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Belgian Research Action through Interdisciplinary Networks

2012-2017

AFFECT

Impact Assessment of Belgian De-"Radicalisation" Policies Upon Social Cohesion and Liberties

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FINAL REPORT

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ABSTRACT

The 2014, 2015 and 2016 Brussels and Paris attacks by young European Muslims who had joined IS were followed by abundant legislative activity in the security area; they prompted the federal government and the governments of the federated entities to adopt several "action plans", and eventually led to an important reorganisation of the Belgian security assemblage. In this context, the objective of AFFECT has been to assess the impact of de-"radicalisation" policies on social cohesion and liberties. Two problems appeared to require particular attention: the rise of "pre-emptive security", and the adoption of the notion of "radicalisation" that fits perfectly into the latter's precautionary logic. The field investigated is that of the Belgian State's law enforcement apparatus (police, courts, prisons). Our findings (i) suggest that "radicalisation" is, in advanced liberal societies, the "strategic invention" that allows the passage from social security to "pre-emptive security", and the reconfiguration of law and the "surveillant assemblages" that this passage requires, and (ii) uncover some impacts of mechanisms induced by this notion, on social cohesion and liberties, the suspectification of the Muslim community, and the marginalisation or radical exclusion of some of its members.

Keywords: radicalisation; terrorism; pre-emptive security; precautionary logic; surveillance; reintegration; prison; local police; criminal law enforcement; penal reaction; risk assessment; observation policy; multi-agency work; Action Plan against Radicalisation in Prison (Plan P); prison trajectories; prison regimes; management of extremist offenders; State islamophobia; stigmatisation; polarisation; crimmigration.

1. INTRODUCTION

From May 2014 onwards, Belgium, like other European countries, faced a wave of terrorist attacks committed by people who either had fought in the ranks of the Islamic State in Syria or Iraq, or had pledged allegiance to it. Some of them had prison records; the perpetrators of the deadliest attacks, who operated both in Belgium and in France, were mostly young Belgian Muslims with an immigration background. In the aftermath of the attacks, new laws were enacted and new uses of existing laws were invented; new surveillance networks were assembled and new uses of existing surveillance networks were implemented. They all raise a series of questions. Do they, as the American response to the terrorist attacks of 9/11 did, "highlight a trend towards 'preemptive security' that was already under way across Western societies" (Ericson, 2008, 57)? Do they follow its precautionary logic –a logic that normalises suspicion (Guittet and Brion, 2017), turning real or imagined communities (Anderson, 1983) into suspect communities (Pantazis and Pemberton, 2009; Breen-Smyth, 2014; Ragazzi, 2016)? Do they "erode or eliminate the traditional principles, norms and procedures that prevent the prevention of imagined sources of harm" (Ericson, 2008, 57)? And is it possible to effectively respond to the threat of terrorism *without* abandoning the fundamental human rights principles that are the hallmark of free and democratic societies?

These questions will constitute the guiding thread throughout this research report. In contrast to research using psychological or sociological positivist theories within the criminological field to explain and predict "radicalisation", attributing it to ideological factors (Salafism, political Islam), psychological factors (grievances, frustration/aggression), or sociological factors ('root causes', real or perceived social inequalities), AFFECT takes a constructivist approach to the issue[1]. Situated within critical security studies, its aim is to analyse the institutional construction of "radicalisation" through police action, judicial and administrative proceedings and the penitentiary system, in order to highlight how "pre-emptive security" affects social cohesion, rights and liberties. In the eyes of many Irish, British, American, Canadian and Australian authors (Pantazis and Pemberton, 2009; Huq, 2010; McGovern and Tobin, 2010; Choudhuri and Fenwick, 2012; Hickman and al., 2012; Breen-Smyth, 2014; Chommeloux, 2014; Cherney and Murphy, 2016; Kundnani and Hayes, 2018; Nguyen, 2019; Ahmad, 2020), "radicalisation" has, as far as Muslims are concerned, become the new face of discrimination. By studying Belgian counter-"radicalisation" policies, AFFECT intends to discover whether, here as there, there are reasons to state that "preemptive security" and its precautionary logic have polarising effects that make them counterproductive.

2. STATE OF THE ART AND OBJECTIVES

After the 2004 Madrid and the 2005 London bombings, identifying the factors and the processes that had led some individuals or groups to join al-Qaeda, turn to armed struggle and commit attacks has become critical for Europe and every EU member state (Khosrokhavar, 2006; Atran, 2011; Crettiez and Ainine, 2017; Torrekens, 2019). In Belgium, the 2014, 2015 and 2016 Brussels and Paris attacks by young European Muslims who had joined IS have rekindled discussions on what could and should be done in order to better prevent further attacks. While the Belgian State's law enforcement apparatus (police, courts, prisons, intelligence and security services) had undergone significant reforms over the past 20 years, the attacks were followed by additional legislative activity in the security area; they urged the federal government and the governments of the federated entities to adopt several "action plans", and eventually pushed toward an important reorganisation of the Belgian security assemblage (Brion, De Valkeneer and Francis, 2019; Thomas, 2020). The fast pacing of developments in counter-terrorism has raised concerns about their legitimacy, efficiency, and impacts. Two aspects require particular attention: the rise of "pre-emptive security" and its precautionary logic, and the adoption of the "radicalisation" notion.

Over the past two decades, a precautionary approach to counter-terrorism policy has come to dominate police and state law enforcement, raising a series of thorny issues (Ericson, 2007, 2008; Amoore and De Goede, 2008; Bigo, Bonelli and Deltombe, 2008). Firstly, evidence-based decision-making on surveillance, intervention and regulation appears to have declined

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[1] Therefore, we have systematically used quotation marks to refer to the notion, following the example of what the team of the CONRAD research did. (De Backer, Aertsen, Bousetta, Claes, Dethier, Figoureux, Moustatine, Nagui, Van Gorp & Zouzoula, 2019, 8). When the word is within a quote, it was left as it was.

considerably, raising questions about due process and fairness (RAN, 2016; Velduhuis, 2016). Second, there is growing evidence that the increasing use of preventive measures is contributing to the solidification of a social sorting process (Lyon, 2003, 2007; Anwar, 2022). Finally, there is little practical evidence to suggest that the precautionary approach and preventive counter-terrorism measures are actually effective in reducing the terrorist threat (Thompson, 2020; Chantraine and Scheer, 2021).

In Belgium as in other Western countries, "radicalisation" has become the key to the new security assemblage (De Valkeneer, *forthcoming*). This notion emerged in EU counter-terrorism policies shortly after the Madrid attacks (Bigo and Bonelli, 2007; Coolsaet, 2016, 2019) and quickly became popular (Sedgwick, 2010; Kundnani, 2012; Derek Silva, 2018), despite severe academic criticism (Huq, 2010; Kundnani, 2012; Fadil et al., 2019). Aptly described by Fadil (2019) as an "empty signifier", it seems to have been invented to fit the precautionary approach to terrorism and could also, from an ethnomethodological perspective (Garfinkel, 1967), be defined as a "for all practical purposes" notion. While in the United States it is sometimes described as a "staircase to terrorism" (Moghaddam, 2005), in Europe it is most often represented by means of multi-level and multi-coloured pyramids. Vertically, the levels represent the phases of the process leading to terrorism; horizontally, each tier represents individuals characterised by a presumed level of dangerousness. The pyramid is the form in which suspicion is operationalised (Pantazis and Pemberton, 2011); the colours of the tiers refer to the different categories of actors (to be) enrolled in the surveillance of suspected (Muslim) communities.

Whatever the metaphor, whether staircase or pyramid, it is usually assumed that "radicalisation" is articulated in two phases or sets of phases, sometimes referred to as 'cognitive radicalisation' and "behavioural radicalisation". Law enforcement officials generally share a rather mechanical understanding of the progression from the former to the latter, which allows them to consider "cognitive radicalisation" as a proxy for "behavioural radicalisation". Yet, the threshold between holding radical views and moving to radical violence is still a matter of scientific debate (Wolfowicz et al., 2021). Recognising that "*radicalisation to extremist views is psychologically a different phenomenon from radicalisation to extremist actions" (2017, 211),* and that research in social psychology *"has long established that attitudes do not easily translate to action"* (2017, 212) McCauley and Moskalenko, both considered seminal authors in the field, have recently recommended replacing the classic one-pyramid mode devised by McCauley in 2006 with a two-pyramids model, juxtaposing an 'opinion pyramid' and an 'action pyramid'. They add: "*As several milestone authors have noted, jihadist actors are few (…) in comparison with tens of thousands with radical opinions (e.g. Hafez & Mullins, 2015; Horgan,2012; McCauley, 2013). And many individuals move to jihadist action without jihadist ideas – for personal revenge, status, escape, or love. The warrant for the two-pyramids model is the observation that 99% of those with radical ideas never act. Conversely, many join in radical action without radical ideas (…)*" (McCauley and Moskalenko, 2017, 212).

Quite unfortunately, one-pyramid approaches have already gained prominence in Belgium and EU Member States and penetrated many professional fields, including the police, courts and prisons. According to Kundnani and Haynes (2018, 14), "the training of large numbers of public

service workers to look for signs of radicalisation in Muslims [has] institutionalised Islamophobia into the routine practices of government bureaucracy", fuelling "prejudice and discrimination".

In this context, the objective of AFFECT was to answer the overarching question of the efficiency and intended or unintended consequences of Belgian counter-terrorism and de-"radicalisation" policies. This was achieved through:

1) Observing and unpacking the different actions taken by the different actors involved in the Belgian counter-"radicalisation" process understood as a policy process in five steps: (1) detection measures, (2) preventative community measures, (3) preventative administrative and judicial measures, (4) preventative measures in prison and probation, (5) extra-judicial measures;

2) Gathering and analysing evidence on how these security policies have possible unintended effects on security professionals' daily routines and professional culture on the one hand, and possible negative effects in terms of the risk of polarisation and "radicalisation" within both suspected and non-suspected social groups on the other hand.

The results are presented in several parts:

1) Impact of Security and "Deradicalisation" Programmes on Local Police Work:

This part of the project examined the emerging counterterrorism regime in Belgium, its strategic assumptions and knowledge claims, its programs, techniques and effects. The VUB, as one of the consortium partners, focused specifically on the role of the local police in a wider regime of counterterrorism practices. Through desk studies of key policy documents and literature review, and the performance of a range of ethnographies in local police forces, the aim was to understand how the local police has responded to the challenge of terrorism. What are the perceived strengths and pitfalls of its response? What challenges does it raise? What effects does counterterrorism policing have on the police and on police culture? As such, the project aimed to contribute to the further development of a counterterrorism police practice within a democratic framework.

