture and language, which allows them to be accepted and to set up a dialogue more easily. They also share information with the security services in case of security concerns.
29. Several studies stress the importance of adapting programs to the specific needs and vulnerabilities of women³⁶. They face higher unemployment rates, greater childcare considerations, as well as increased stigmatization and insecurity. Programs can be tailored by providing access to psychosocial services, education, skills, development, socialization support and community-based approaches.
30. Because of the expectations placed on these programs and the costs involved, it is important to evaluate them to define their areas for improvement. Thus, monitoring and evaluation should be integrated from the design of the program, and also include the practitioners who will implement it in the design of the evaluation method because of their experience in the field. The evaluation should include the determination of the indicators used to measure success, whether the person has found a job or been able to follow training for example. It is also important to carry out an economic evaluation by analyzing the relationship between the cost and effectiveness of the intervention.
31. Finally, such measures may, in certain circumstances, also raise serious concerns about implications for human rights such as freedom of thought, conscience, religion or belief, expression, privacy and equality. Therefore, each of these policies must be carefully developed following the international legal frameworks³⁷.

The role of Parliaments and of the Parliamentary Assembly of the Mediterranean

³¹ <https://www.clingendael.org/sites/default/files/pdfs/Prisons-and-terrorism-15-countries.pdf>

³² <https://www.cairn.info/revue-politique-etrangere-2015-4-page-171.htm>

³³ <https://www.clingendael.org/sites/default/files/pdfs/Prisons-and-terrorism-15-countries.pdf>

³⁴ <https://eeradicalization.com/dealing-with-returning-foreign-terrorist-fighters-insights-from-the-moroccan-experience/>

³⁵ <https://www.cairn.info/revue-politique-etrangere-2015-4-page-171.htm>

³⁶ <https://giwps.georgetown.edu/wp-content/uploads/2018/04/Policy-Brief-Women-Deradicalization-and-Rehabilitation.pdf>

³⁷ https://www.osce.org/files/f/documents/4/7/393503_2.pdf

32. Parliaments play a crucial role in counterterrorism efforts in their legislative and oversight capacities. As policymakers, Parliaments need to ensure that national legislations are in line with international law, namely UN Security Council resolutions, and are effective in addressing key threats posed by terrorist phenomenon, including recidivism.
33. PAM brings together 34 Parliaments of the Euro-Mediterranean and Gulf regions, and with support of key partners, it provides a unique forum for its members to share legislative strategies and national experiences to address common challenges, including terrorism.
34. The Resolution adopted at PAM's Plenary Session in Athens in February 2020 recalls the responsibility of States to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts, or in supporting terrorist acts, is brought to justice, keeping in mind a special attention when developing tailored prosecution, rehabilitation and reintegration strategies for women and children associated with foreign terrorist fighters.
35. Additionally, PAM has adopted another resolution in Belgrade, in 2019, which calls on its member countries to utilize *Madrid Guiding Principles*, to provide Member States with a practical tool built upon good practices to address the issue of the returning and relocating foreign terrorist fighters.
36. As most PAM countries are increasingly faced with the growing threat of terrorist recidivism posed by released convicts, it is the time to reflect on the effectiveness of policies that may mitigate and minimize the risk of future attacks. In this regard, PAM recommends to hold dedicated discussions on the issues raised in this report, and to benefit from the national perspectives of its member Parliaments, as well as those of leading experts, and organize a structured exchange of views and best practices. The outcomes and recommendations of these discussions could be considered to be adopted as part of PAM future resolutions on the subject.
37. The Special Parliamentary Committee of PAM on Counterterrorism, under the leadership of its Chair, Hon. Gennaro Migliore, assisted by PAM Secretariat, is fully committed to work with its Member Parliaments and strategic international partners in this regard.