2) Prosecution of "Radicalisation" and Impact of Security Policy on the Judiciary:

The NICC/INCC, as another partner in the consortium, conducted observations of public correctional hearings of persons prosecuted for terrorist offenses, and interviewed judges and lawyers involved in these matters. These approaches were complemented by an analysis of the jurisprudence on terrorism. These analyses made it possible to study the place and point of view of the different actors, the interactions between the various actors of the judicial system and the other actors (public and private) involved in the process. They also made it possible to highlight the weight of the context and its potential effects on the judicial intervention. The research identified the evolution and specificities of the "terrorist" cases submitted to the justice system, those of the population concerned, as well as the particularities of the procedure and of the judicial decisions taken in this field in the context of terrorist attacks. The potential unintended effects on the daily practices and professional culture of the judicial system were also highlighted.

Particular attention was paid to problematic issues related to fundamental rights and freedoms as well as to the effects on social cohesion.

3) Implementation and Impact of the Federal Action Plan against "Radicalisation" in Prisons:

The assessment of the Federal Action Plan against "Radicalisation" in Prison was carried out by the UCLouvain partner. The research combined prison ethnography, desk studies of key policy documents, analysis of data recorded by the Extremism Cell of the Prison Administration, analysis of prison files and files of the sentence enforcement court, interviews with professional members of 'internal services' and 'external services' intervening in prisons, and biographical interviews with terrorism-related detainees. These analyses aimed to understand the rationale behind the inclusion of selected inmates in the Extremism Cell database and to document its impact on prison careers, release procedures, post-prison trajectories and human rights. They also aimed 1) to highlight the challenge for the prison administration of having a large number of prisoners labelled as terrorists or presumed to be linked to terrorism; 2) to document the difficulties this raises in terms of organising movements and activities, and to examine whether the solutions found imply a restriction of the rights that inmates can exercise; 3) to document the interactions between internal security staff and external rehabilitation and "deradicalization" or disengagement staff, and the difficulties and opportunities that the structure of the Belgian state presents for the articulation of prison and probation.

4) The Law on Foreigners and Impact of Security Policy on the Right of Residence:

Based on the observation that the two issues of "terrorism" and "foreigners' rights" are no longer as watertight as they were in the past, the partner at the NICC/INCC has developed another aspect of its research on a field that lies at the border of the criminal justice system and the administrative field of foreigners' rights. It aims to examine more specifically the impact of Belgian anti-terrorism policy on the application of foreigners' rights as manifested in the case law of the Council for Alien Law Litigation (CCE). In this perspective, the partner at the NICC/INCC undertook the analysis of different ways in which the terrorist label assigned to persons is mobilised and rendered operational by the instances implementing the Law on Foreigners. In the same context, the partner explored the role played by the Immigration Office and the Council for Alien Law Litigation in the control of migration flows, notably through examining characteristics of the appellate procedure carried out by the Council for Alien Law Litigation, as well as its suitability to ensure effective defence of Human Rights.

3. METHODOLOGY

3.1   Impacts of Security and De-"Radicalisation" Programmes on Local Police Work[2]

Through desk studies of key policy documents and literature review, we first examined how counterterrorism is predominantly performed by the police in Belgium, what its main counterterrorism strategy is and what are the main assumptions that govern this strategic choice. We saw that counterterrorism policing means acting under uncertainty: it is increasingly unclear who *will* participate in terrorism, which is why "identity" has moved to the centre of policework. Police participate in a process of assembling and negotiating identities ("potential terrorist") in networks of expertise on the basis of both formal and informal criteria. It is a process that is "contextual" and "tailor-made", and because threats are not necessarily known in advance, it is a process that is potentially vulnerable to selective policing and a focus on the usual suspects.

To examine these processes further and make sense of what the police do in counterterrorism, we conducted ethnographic research in three different local police forces in Belgium. More specifically, we made field observations and conducted life story interviews, focus groups and in-depth interviews between 2018 and 2021 (see Figure 1). The three local police forces included in this study, one in Flanders, one in Brussels and one in Wallonia, while very different in terms of size, crime trends, geography and demographics, were essentially selected on the basis of their experiences with terrorism and "radicalisation" in Belgium, and more specifically, their experiences with high numbers of foreign terrorist fighters in their jurisdiction.

Fig. 1

Local Police force I	Local Police force II	Local Police force III
Medium sized	*Large*	*Medium sized*
Flanders	*Brussels*	*Wallonia*
240 hours of ethnography	**174 hours** of ethnography	
1 Focus group	**1** Focus group	
5 Life story interviews	**5** Life story interview	
3 in-depth interviews	**1** in-depth interview	**5** in-depth interviews
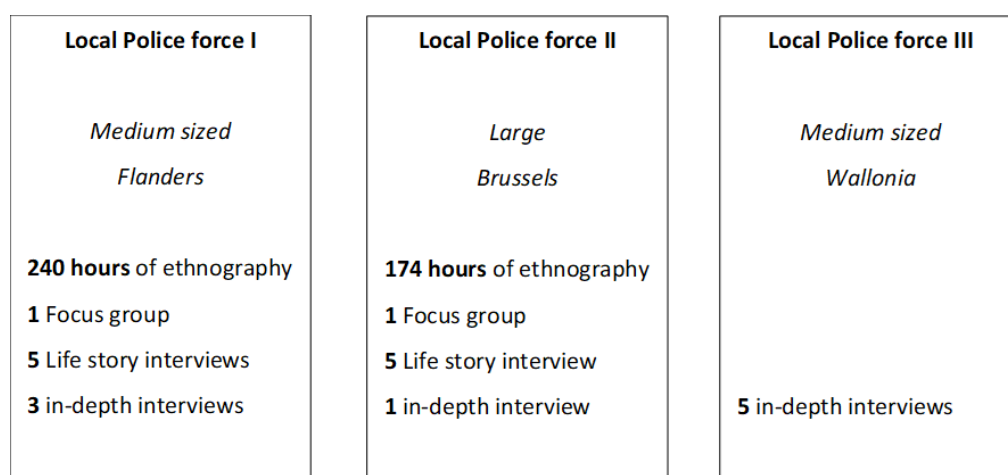
3.1.1. Field Observations

Between February 2019 and April 2019 we conducted 240 hours of **field observations** in a medium sized Flemish local police force. Researcher Estelle Hanard was embedded with intervention teams for a period of two months and participated in both day-and night shifts. She

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[2] This part was conducted by Estelle Hanard, Kristof Verfaillie and Sofie de Kimpe.

then spent a week with the neighbourhood police teams. She concluded her fieldwork with observations in an intelligence unit within the local police focused on the detection and assessment of "radicalisation".

In the second local police force in Brussels, she conducted 174 hours of observations between May 2019 and July 2019 and participated in the neighbourhood police teams and the intervention teams (day- and night shifts).

The research in the two first police forces was conducted prior to the Covid-19 pandemic. The fieldwork in the local police force in Wallonia took place during the Covid-19 pandemic, which meant that we were unable to conduct a full ethnographic study and were restricted to in-depth interviews.

3.1.2. Interviews

In addition to field observations, we conducted **focus groups**, **life-story interviews**, **and in-depth interviews**.

In the first and the second local police force, we organized focus groups to map the strengths and the weaknesses of the current Belgian counterterrorism architecture as experienced by the local police. The focus group participants (8 for each group) were all members of the local police and selected by the local police force in close consultation with the research team on the basis of their expertise in local counterterrorism policing.

The life-story interviews allowed us to explore the effects of counterterrorism policing on the local police based on analysis of the individual career paths of experienced police officers (usually with a 10+ years seniority). These semi-structured interviews were a means to collect data about how important changes in society and police policy are experienced by local police officers. By allowing them to narrate about the important transformations they experienced throughout their career, about what they felt had changed in policing in general and in the specific police force they worked in, we were able to assess in a more indirect manner how and to what extent the topic of terrorism played a role in their professional environment.

Finally, the in-depth interviews focused on mapping the history of the local counterterrorism approach and its perceived strengths and weaknesses within the police force under study. These interviews allowed us to amend or further refine the findings from the focus groups.

3.2 Prosecution of ("Radicalisation" and) Terrorist Offenses and Impact of Anti-Terrorism Policy on the Judicial Field[3]

The research approach in the judicial field required cross-analysis based on diversified research material from four main sources: observations of hearings (39 hearings, concerning 49 different

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[3] This part was conducted by Coline Remacle, Sarah Van Praet and Charlotte Vanneste. Sarah Van Praet's contribution consisted mainly of the collection of Dutch-speaking data. The data analysis and report writing were done by Coline Remacle (mainly) and Charlotte Vanneste.

defendants), interviews with lawyers (11), interviews with magistrates from the Federal Prosecutor's Office (10) and a quantitative analysis of case law on terrorism from 2003 to 2019 (179 cases concerning 540 defendants, giving rise to 570 decisions handed down by trial courts).

Hearing observations are part of an ethnographic approach as envisaged by D. Céfaï (2010)[4]. This is mainly characterised by the "direct" involvement, *in situ,* of the researcher, who observes, listens to and immerses himself or herself in the places and people to create his or her own experience, either as a simple witness, or by participating more actively. It is a matter of observing live, *in vivo,* the practices of the actors, which are ultimately according to L. Mucchielli (2015, 63) "the only method potentially making it possible to grasp the social environment 'in the process of being made', in other words to understand the human and social processes (the host of 'interactions') that produce social phenomena" (free translation). The observation data are collected using a "field diary", "the ethnographer's weapon", according to F. Beaud and F. Weber (2010). The collection and analysis process is then inductive, according to the principle initiated by the *Grounded Theory* (Glaser & Strauss 1967, 2010, Paillé 1994). It is a matter of bringing out categories, concepts, themes and analyses that are grounded in field experience, a matter of highlighting the elements that seem the most significant and structuring, as well as of developing a theorising process by being firmly anchored in the data. This is much more like a process than a result. By theorising, we must understand, as argued by Paillé (1994), that "it is to identify the meaning of an event, it is to link different elements of a situation in an explanatory diagram, it is to renew the understanding of a phenomenon by bringing it to light differently" (free translation).

Table I. Description of the sample of observed hearings

	In French	In Dutch	Total
Number of observed hearings	20	19	39
Number of cases	17	17	34
First instance court	*14*	*13*	*27*
Appeal court	*4*	*4*	*8*
Number of defendants	27	22	49
men	*21*	*14*	*35*
women	*6*	*8*	*14*
Period	Dec 2018 - Jan 2020	Nov 2020 – March 2021	Dec 2018 – March 2021
Reports : number of pages	*247*	*66*	*313*

The observations (Table I) were made in two distinct periods, one covering 20 French-speaking hearings (December 2018 to January 2020) and the other covering 19 Dutch-speaking hearings (November 2020 to March 2021).

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[4] Namely, "an investigative approach, which is based on prolonged, continuous or split observation, of situations, organisations or communities, involving know-how that includes access to the field(s) […], the densest and most precise note-taking possible […] and analytical work that is grounded in this field experience" (Cefaï, 2010, pp. 7-9)

The **interviews with the French-speaking lawyers** were conducted between September 2019 and January 2020. The interviews with the Dutch-speaking lawyers were conducted either face-to-face (1), by video-conference (3) or by telephone (1) between April 2020 and April 2021.

Table II. Description of the sample of the interviews with the lawyers

	In French	In Dutch	Total
Number of lawyers	6	5	11
+ Works		1	1
Period	Sept 2019 – Jan 2020 + March 2021	April 2020 – April 2021	Sept 2019 – April 2021
Total length of the interviews	*9 hours 10 min*	*6 hours 23 min*	*15 hours 33 min*
Transcripts : pages	*140*	*108*	*248*

The **interviews with the magistrates of the Federal Prosecutor's Office** were conducted in the final phase of the research, using a more directive interview technique. In these interviews, we presented the magistrates with a series of initial findings from our analyses, then questioned them on certain points that required clarification and on aspects relating more to their representations and feelings. This series of interviews ended with an interview with the Federal Prosecutor. They were carried out either face-to-face or remotely due to the health restrictions of the Covid-19 pandemic.

Table III. Description of the sample of interviews with magistrates from the Federal Prosecutor's Office

	In French	In Dutch	Total
Number of federal magistrates	7	3	10
Period	Summer 2021	Summer 2021	Summer 2021
Total length of interviews	*16 hours*	*Around 6 hours*	*Around 22 hours*

Finally, in addition to the formal interviews with the criminal lawyers and the magistrates of the Federal Prosecutor's Office, which were subject to meticulous analysis, informal interviews were also conducted in the initial phase of the research following the same principle applied for analysing the observations. These **exploratory interviews** made it possible to better situate the context or understand certain issues. The actors thus encountered include an official of FPS Interior, a member of CUTA, a State Security agent, a former investigating magistrate, a public prosecutor, a first advocate-general, a magistrate of a court of first instance, two public prosecutors, a judge from the TAP[5] (as well as the Federal Prosecutor, with whom a more formal interview took place in the second phase).

These qualitative approaches were supplemented by a **quantitative analysis of the "terro" litigation case law** made available by the Federal Prosecutor's Office. "Terro" litigation refers to people prosecuted on the basis of one or more offences defined as terrorist by Articles 137 to 141*ter* of the Criminal Code or on the basis of offences included in such litigation by the Federal

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[5] "Tribunal d'application des peines". This could translate as "probation court". We will however refer to it as TAP throughout this report.

Prosecutor's Office because of their context or their nature without being legally defined as "terrorist". The case law as a whole concerns 179 cases[6], 254 decisions handed down by trial courts, involving 540 people, of whom 29 were prosecuted in the context of two or even three cases (hence 570 individual decisions). For the analysis, we used descriptive statistics. In order to examine the impact of the various socio-demographic and legal variables on the decisions taken (sentences and other measures), we also used cross tables confirmed by statistical tests and logistic regressions.

3.3 Prevention of "Radicalisation" in Prison and Impact of Security Measures on the Penitentiary System

Before presenting the methodology of this segment, it is important to note that the research within the official framework of AFFECT itself was preceded and prepared by several instances of data collection carried out mainly by Fabienne Brion, which – beyond gaining an important understanding of the field – allowed to progressively forge a relationship of trust with key actors and institutions. The first notable of such instances was a 14-month participative observation carried out at the Forest prison facility between October 2014 and December 2015. This period coincides with the first vague of repressions of terrorism, most importantly providing the researcher with the opportunity to daily interact with a member of the newly established Cellule Extrémisme, as well as with the local direction of the prison[7]. This observation was supplemented with desk research, as well as a statistical study of "terro" informations included in the DG EPI-Risk database in March 2015.

After the official kick-off of the AFFECT project, field research was conducted at the Saint-Gilles prison facility in July and August 2018. During this time, every prison file regarding "terro" inmates and other CelEx inmates[8] was systematically consulted and analysed. Additionally, biographical interviews were conducted were conducted with 12 CelEx/CUTA inmates inside the walls and with 8 ex-CelEx/CUTA inmates outside the walls.

The subsequent research conducted to assess the implementation of the Plan P and the impacts of the "terrorist" or "radicalised" labelling on reintegration paths combined different methods of data collection: **field observations** were conducted in three Belgian prisons chosen due to their contrasting placement policies for CelEX/CUTA inmates and the type of detention regime in place; these field observations allowed access to **individual prison files** of CelEx/CUTA inmates incarcerated in these same three institutions; a **qualitative analysis of sentence enforcement files** kept by the probation court (Tribunal de l'application des peines, hereafter TAP) was carried out; **semi-structured interviews** were realised with workers considered as "external" inasmuch as they

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[6] A case may involve one or more defendants (up to 45 in 2015), about which one or more decisions can be made.
[7] It should here be noted that the director in question, with whom the researcher has thus established a privileged working relationship, has since moved on to becoming a judge at the TAP in Brussels. This has, without a doubt, further facilitated our access to the court and therefore the segment of the research presented under point 4.3.7.
[8] Monitored inmates formerly known as "CelEx inmates", now "CUTA inmates", are divided into the categories legally determined in CUTA's Common Database: Foreign Terrorist Fighters (FTF), Homegrown Terrorist Fighters (HTF), Hate Propagandists (HP/PH), Terrorist Convicts (TC/CT) and Potentially Violent Extremists (PVE/EPV). For the sake of convenience, referring directly to language used in observed prison facilities and by interviewed actors accustomed to the former designation, the terms « CelEx inmates » and « CUTA inmates » will be used interchangeably throughout this report.

are linked to organisations outside the penitentiary institution, and whose presence in prisons is traditionally linked to missions of care or social help to prisoners (those actors are: 1) Muslim counsellors, chaplains and lay advisers; 2) services providing psychosocial help to prisoners).

The material thus collected was the object of specific analyses as well as cross-analyses. Findings are therefore presented at times per field research, and at times through cross-analysis results.

3.3.1. Field Observations

Field observations were carried out in three different carceral institutions successively, between September 2019 and October 2021. The first carceral institution, in which field observations were made between September and December 2019, resorts to segregation and dispersal regimes for the management of CUTA inmates. At the time of the observations, the establishment comprised of 421 inmates, of which 16 CUTA inmates. 11 of these CUTA inmates were on a D-Rad:ex section, 5 others were in closed sections. None were on semi-open sections. Observations in the second carceral institution were interrupted by the first lockdown: they started in February 2020 and lasted until mid-March. The observations were resumed in July 2020 and lasted until October 2020. This institution resorts to dispersal and isolation for the management of CUTA inmates. At the time of the observations, the establishment comprised of 396 inmates, of which 11 CUTA inmates. 9 of these prisoners were in closed sections, 2 on open sections, but were under special individual measure or regime (hereafter SISM/ SISR). The third carceral institution in which field observations were carried from February 2021 until October 2021 resorts to dispersal and isolation for the management of CUTA inmates. At the times of the observations, the prison comprised of 311 inmates, of which 7 CUTA detainees. 7 of these prisoners were in open sections, with was under SISM/ SISR. 2 of the CUTA inmates were women. There is no closed section.

A **qualitative methodology based on participant observations** of the daily work of prison officers in detention was adopted and **unstructured interviews** with supervisory staff and members of the psychosocial service (PSS) were also carried out. The observations were recorded in a field notebook. In addition to the participant observations, **informal interviews** were carried out in order to gain access to information in a more spontaneous and less controlled manner from the actors interviewed.

In order to better understand the logics of the risk assessment work carried out by psycho-social staff and prison officers, the ethnographic survey was complemented by the **reading of 24 prison files of CUTA inmates** incarcerated in the three institutions observed (9 of detainees on D-Rad:ex in the first institution, 9 from the second prison and 5 of the third one). These files contain a number of useful documents, such as excerpts from the judgment (for convicted prisoners) or the arrest warrant (for accused prisoners), documents relating to classification, transfer requests, and requests relating to the execution of the sentence. Additionally, **statistics** provided by the Cellule Extrémisme were mobilised to objectivise observations made.

3.3.2. Qualitative analysis of sentence enforcement files

Another component of this part of the research was **a qualitative analysis of sentence enforcement files kept by the probation court** (Tribunal de l'application des peines, hereafter TAP). At the beginning of the research, **six judges of the Liège and Brussels probation courts were interviewed** in an attempt to map each court's experience and the distribution of "terro" files across the judicial districts[9]. The judges in Brussels established a list of some 60 potentially relevant files across two chambers, 44 of which were ultimately selected, primarily with regards to inmates' profiles: the research is thus limited to inmates convicted of terrorist offenses linked to radical Islamist ideology (17), as well as to inmates convicted of common offenses suspected of "radicalisation" in the same context (27). It is important to note that this sample presents an important bias given that it cannot be deemed representative of the entire country's practices, especially that of the Northern (Flemish) part. The below presented results should thus be read with this limitation in mind.

The consultation of the selected paper files took place between September and November 2021, as well as between January and March 2022, during which relevant information was extracted and organized for the purpose of a **thematical analysis** (Paillé & Mucchielli, 2012). During this phase, special attention was paid to written opinions given by prison Directors and Prosecutors, decisions made by the administration responsible for detention management (Direction Gestion de la Détention/DGD), as well as reports filed by the PSS. A series of quantitative data, such as (among others) dates of incarceration, eligibility and release, but also subsequent types of leaves/release granted, was also gathered. With the intention of grasping the ways in which information circulates and is used in release-related decision-making, relevant segments of different components were precisely quoted when logged into allocated Word and Excel forms. All excerpts were subsequently coded, categorised and compared in order to identify patterns and rationales not only in each individual instance's writings, but also in the circulation of information itself (Which information is given particular agency?; What determines the relevance of a piece of information?; Which body is relied upon to produce x type of information?; How is information conveyed between bodies?). Subsequently, the effects of these patterns on decisions related to early release – and thus, on inmates' perspectives of effective reintegration – were examined, notably through an assessment of refusal motivations, but also of the relative length of time spent waiting for early release from the moment of eligibility.

3.3.3. Semi-structured interviews

In terms of "deradicalization" and reintegration of "radicalised" inmates objectives, the Plan P targeted, among others, Muslim advisers working in prisons, and stated that "cooperation relationships between the local and federated entities had to be reinforced". Following this plan,

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[9] Efforts to establish contact with judges in Mons were unsuccessful. While the judges in Liège spoke of some files thought to be relevant for our research, contact with the court was interrupted due to the president's retirement.

the status of Muslim advisers, as well as of chaplains and lay advisors was changed through the Royal Decree of 17 May 2019.

Islamic counsellors, chaplains and lay advisers

Even though the Plan P specifically focuses on Muslim chaplains, we conducted semi-structured interviews with Muslim advisers, Catholic and Protestant Chaplains and lay advisers. There are two reasons for this choice. Firstly, despite many solicitations, Muslim advisers seemed afraid to take part in the research. Secondly, although "each individual carries a part of the collective " (Pinson, Sala Pala, 2007, 593), opening the research field to other chaplains and lay advisers made it possible to collect more, and differently situated, points of view which could then be compared to identify the similarities and specificities regarding "the constraints of the system, the values […], and resistance to constraints" (Pinson, Sala Pala, 2007, 593). In total, thirteen semi-structured interviews were carried out between October 2019 and November 2020 (with a last one realised in May 2022): four interviews with Islamic counsellors, five with Catholic chaplains – including one who no longer works in prisons –, one with a Protestant chaplain, and three with lay advisers – including one who no longer works as lay adviser[10]. All of them were practicing as professionals, not as volunteers as is also possible. Interviews were carried out in person or via ZOOM, following the COVID lockdowns and measures. Most of the interviews were recorded in full and then transcribed. The recorded and transcribed material amounts to 17h38. One interview could not be recorded at all and several included times when the recording had to be interrupted, at the request of our interlocutors. Notes were then taken, as precise and faithful as possible to the words of the speakers. All interviews were anonymized. This material was complemented by notes taken while on the phone with chaplains, lay advisers or people from their organisations as well as field notes from the ethnography.

External psychosocial services of help to detainees

Two exploratory interviews with employees from a service of help to detainees (hereafter S.A.D.) were carried out in November and December 2019. Eleven more interviews were conducted with employees of S.A.D. and specific services[11] between May 2021 and February 2022. This material was then complemented with interviews with three actors from the CAPREV (two of which are intervening in penitentiary institutions to provide help to detainees) and with three justice assistants. All the services we were in contact with operate within the carceral institutions on the FWB territory. This is a bias, since help to detainees is organised slightly differently in the Northern part of the country. However, the content of the interviews was framed to make it relevant for the whole of Belgium. Interviews were first carried out face-to-face. The COVID lockdown and the habits it created led us to conduct some interviews via ZOOM as well. All interviews were recorded and transcribed. Only one interview could not be recorded completely due to technical problems. Notes were then taken. The material recorded and transcribed amounts to 15h12. A content analysis method was then used to analyse the material. One should

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[10] Orthodox chaplains were also contacted, but no answer was given. Anglican chaplains and Israelite chaplains (as they are referred to in Belgium) were not contacted.
[11] For an explanation of the differences between services, see point 4.4.4. of this report.

note that, for this part, if all interviews were anonymized, each interviewed person was given a number. The literature existing on such services being quite limited, it was decided to keep these numbers in the text of our analysis, to give the reader a better feeling of how many actors were describing similar experiences or mechanisms.

This material is complemented by activity reports of one S.A.D. as well as letters confirming annual subsidies of this same service and specific subsidies assigned to several S.A.D.. Although it was not possible to comprehensively investigate the question of budget available and assigned to such services, these documents were used to objectivise and contextualise some information given in interviews.

3.4   The Law on Foreigners and Impact of Security Policy on the Right of Residence[12]

The first step consisted of using keywords to search the public database of the Council for Alien Law Litigation (CCE/RVV), for all the judgments in annulment and in full jurisdiction rendered in French and in Dutch, regarding a person suspected of involvement in acts of terrorism, or convicted of a terrorist offence in Belgium from 2007 to 31 December 2019. These were subsequently subjected first to a **quantitative**, then to a **qualitative analysis**.

The approach made it possible to identify a total of **85 judgments in annulment** (63 in French and 22 in Dutch) and **22 judgments in full jurisdiction** (17 in French and five in Dutch) proving to be relevant in the context of our project. The 85 judgments in annulment concern 51 people of 13 different nationalities and comprise a total of 100 decisions. The 22 judgments in full jurisdiction concern a total of 17 people of seven different nationalities, each of them containing a single decision. Judgments rendered under the annulment procedure are in fact much more common, and on average much more substantial and more detailed, than those rendered in full jurisdiction.

An initial overview of the developments in terms of the number of judgments, decisions and volume of judgments examined shows that their increase is consistent with the period following the entry into force of **the law of 24 February 2017**, *amending the law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners in order to strengthen the protection of public order and national security,* following in particular the priority policies of the government in the fight against terrorism in the context following the attacks of 2015 and 2016. This has indeed extended the scope of action of the Immigration Office (OE/ VZ) in terms of residence and made the instruments at its disposal more flexible: this research was therefore first devoted to the analysis of the 85 judgments resulting from this procedure.

Firstly, a **statistical analysis** was carried out on the basis of *the year in which the judgment of the CCE/RVV was rendered*, making it possible to report on a change in the general trends linked to the application of the law on foreigners and to make some observations more specifically related to the Council's work. Secondly, it was deemed appropriate to examine the corpus on the basis of *the year of the OE/ VZ's (contested) decision*, focusing on the measures ordered, the profile of foreigners targeted and the various elements taken into consideration during the decision-making

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[12] This part was conducted by Reka Varga and Charlotte Vanneste.

process. This analysis shows a significant evolution in OE/ VZ-level decision-making during the period studied, and especially after the entry into force of the law of 24 February 2017.

The qualitative analysis focused on the arguments and assessments put forward by the OE/VZ, as extracted from the judgments and organised in such a way as to be able to conduct a thematic analysis (Paillé & Mucchielli, 2012) on the one hand, and a classic case law analysis on the other. The thematic analysis is therefore limited to the decisions of the OE/VZ as they appear in the judgments of the CCE/RVV.

4. SCIENTIFIC RESULTS AND RECOMMENDATIONS

4.1. Impact of Security and De-"Radicalisation" Programmes on Local Police Work

4.1.1. Introduction

The police is expected to counter terrorism. They have to uncover ongoing terrorist activities, investigate or adequately respond to terrorism once it has occurred, but at the same time they are expected to *anticipate* terrorism and *prevent* terrorist threats from materializing. While it is more or less clear what the reactive strategies represent, the preventive police strategies in counterterrorism are a much more debated issue, as the experiences in Belgium and abroad have shown (H.M. Government, 2009, 2011, 2015 see also: Awan, 2012; Innes and Levi, 2017; Innes et. al., 2017; Bruggeman and Van Daele, 2017).

These experiences, and the issues they raise, can be summarized along the following lines:

- the police is expected to anticipate and prevent terrorism but they have to do so in ways that have proven to be effective (evidence-based), without undermining the public's trust, and without instigating or inadvertently contributing to processes that are believed to be root causes of terrorism (e.g. experienced discrimination as the outcome of forms of selective policing).
- It is not entirely clear what it means for the police to be "effective" beyond disrupting or uncovering ongoing terrorist-related offences. Effective preventive action might refer to acting on "root causes", but in practice there seems to be very little consensus about the concept of root causes and how they translate to "pathways into terrorism", notwithstanding the available research on the matter (e.g. Horgan, 2017). In fact, many scholars and practitioners believe that as long as no actual crimes are (being) committed it is not up to the police to act in matters of counterterrorism; tackling root causes is thought to be beyond the scope of the police (Perry et. al., 2017).
- If the role of the police in counterterrorism is reduced to standard models of policing, *prevention* seems to refer to participating in a "multi-agency approach": in such models the police should focus on its core business of crime fighting, leave the actual prevention of terrorism to others, and act as a partner within a wider network of actors, each with

their own mode of existence in a wider counterterrorism effort (see Koehler, 2017, infra). In such networks, tensions can (and do) emerge between a police focus on disrupting or uncovering ongoing terrorist-related offences on the one hand, and strategies that intend to promote

- What complicates the participation of the police in multi-agency work is that the overall focus of such work often remains unclear. Countering terrorism implies acting under uncertainty: if it is unclear how, when and where terrorism will strike and how to detect pathways to terrorism, this significantly complicates how effective counterterrorism networks should be established (e.g. who should be part of such networks), how this translates to coproducing security with stakeholders and how to intervene in society without inadvertently contributing to root causes. In other words, while it is commonplace to advocate holistic or integrated approaches to terrorism, in practice such approaches can refer to a wide range of practices whereof the preventive effects are unclear.

These challenges the police face are not easily mitigated because there are no general prescriptions for countering terrorism (Crenshaw and Lafree, 2016). In the absence of such prescriptions, the focus in evaluation research shifts from making judgements about whether counterterrorism policing is performed as it should be, to trying to understand what it is the police do in countering terrorism. In this report we will therefore learn and draw lessons from how counterterrorism is *actually* shaped, what it entails to counter terrorism *in practice* and what effects it has, on those, like the police, who are expected to perform or participate in these practices.

4.1.2. Studying Counterterrorism Policing

Making sense of counterterrorism policing requires more than simply providing an overview of the legal and policy framework of the counterterrorism architecture that was built over the past years in Belgium. Nor does it suffice to cite or point to desired police philosophies or strategic textbook visions about counterterrorism policing ("what counterterrorism policing should be like"). Such frameworks and overviews are obviously important and can be found elsewhere (see e.g. Hardyns and Bruggeman, 2016; De Raedt et. al., 2021). However, if we attempt to grasp which strategies or rationalities seem to prevail *in practice*, we need to go beyond the formalities of the counterterrorism architecture. Policy texts can underline the importance of "community policing", of "prevention" or of "holistic or integrated" approaches to terrorism, but what matters is how these practices are actually performed and how they are shaped in practice.

Counterterrorism has to be performed by someone, somewhere and with respect to particular groups or populations. This performance occurs throughout a myriad of interactions, not simply within or by the police but in schools, in prisons, in communities and de-"radicalisation" initiatives, through counselling and social work and in many other sites and places, and the police participates in some of these interactions but not others. "Counterterrorism" is shaped throughout these many interactions. The formalities of the counterterrorism architecture, the official policies, laws and regulations, are only part of those interactions.

Analysing the actual performance of counterterrorism

Making sense of counterterrorism entails focusing on the performance of counterterrorism. While formal rules and regulations are of great importance to that performance, counterterrorism can never be understood in terms of those formal realities alone. The importance of recognizing the actual performance of counterterrorism goes beyond acknowledging the inevitable and well documented tension between the law-in books and the law-in-action. It also refers to the risk of confounding legal concepts and policy definitions with analysis. For instance, formally, "terrorism" refers to highly specific actors, laws and regulations. Many practitioners, even within law enforcement, who are formally not part of those specialized agencies, will therefore argue that "counterterrorism" is something they don't participate in. They will argue that they focus on other forms of policing but not on countering terrorism. They may think of themselves as being part of an intervention team or a neighbourhood police team and refer researchers to other actors within the police who they believe do participate in counterterrorism. While this may undoubtedly be true from a formal perspective, intervention teams or neighbourhood police teams also develop practices that are part of a counterterrorism effort, so formally defined or not.

Similar observations can be made about socio-preventive actors. They might reject the idea that they are participating in counterterrorism. They might even explicitly distance themselves from counterterrorism labels and underline their commitment to community building or positive identity development. Yet, if counterterrorism policies are believed to require a holistic approach, or if policymakers believe that what socio-preventive actors do (and have always done) has a preventive effect on terrorism, then what these socio-preventive actors do, becomes part of a counterterrorism effort, so intended or not.

Ignoring these practices simply because they are not supposed to be part of counterterrorism, or because particular practitioners suggest they are not, is to reduce counterterrorism to normative assumptions of what it *should* be like, thus failing to grasp its actual rationalities and effects.

This latter point is perhaps particularly true for police strategies. Many police strategies exist to reduce crime, and assessing to what extent known police strategies are also useful in countering terrorism may be helpful for the development of more evidence-based approaches in that field. However, making sense of the performance of counterterrorism implies focusing on the kinds of strategies that are actually deployed and that seem to be preferred over others. Many police strategies exist and could be used to counter terrorism, but what matters in this report and for our purposes here, are the strategies that are chosen in the field. Some are better received, or more frequently performed than others, and this matters to our understanding of the effects counterterrorism has in practice.

To assess which strategies prevail over others, we will first turn to the findings of the Belgian parliamentary committee of inquiry into the terrorist attacks of the 22nd of March 2016 (e.g. Bruggeman and Van Daele, 2017). These findings will allow us to make a first assessment of dominant counterterrorism practices, which can then serve as a basis for further analysis.

4.1.3. Terrorism as Crime

Although Belgium has advocated a holistic approach to terrorism early on in the post-9/11 policy discourse, in practice its main counterterrorism focus has always centred around criminal law enforcement (Renard, 2016: 8; Verfaillie et. al., 2019). In its third intermediate report, the Belgian parliamentary committee of inquiry into the terrorist attacks of the 22nd of March 2016 (2017, 131), finds that:

> *"today, solutions are usually sought in the sphere of criminal law enforcement. Of course, it was necessary to take a number of suitable punitive measures, but prevention and proactive action must be further explored. These aspects remain essential for a full-fledged approach to Islamist extremism, violent radicalization and terrorism".*

The Belgian counterterrorism approach is highly focused on criminal law enforcement. This focus entails a number of important assumptions about what to do about terrorism, what the objectives of counterterrorism should be and what it means to be successful in counterterrorism.

A criminal law enforcement approach to terrorism is essentially reactive: it frames terrorism in terms of a criminal act that must be processed by the criminal justice system whenever a terrorist act has occurred or is in the process of occurring. To think of terrorism as a criminal act, and much less in terms of an act of war for instance, implies a focus on a strategy of criminalization, investigation, prosecution, sentencing, incapacitation and reintegration (cf. Welsh and Farrington, 2014).

The focus on criminal law enforcement in Belgium is obvious in terms of the investments that were made the past 20 years in the development of a counterterrorism architecture with a strong focus on a criminal law approach: a range of specific terrorist offences[13] were drafted and an assemblage of specialized judicial and non-judicial actors was put in place to monitor, investigate and prosecute these terrorist offences or reasonable indications of terrorism[14].

The criminal justice system was thus enabled to act on the basis of information (coming from a wide variety of sources) that points to the existence of a terrorist offence (cf. Book II of the Criminal Code, Title Iter) or that contains reasonable indications of a terrorist offence, in which cases the Federal Prosecutor will act, investigate and prosecute. Because of this strong focus on criminal law enforcement, the police are predominantly preoccupied with uncovering ongoing terrorist activities or investigating or responding to terrorism once it has occurred (cf. Weisburd and Majimundar, 2017; see also: Devroe and Ponsaers, 2016). Their main strategies to fight terrorism therefore resemble those of the standard model of policing (Weisburd and Eck, 2004), which means that efforts are mainly focused on increasing the system's capacity to make arrests and on improving its ability to respond to terrorism. The importance of these more traditional kinds of

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[13] See e.g. Book II of the Criminal Code, Title I *ter* "Terrorist Offences", articles 137-141ter.

[14] In practice, the criminal law enforcement approach essentially revolves around the Federal prosecutor, the 18 specialized investigative judges and specialized federal police units, and cooperation schemes with intelligence services (VSSE and ADIV), the Coordination Unit for Threat Analysis (CUTA) and the Belgian Financial Intelligence Processing Unit. This, however, does not exclude local prosecutors from participating in counterterrorism (*infra*).

policing is reflected in the priorities of the government investments that were made in the counterterrorism architecture, the increase of (specialized) police capacity, the use of foot patrols (by law enforcement and the military), the coordination and better management of reactive responses and of information flows[15]. It is also reflected indirectly, however, in the finding that Belgium at one point in time rendered among the highest number of verdicts for jihadist terrorism in the European Union (Europol, 2017, 12, 18).

4.1.4. Prevention Through Deterrence

Although the criminal law enforcement approach is thought of as mainly repressive or reactive, it does intend to prevent terrorism, and it does so based on three key assumptions: 1) through general and individual deterrence; 2) through a strategy of cumulative or adaptive criminalization; 3) and through strategies of focused deterrence.

General and individual deterrence

First, criminal law enforcement is believed to prevent terrorism through the process of general and individual deterrence (Hart, 1968; Von Hirsch, 1976; Tonry and Farrington, 1995). By focusing on arrests, investigations and sentencing, it intends to incapacitate and deter offenders. In doing so it attempts to dismantle or disrupt terrorist groups and networks and prevent individual perpetrators from committing new offences by simply removing them from society.

The experience of punishment is believed to deter the convicted terrorist offender to the extent that s/he will no longer participate in terrorist activities upon his or her release from prison. This, in turn, is believed to result in general deterrence, or the belief that other potential offenders in society may be discouraged to participate in terrorism because of the sentencing and incapacitation of others like them.

Criminalization

Second, the effects of general and individual deterrence have been significantly extended through consecutive processes of criminalization. In addition to criminalizing the actual violent act of terrorism and by expanding the notion of what constitutes a terrorist offence, a range of other practices are criminalized, practices that are somehow connected to terrorism or seem to facilitate it. Preaching hate, traveling to conflict areas to participate in terrorism, financing terrorism, recruitment of jihadi fighters and so forth, they have all become part of a web of criminalisations so that in addition to simply responding to the violent terrorist act itself, the criminal law enforcement approach can be applied to a much wider range of (facilitating) practices that are now defined in terms of a terrorist offence (or existing criminal offences, like arms trafficking, cybercrime, drug trade and other organized crime activities become more explicitly connected

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[15] The importance of such strategies is not only apparent from the measures taken in the aftermath of the attacks in Belgium on the 22nd of March 2016, they were also dominant in the counterterrorism policy developed prior to these events, as documented in the third intermediate report of the Belgian parliamentary committee of inquiry into the terrorist attacks of the 22nd of March 2016 (Bruggeman and Van Dale, 2017, 88-96).

to terrorism for law enforcement purposes). In doing so the preventive logic of general and individual deterrence is significantly expanded.

One of the consequences of this expansion is that it shifts criminal law enforcement much more toward uncovering processes that are much less visible than the highly visible terrorist act itself (see also infra). The police therefore needs to rely much more on a range of special investigative methods, (covert) surveillance and information-sharing with other agencies (e.g. intelligence services) to make arrests and incapacitate offenders.

The Belgian police is therefore said to become increasingly more proactive in that it mobilizes resources on its own initiative and acts much less based on the demands of those external to its organization in matters of terrorism and organized crime (cf. Bruggeman and Van Daele et. al. 2017, 298). While this is most certainly the case, the fundamental mechanism that underpins the prevention of terrorism, however, remains the same. Whether the police takes the initiative to mobilize resources to uncover terrorism or simply responds to terrorism when it occurs (or is made aware of its occurrence by third parties), the idea of general and individual deterrence is what is believed to prevent terrorism from occurring. In other words, taking the initiative, being proactive, is simply meant to make processes of deterrence more effective. There is no focus on broader underlying driving forces of crime and disorder[16].

Focused Deterrence

The Belgian counterterrorism policy revolves around criminal law enforcement. This means much time and effort is spent on uncovering ongoing acts of terrorism, investigating or responding to terrorism once it has occurred or on crimes that can be connected to terrorism. A criminal law enforcement focus is a strategic choice which is felt and reflected in the Belgian counterterrorism architecture. Precisely because this architecture is grounded in the rationality of criminal law enforcement, it is shaped and transforms in response to new or changing realities in the field. For instance, whereas the counterterrorism architecture was initially heavily focused on foreign terrorist fighters, it has gradually shifted towards the problem of homegrown terrorism or the more explicit general monitoring of potentially dangerous forms of "radicalisation" (infra)[17].

In such an architecture, specific profiles are drafted (e.g. "foreign terrorist fighter") and the system acts on these profiles (and thus acts on what is already known). Depending on the available intelligence it can decide to prosecute (supra), but if concrete indications of terrorism or terrorism-related offences are lacking, it can opt for discrete forms of surveillance to monitor, gather intelligence and assess if a particular individual is somehow about to participate in terrorist activities or on a "pathway" to terrorism (see also infra). In specific cases, however, the discrete forms of surveillance can be abandoned or a choice can be made to opt for more focused deterrence-like strategies (Kennedy, 1997, 2008; Braga and Weisburd, 2012).

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[16] As such, a distinction can be maintained in policy texts (e.g. Bruggeman and Van Dale, 2017) between "proactive action" and "prevention". Both notions refer to a different range of practices that intend to ensure that terrorism does not materialize or occur.

[17] This shift is also reflected in a gradual shift toward more administrative forms of policing.

Focused deterrence essentially refers to formats in which known high-rate offenders responsible for a large proportion of crime in a particular area are targeted by law enforcement. They can become the object of multi-agency work and they are presented with clear incentives to comply (risk of prosecution) when they engage in criminal activity (Weisburd and Majimundar, 2017). In the Belgian counterterrorism approach there is no formal use of such strategies, but there are attempts to target specific risk profiles and confront them, or make them aware of the fact that they are under surveillance ("aanklampende aanpak"). It is believed that when individuals at risk of participating in terrorist activities are made aware that they are under surveillance, they may be deterred from doing so[18].

4.1.5. The Limits of Criminal Law Enforcement

There are a number of reasons why the criminal law enforcement approach is often perceived as ineffective or insufficient to fight terrorism:

No structural solutions to terrorism

Because of its focus on offenders and on acts committed, the criminal law enforcement approach does not provide structural solutions to terrorism, it does not mitigate underlying issues conducive to terrorism (the "root causes") nor does it think itself fit to provide such solutions. As a policing strategy it is highly similar to what police scholars have described as "the standard model of policing" (cf. supra, Weisburd and Eck, 2004; Weisburd and Majmundar, 2017): a one-size-fits-all application of highly reactive strategies that in themselves seem to have little impact on the actual reduction of crime. There is an important trend toward more proactive policing, and in that sense the Belgian police approach to counterterrorism is not simply reactive. This trend, however, essentially reflects more police-initiated action to deter offenders and disrupt criminal/terrorist networks. It does not focus on prevention through structural problem-solving ("tackling the root causes")[19].

No qualitative understanding of terrorism

From the perspective of the criminal law enforcement approach, more prevention essentially means improving general and individual deterrence by increasing the criminal justice system's capacity to act. As such, it does not focus on a qualitative understanding of terrorism but on influencing the choice process: offenders are expected to be deterred by the experience or the threat of punishment or they are made to experience more constraints in the process of participating in terrorism. One of the consequences of this focus is that there is little anticipation

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[18] Precisely because the "*aanklampende aanpak*" is so ill-defined, as an offender or person-focused approach it can refer to a wide variety of practices and it can entail much more *in practice* than a focused deterrence strategy (*infra*). Notice, however, that when it is used as a focused deterrence approach this too constitutes a form of proactive policing that has nothing to do with prevention through structural problem-solving.

[19] Because in practice the police is mainly focused on criminal law enforcement and because they subscribe to the idea that structural problem-solving is beyond their capabilities, prevention *from a police perspective* will always and inevitably revolve around strategies focused at influencing decision-making by (potential) offenders. In addition to a prevention-through-deterrence rationality of criminal law enforcement, such strategies are reflected in the use of administrative law ("bestuurlijke handhaving") or situational crime prevention formats with a focus on identifying and protecting attractive targets and vulnerabilities to reduce the opportunities for terrorism (e.g. Clarke and Newman, 2006, 2007).

or prevention of terrorism beyond what is already known. The criminal justice system responds to developing threats so that it systematically needs to adapt to terrorist practices that are genuinely new (see also: Van Calster, 2006). Because it is responsive, it can only do so when these practices actually manifest themselves, which often results in the perceived need for new and additional criminalisation mechanisms or in a reinforcement of, or variation on, established policing strategies (e.g. increase foot patrols or stop-and-search practices)[20].

Because a clear-cut predictable pathway to terrorism does not exist, because terrorist profiles are diverse, the modus operandi seem to change quickly and the terrorist threat grows ever more diffuse ("lone actor terrorism" and "flash-'radicalization'"). This significantly constrains the ability of the criminal justice system to act and respond effectively (it needs to re-adjust every time an *unknown* emerges or a novelty occurs). Having to respond to more diffuse threats moreover results in an ever-growing need for resources, surveillance and police capacity, information, coordinative efforts and partnerships with agencies beyond the criminal justice system. It is this trend that gives substance to the growing feeling among crime control professionals that information management lacks any coherent vision or strategy (it is simply responsive) and that they face an unmanageable overload of information ("infobesitas") which results in too much noise and a lack of analytical capacity to find any significant signals in the noise (see Bruggeman and Van Dale, 2017, 55).

As such, much is expected of the implementation of the Joint Intelligence Centres and Joint Decision Centres in the jurisdiction of the Court of Appeal of Brussels, and the Counterterrorism Forums (CT) in the jurisdiction of the Court of Appeal of Liege, Charleroi, Ghent and Antwerp. These centres, however, are essentially focused on coordinating and prioritising action ("is a criminal law approach desirable at this point or not"). While this most certainly makes both the intelligence approach and the criminal law enforcement approach to terrorism more effective, it does not necessarily result in a better understanding of terrorism.

The risk of selective policing

Finally, while a criminal law approach undoubtedly entails and safeguards particular formal rights and due process mechanisms, in a context of counterterrorism it is susceptible to important and informal processes of selectivity. Maguire (2008) suggests that criminal investigations are always prone to (subtle) forms of bias. Contrary to the popular belief, criminal investigations are not about following clues and discovering truth. In practice they seem to revolve around constructing cases and translating a social reality into a legal one. This process is suspect-centred and often focused on building successful cases against likely offenders ("the usual suspects").

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[20] Again, being reactive here refers to more than simply responding to a crime once it is committed. It refers to acting on the basis of *known* threats or on the basis of what is assumed to be true about terrorism. While some of these actions are indeed reactive, others can be initiated by the police (and are thus technically proactive). This distinction is important: proactive action can indeed disrupt or prevent the reoccurrence of a known terrorist threat. The point here, however, is that the proactive response is a *response*, an initiative based on what is experienced or known to be true about terrorism. In that sense, the distinction becomes much less relevant. If both forms of action are grounded in the same assumptions about what terrorism is, who the perpetrators are and how they operate, actions of the police are in that sense always reactive. Being reactive, then, refers to acting on the basis of what is known about decision-making by terrorist offenders ("who terrorist offender are and what they are expected to do").

One of the main concerns raised about the implementation of counterterrorism policies is the risk they entail of creating suspect communities (Hillyard, 1993; see also: Mythen et. al., 2009) and of fuelling a culture of suspicion (Chan, 2008). Such cultures potentially reinforce the biases present in criminal investigations, even more so when the criminal law enforcement approach itself shifts towards uncovering terrorist activities through surveillance and intelligence gathering (which implies a focus on suspects). The focus on specific suspect populations becomes even more pronounced when the terrorist threat itself ("what needs to be uncovered") becomes less clear and more diffuse, as the more recent trends suggest (Europol, 2019, 2020, 2021). In such circumstances, stereotype categorisations of suspects inadvertently become more important heuristic tools in criminal law enforcement[21].

In other words, while formally focused on truth finding and due process, a counterterrorism climate potentially fosters the suspect-oriented biases in criminal investigations, thus making the policing of terrorism more vulnerable to structural processes of selectivity (*infra*).

The evaluations of counterterrorism policies, both in Belgium and abroad, suggest that many of the limits of the criminal law approach are recognised or even accepted among crime control professionals. While they may not always (fully) recognise the limits of deterrence, they often know and accept that they cannot provide structural solutions to terrorism, they recognise that counterterrorism policing might benefit from more intelligence-led approaches, partnership approaches and administrative approaches, and they are aware that antagonising the population may affect the information that can be obtained from the population, which ultimately affects their ability to control terrorism.

From a criminal law perspective, these limits are not necessarily felt to be a problem: what the police does, or is expected to do, is assessed in terms of what other actors do and are expected to do. In other words, the police focus on criminal law enforcement, and this is perceived as a distinct part of a much larger counterterrorism puzzle. As such, criminal law enforcement does not need to provide structural solutions to terrorism nor does it need a better understanding of the fundamental processes at work in terrorism and of pathways to terrorism; this is what other actors are expected to do:

> « *The investigative committee subscribes to the (…) integrated approach, in which the local police is included as a full partner in the administrative and judicial approach of radicalization, violent extremism and terrorism. The committee does emphasize that tackling these phenomena is not an exclusive assignment for the police and justice. The security approach should therefore coincide with a prevention policy, which is not only focused on avoiding radicalization but should also focus on its potential socio-economic breeding ground.* » (Bruggeman and Van Dale, 2017).

In other words, what the police (and justice) do is felt to be distinct from what a prevention policy does. These latter policies are simply not seen as part of the criminal law enforcement approach;

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[21] It is at this point that a normalisation occurs of selective forms of policing in the public debate ("we are obviously not focusing on 'grandmothers' or 'the Chinese'").

they refer to practices distinct from the criminal justice system aimed at preventing the occurrence of future criminal acts (Welsh and Farrington, 2014, 2). Prevention, in this sense, has nothing to do with deterrence, disruption or law enforcement. It refers to "social policy", "root causes" and "structural measures" to deal with terrorism, and such prevention policies should somehow be integrated with the "security approach" (with what the police and justice do).

The idea that distinctly different approaches need to be integrated for crime control to be effective is a well-established idea in the Belgian field of crime control[22]. Specifically, in matters of counterterrorism, the integrated security idea was formally embedded in the Belgian counterterrorism architecture with the creation of specific formats in which such integration could take place (e.g. the local integrated security cells). Conceptually, the rationality of such an integrated counterterrorism approach can perhaps best be understood in terms of Daniel Koehler's "network of counter-terrorism" (2017).

4.1.6. Network Policing

Koehler (2017, 113-116) suggests that any country's counterterrorism architecture should essentially consists of three impact levels (macro, meso, micro). On each of these levels, preventive, repressive and intervention measures can be taken. As such, a holistic counterterrorism approach comes into focus in which each of the different initiatives are expected to complement each other and contribute to the overall objective of "counter-terrorism".

Repression

The repressive measures in this network refer to reactive forms of crime control: investigating, prosecuting, sentencing and incapacitating individual offenders and groups, as well as the broader reactive strategies such as border protection and disrupting financial flows. Community-policing and probation are seen as more benign or "positive" aspects of repression, but in Koehler's framework, they are situated within the repressive field nonetheless.

Prevention

Prevention in the counterterrorism network refers to measures ranging from education, research, civil society, youth and social work, community-cohesion programs to workshops with former extremists in schools. These measures intend to reduce the attraction of terrorist ideologies, focus on support for specific risk populations often based on the idea that specific socio-biographical factors (e.g. unemployment, level of education, mental health problems) facilitate "radicalisation".

Intervention

Closely connected to prevention are the measures of intervention. They essentially refer to the specific programs and policies to "deradicalise" and disengage, such as the development of counter-narratives, family counselling programs or tools that target the social environment of "radicalising" or "radicalised" individuals, the interventions to "deradicalise" terrorist groups or

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[22] Although here too researchers have found that in practice the integrated approach has materialised into a wide variety of practices and may not be as self-evident as the official policy discourse suggests (Bauwens et. al., 2011).

the more targeted programs that support individuals in the process of distancing themselves from radical ideologies or "radicalised" environments.

Precisely because "prevention" and "repression" (and in the case of this network: "intervention") are often perceived as distinct practices that are nevertheless part of a comprehensive effort to counter terrorism, policymakers need to focus on developing "integrated security" approaches in which they face the challenge of "striking the right balance" between prevention and repression and connecting prevention and repression in meaningful ways. Koehler (2017, 116) suggests that in counterterrorism such meaningful connections can be made in terms of treating the different measures in the network as *resources*: actors in the field of prevention might benefit from intelligence-gathering or from (de-)"radicalisation" or disengagement knowledges, just as law enforcement might benefit from specific training to recognise ongoing processes of "radicalisation" (CoPPRa) or the criminal justice system (e.g. prisons) might organise itself to facilitate "deradicalisation" programs.

When observers suggest that the Belgian counterterrorism effort is too reactive and repressive and that a more explicit focus on "prevention" is required (Renard, 2016), they essentially suggest that this balance is somehow lost, that not enough meaningful connections are made within the broader network of counterterrorism and that the role of the police is reduced to traditional law enforcement.

A focus on "radicalisation" to prevent terrorism

What allows connections to be made between the different actors in the counterterrorism network is not the legal notion of terrorism, which is essentially dealt with by highly specialized actors at the core of the criminal law enforcement approach (*supra*). What allows for integrated approaches, especially with actors external to the criminal justice system ("prevention") is the idea of *a pathway to terrorism*, or what scholars and policymakers in the wake of the terrorist attacks in Madrid (2004) began to refer to as "radicalisation" (Coolsaet, 2008, 2011)[23]. "Radicalisation" initially referred to the idea that a process exists, a pathway to terrorism, and that this process was something that could be acted upon to prevent terrorism. As this process was by no means to be reduced to individual pathologies or moral qualifications, but thought of in terms of socio-psychological root causes, this opened up a way of thinking that required the mobilisation of a wide range of actors in education, social work, employment, immigration and other fields who would have to become involved in the prevention of terrorism.

In other words, the notion of "radicalisation" allowed for a counterterrorism approach in which prevention could be connected with a criminal law enforcement approach in meaningful ways and could be fitted within the framework of the Belgian Federal state (see also Dewael et. al., 2017). Yet, in practice, the integration of different approaches seems to bring about the potential risk of blurring and conflict among the different constituent fields of the counterterrorism network, and this is particularly so at the local level where such integrated approaches have to materialise.

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[23] We will not deal with the history and evolution of the concept of "radicalisation" here. For an excellent overview see Coolsaet (2008, 2011).

At the local level, counterterrorism is a matter of a patchwork of networks of expertise in which different actors make judgments about who is in the counterterrorism network and who is out. These networks are formed both within the field of prevention (e.g. education) as within the field of security (e.g. local task forces), or there can be assemblages in which both of these worlds meet (e.g. local integrated security cells). The judgements that are made within these networks often take the form of formal and informal risk assessments to assess and qualify the particular risk individuals pose and how this risk should be managed. As such, the Belgian counterterrorism network is a patchwork of sites and nodes (e.g. youth centres, schools, social services, prevention services, local taskforces, local integrated security cells etc...) in which "identity" is assessed, negotiated and managed.

For instance, schools do not simply have to educate youth about human rights or embed civic standards in society (cf. Koehler, 2017), they also have formal and informal procedures in place to assess whether their students are caught up in a process of "radicalisation". Schools need to reflect about their curriculum, how it can contribute to the prevention of terrorism or to a process of "deradicalisation". They need to assess what "radicalisation" means exactly within their context and at which point they need to connect the case of a particular student to other actors in the counterterrorism network.

The police are not simply uncovering ongoing terrorist activities or responding to terrorism, they also monitor the process of "radicalisation" to assess the risk of actual terrorism. They participate in local taskforces to assess processes of "radicalisation", they monitor specific individuals (e.g. foreign terrorist fighters) and negotiate security risks with different security actors. The local police, however, also participates in the local integrated security cells where socio-preventive partners and local authorities participate, and "socio-preventive" solutions are negotiated, and they broker information between these cells and the local task forces.

It is at this point that the concept of "radicalisation" has proven to be difficult (Coolsaet, 2011). As there are no clear and unambiguous terrorist profiles or root causes, and as there is no clear pathway to terrorism (Crenshaw and Lafree, 2016), a range of informal criteria become part of how identity is brokered throughout the counterterrorism network ("s/he is becoming a violent extremist" or "s/he is on a pathway to terrorism"). Different nodes or actors within the network can make assessments of "radicalisation" based on different criteria and it is not always clear what these criteria are, when individuals or groups pose a security risk and why particular "solutions" to mitigate those risks would be effective or even required.

As was the case with the criminal law enforcement approach to terrorism, with its focus on obtaining criminal convictions (supra), the introduction of "radicalisation" as an autonomous policy concept resulted in an informalisation of the counterterrorism approach. The criteria for assessing pathways to and out of terrorism are informal and unclear and because they are performed throughout the counterterrorism network they are performed throughout society. It is this pervasive and structural construction of suspect identities throughout society that has potentially counterproductive and self-undermining effects (e.g. De Bie, 2016; Miller and Chauhan, 2017).

4.1.7. Conclusion

In this first part, we have examined how counterterrorism is predominantly performed by the police in Belgium, what its main counterterrorism strategy is and what are the main assumptions that govern this strategic choice. We found that while Belgium advocates holistic approaches to terrorism, its police strategy is highly focused on criminal law enforcement. The police deploy a variety of practices to counter terrorism, but in practice much of its time and resources are spent on highly traditional forms of policing. Such police practices are mainly focused on uncovering ongoing terrorist activities or investigating and responding to terrorism once it has occurred.

Prevention is often implied; it is believed to be an effect of the criminal law enforcement approach itself. Offenders are expected to be deterred by the experience or the threat of punishment or they are made to experience more constraints in the process of participating in terrorism. "More prevention" in this perspective essentially means expanding the criminal justice system's capacity to act (e.g. through criminalisation) so that its potential to deter future acts of terrorism is significantly increased.

However, the system's capacity to act was extended even further with the introduction of the more informal concept of "radicalisation", which added another notion of prevention to the criminal law enforcement approach. In addition to affecting the choice process of potential offenders through deterrence, the concept of "radicalisation" sensitises the police to look out for potential indications of terrorist offences. In this process, the prevention mechanism is no longer simply deterrence but forms of risk-assessment, focused on making decisions about who requires further surveillance and who does not. Police act as identity brokers, which, on the one hand, refers to processes of monitoring and evaluating behaviours often as part of regular police work, but also refers to processes of negotiating and assembling identities within networks of different and varying actors.

Counterterrorism often entails the assemblage of profiles that can only come into being in networks of expertise; it is only when networks are formed that profiles can come into being. Prevention, then, means bringing into being profiles that are unknown prior to the act of assembling expertise and it is the police's ability to act as a gatekeeper in this process and within a broader counterterrorism network which is crucial to prevent terrorism from materialising. As such, more prevention in this perspective means enhancing the police's capacity to broker identities.

The predominance of the criminal law enforcement approach favours two faces of prevention: deterrence and risk assessment (to broker identity), and we have seen that these processes make counterterrorism more vulnerable to particular forms of bias. On the one hand, the criminal law enforcement approach shifts towards uncovering terrorist activities, gathering intelligence and monitoring "radicalisation" so that suspect-oriented criteria enter the police practice which may affect due-process mechanisms in crime control. On the other hand, police participate in counterterrorism networks that favour "tailor-made" approaches. Within such networks, they act as identity brokers, they assemble and negotiate identities on the basis of formal and informal criteria, and this too makes counterterrorism more vulnerable to bias. If countering terrorism

implies acting under uncertainty, it is never entirely certain who the system should focus on, and this provides a context that favours a focus on profiles that are *presupposed* to participate in terrorism.

Although this informalisation of counterterrorism policing is often felt to be beneficial to prevent terrorist violence in the short run (counterterrorism should be "tailor-made" and "contextual"), it does raise a deeper issue, one that cannot be settled in terms of striking the right balance between prevention or repression and which is intrinsically connected to the nature of police work. We have seen that in counterterrorism policymaking, prevention and repression are felt to complement one another, they are fields that need to be balanced or connected in meaningful ways. The immediate consequence of this is that the role of the police can be reduced to the reduction of terrorist violence as long as its efforts become part of "integrated approaches" in which the right balance is struck between structural forms of prevention and law enforcement, between the long-term preventive view and the short-term prevention of violence.

However, if police strategies, through processes of informalisation, become more vulnerable to bias and forms of selective policing, a prevention paradox emerges: the police strategies that may be thought of as useful in preventing acts of terrorist violence in the short run, risk in the long-run facilitating some of the very processes that are believed to be conducive to terrorism. Selective police performance results in feelings of injustice, it contributes to processes of "radicalisation" and polarisation and it reduces police legitimacy and compliance with the law (Tyler, 2004; Tyler et. al., 2015).

Throughout their performance, the police adopt informal criteria to assess security issues and these criteria help establish and perpetuate particular identities and popular assumptions about connections between "radicalisation", terrorism and migration in ways that, in the long run, may prove to be counterproductive.

In other words, when the police participates in counterterrorism yet reduces its strategies to questions of effectiveness and short-term success, it paradoxically ignores the crucial preventive role it has to play in the wider counterterrorism objective, and this role goes beyond the reduction of violence or the de-"radicalisation" of groups and individuals. It ignores the fact that crime control strategies, whether they be preventive or reactive, are never just technical responses to an occurrence "out there". They are profoundly political; they are practices that shape and organize society. In that regard, developing counterterrorism policies can never be reduced to finding the most effective ways to combat terrorism or striking the right balance between security and civil liberties or between prevention and repression.

Paraphrasing Garland (1990, 276), in designing counterterrorism policies "*we are not simply deciding how to deal with a group of people at the margins of society – whether to deter, reform, or incapacitate them and if so how. (…) We are also and at the same time defining ourselves and our society in ways which may be quite central to our cultural and political identity*". Because counterterrorism policies have a cultural impact, because they affect who we are, we need to understand what it is these policies do (or claim to do). To that end, and to better understand some of the issues we have identified in this first part of the report, in the next section, we will

present the findings of a more detailed empirical analysis of the role of the local police in combating terrorism.

4.1.8. Results

Counterterrorism policing is often thought of in terms of a top down practice. The assumption is that policymakers at the federal level develop strategies (plans, directives, policies, objectives ...), which are then unfolded and adopted across the Belgian field of crime control. In this study, we found that counterterrorism police strategy cannot be understood this way. What is referred to as "strategy" is better understood as the outcome of a process of "situated problem-solving action" (Garland, 2001). Throughout society, the police have at a certain point begun to identify and focus on particular issues and problems (e.g. individuals leaving for Syria), they have attempted to develop solutions for these problems and this problem-solving is shaped "by their habitus, their organisational interests, and their perceptions of the environment in which they operate" (Garland, 2004, 171).

This last point is important. When new issues emerge in society, like "radicalisation", extremism, terrorism, these issues first have to be recognised as problems the police have to focus attention and action on. They have to be perceived as a problem for which a solution is needed, and both the selection of issues and the solutions that are provided are part of a process that is based on well-established patterns of action (or what is commonly referred to as "police culture").

However, actors like the police quickly find that their established ways of doing things do not always work and need to be revised and modified. Dealing with new issues like terrorism thus gradually changes established ways of doing things. Throughout a process of situated problem-solving, a range of solutions emerges, ways of dealing with terrorism, and over time, these solutions lead to new established ways of acting (they become a "strategy" and a "culture of counterterrorism"). At this point, these adaptations do not only have an impact on the phenomenon they are meant to deal with ("we have become better at countering terrorism"), they have also fundamentally changed the way policing is performed.

What we will report on in the following section is a series of adaptations that we have observed in our study and that have come to be experienced as useful by local police forces in countering terrorism. Next, we will show how these adaptations have raised new challenges, new problems to be dealt with.

4.1.8.1. Adaptations In Local Policing

a) The Emergence of a Professional Intelligence-Led Approach

One of the most notable shifts within the police forces we studied is the emergence of a professional intelligence-led approach of terrorism. This is reflected in a number of evolutions and field observations.

One of the effects that the terrorist attacks in 2016 had in their immediate aftermath, is that they have given many police officers a sense of purpose. Terrorism seems to have offered a clear

objective. It is clear what needs to be targeted and how police officers can contribute to a safe society ("this is why I became a policeman"). Terrorism has a unifying effect. There is a common enemy and a sense that this is a battle to be fought together. This common sense of purpose leads to much more cooperation and to making efforts far beyond what can reasonably be expected from individual police officers (e.g. doing extra hours).

In such a climate, many informal processes and dynamics that usually act as barriers to efficient and effective police work, change or dissolve (e.g. "not wanting to share info"). Forms of cooperation emerge that are otherwise much more difficult or impossible to achieve. The topic of terrorism connects people within law enforcement who would otherwise never have met. Over time, the willingness to cooperate creates informal networks and relations of trust within the police that are crucial for intelligence-led counterterrorism policing.

On the other hand, the terrorist attacks in Belgium in 2016 have also made police officers more aware of the reality of the *threat* of terrorism. Terrorism is no longer something that happens "elsewhere". It can become part of the environment they operate in and affect them personally. While this no longer translates in feelings of unsafety, at the time of the study, police officers are still more cautious during standard routines. In some of the forces we studied, many of them consistently wear body armour for instance, which is something many believe to have been unthinkable prior to the 2016 terrorist attacks in Belgium.

Terrorism can therefore be said to have transformed the daily practice of policing beyond the formal development of a local counterterrorism architecture. "Terrorism" has become everyone's concern and is part of the daily routine so that countering terrorism is much more than an obligation that has to be enforced top-down. It has altered established ways of doing things and changed police officers' tendencies to act. Because this seems to be a collective pattern, terrorism can be said to have changed police culture.

This changing culture has led to the emergence of what might be described as "intelligence-centres" in the three police forces. These centres (or "cells" as they are commonly referred to) collect, process, classify and store information about "radicalisation" and extremism, and they have significantly increased the local police's ability to develop and manage information resources. Human intelligence (humint) has moved to the core of this process. Humint refers to a perceived need to establish networks and qualitative relations with citizens, businesses and third sector organisations throughout, and within, the jurisdiction of the local police to obtain qualitative information about "radicalisation" and extremism.

Local police forces feel that investing in intelligence-gathering, and in human intelligence in particular, has allowed them to make much better, fine-grained, assessments that benefit counterterrorism. By establishing informal networks and investing in community relations, the idea is not to simply gather more information. The idea is that being embedded in the community (the police force's territory) allows police forces to better collect, select and interpret information so that much better assessments can be made of what constitutes a significant terrorism related problem and what does not.

In conjunction with this changing police architecture, much more knowledge and expertise about terrorism, "radicalisation" and violent extremism has emerged. Local police forces have gone through a process of adaptive learning, gradually acquiring knowledge and gaining expertise over the many years they have had to deal with these issues. In police force 3, for instance, the phenomenon became a policy priority as early as 2007. Police force 1 and 2 faced problems with foreign terrorist fighters as early as 2011.

While intelligence-led counterterrorism policing has become a specialisation within the local police, many investments have been made to increase the overall capacity of the local police to act in matters of terrorism. Specific training on the detection of signs of "radicalisation" is promoted to improve early detection and rapid response. Reference is often made to CoPPRa, a program focused on training police officers to detect signs of "radicalisation". This training is promoted throughout the force to allow every police officer to participate in the assessment of "radicalisation" regardless of the specific department s/he is in.

The changing cultural sensibilities and the ensuing professionalisation of local counterterrorism has changed what the local police focus attention and action on. Today, this is perhaps most obvious in a more *proactive* focus on forms of "radicalisation" and violent extremism beyond jihadist extremism. At the time of the study, the local police tried to actively assess and become more knowledgeable about left and right-wing forms of extremism, for instance, and they actively reflect on how issues that occur elsewhere might have an impact on their jurisdiction. They have also begun to perceive and act differently toward many local criminal activities, previously believed to be unrelated to terrorism and less of a priority. In its counterterrorism intelligence-process, the police become more knowledgeable about a range of criminal activities that have always been part of the local environment (the "illegal economy"), but are now perceived differently, as more urgent, because of their potential connections to terrorism.

b) More Awareness about the Importance of Good Information Management

According to the respondents in our study, communication and the flow of information within their organisations has improved significantly. The evolution towards intelligence-led counterterrorism policing has been accompanied by the development of an information architecture that is much more capable of efficiently collecting and processing information than before.

This optimisation of the information process is the outcome of the implementation of work processes, a division of tasks, specialisation and the designation of points of contact in the organisation so that incoming information about "radicalisation" and violent extremism within the local police's jurisdiction can be categorised and prioritised efficiently. Much has also been invested in the development of user-friendly possibilities to use and contextualise information locally. That contextualisation is felt to result in better assessments of potential threats.

The information process has not only improved because local police forces wanted to fight terror more effectively. Over the years, the local police have become much more conscious about the

consequences of an overly broad and ineffective information process on citizens' rights and freedoms.

When the issue of foreign terrorist fighters first emerged, there were no written procedures in place. The initial reflex at the time was to signal departing citizens in the hope that they would not be able to cross the border. Signalling occurred in terms of "missing persons", which resulted in a large number of individuals being signalled and without any built-in assessment for this procedure. Gradually, this changed: evaluations were put in place so that signalling could be discontinued if it was no longer felt to be relevant.

Although the practice of signalling has now been adjusted and improved, the impact of the initial strategy on citizens' personal lives remains significant. Some of them continue to face restrictions on international travel, although they are no longer of any interest to law enforcement. Others formally still require a follow-up, but because of the initial broad signalling strategy, their numbers are so high that it puts a significant strain on the police so that the effects of the early and ineffective information processes are still felt on the ground.

c) More Focus on Multi-Agency Work and Cooperation Between Security Agencies

One of the most important adaptations that have occurred at the local level is the acceptance of multi-agency work and a much better cooperation between security agencies. In each police force, we were able to observe a trend toward more cooperation between local police forces and various (security) partners. The LIVC-R are perceived as useful, notwithstanding the many challenges they still face (see infra). How they function can differ significantly from jurisdiction to jurisdiction but it seems that the adoption of legislation that regulates issues of professional secrecy to facilitate multi-agency work has been pivotal to the acceptance of these platforms.

The local task forces (LTF) are also perceived as a positive development by local police officers. In the past, there seemed to be no constructive working relationship between the local police and intelligence agencies. When terrorism became a reality, that relationship seems to have improved. Gradually, the often-cited "culture of silence" on the part of the intelligence services, was replaced by a "culture of cooperation". The participants in our study attribute this to the changes that have occurred in the intelligence services' professional culture and management, although the common sense of purpose that emerged in the wake of the terrorist attacks (supra) seems to have played an important informal role here as well.

The relations between the local police and federal police seem to have improved in certain respects as well. The development of a local counterintelligence culture seems to have created opportunities for cooperation between the local and federal police to counter terrorism. Gradually, cooperation even seems to have been extended to combat other crimes.

Overall, the acceptance of multi-agency work and increased cooperation among security services has led to a better contextualisation of cases. Because individual cases become the object of multidisciplinary analysis, participants in this process feel they can make better assessments about a case, so that the unnecessary follow-up of individuals can be avoided.

4.1.8.2. New And Persistent Challenges

a) Local Counterterrorism Policing Is Hampered By Significant Conceptual Difficulties

1. What Are Pathways to Terrorism?

One of the main challenges of local counterterrorism policing is the concept of "radicalisation". "Radicalisation" is felt to refer to the general idea of "pathways to terrorism", but to the participants in this study, it remains unclear how that translates into concrete behaviours or useful assessments of threat ("'radicalisation', can you tell me what that is?").

This conceptual ambiguity is much more than an academic debate; it has practical implications on the ground. At the time of the study, the three local police forces struggled with the detection and categorisation of individuals. The most important reason for this seems to be the combination of a trend toward a much more obscure threat landscape on the one hand, and inadequate tools to assess that landscape on the other. The latter is directly related to the ambiguity of the concept of "radicalisation". Many of the outward signs, gestures and behaviours that police officers used to associate with "radicalisation", are less obvious or visible in public spaces or they no longer seem to have that same relevance for detection ("*We don't see what we used to see anymore. Someone who wants to commit a terrorist act, he won't go out in the street with a big beard*"). Because police officers feel they cannot fall back on a clear framework to detect "radicalisation", they feel uncertain about how to act so that personal criteria (and thus forms of stereotyping) become increasingly important in the assessment of danger.

Many respondents have indicated that better training and forms of detection are needed. Specifically, the CoPPRa training was perceived as inadequate at the time of the study. On the one hand, attempts are made to meet these difficulties by focusing on a better contextualisation of cases (through multi-agency work, among others). On the other hand, the police turn to expertise that can enable police officers to make much better, more fine-grained assessments of danger based on the analysis of behaviour. More specifically, the field of behavioural detection seems to be gaining more traction and support within the police.

2. What Is a Close Follow-Up Approach (Aanklampende Benadering)

A second concept that causes a lot of ambiguity in the field is the proper interpretation of the close follow-up of individuals. Police officers refer to the absence of an adequate legal framework, which leads to uncertainty about how they may interpret this approach, and how they should and may act. Local police forces are aware of the major impact the close follow-up of individuals has on the lives of citizens. They struggle with finding the right balance between interfering in individuals' personal lives on the one hand and being able to gather information that is useful for counterterrorism purposes on the other. Practical problems also often arise, such as the languages spoken by individuals or having to deal with certain cultural customs that police officers are sometimes less familiar with and which make follow-up more difficult.

For many police officers, it is furthermore unclear whether the close follow-up of individuals is just a time-intensive form of surveillance, or whether it can actually be expected to have a preventive effect and effectively prevent terrorism.

3. When Should Surveillance End?

Local police forces struggle with the question of when they should seize the follow-up of individuals. Discontinuing the follow-up of an individual usually corresponds to assigning a lower priority to the relevant case after evaluation. The individual's level of disengagement with criminal activities or the stability within his or her family life are among the elements that are evaluated.

While this seems clear, removing individuals from surveillance is complicated because of uncertainty about how pathways to terrorism should be understood. Because those pathways are unclear and because it is also not entirely clear how those pathways can be interrupted, it is unclear when someone is no longer in a process of "radicalisation" and from what point on they should no longer be under surveillance (*"We don't keep people for years, we have learned to let them go. We used to keep people on the lists at all costs. Sometimes we delete them now. We can always go back, drop them and then start again. We don't start from scratch because we already have information"*).

The issue of surveillance is further complicated because local counterterrorism policing is affected by what participants refer to as "umbrella policy"; uncertainty about how to act creates a climate in which no one wants to be the police officer or police force that missed or removed a potential offender from the system. Although information management has improved remarkably in recent years and police forces have invested significantly in better information management (using "filters" and removing noise from the system), participants point to the need for an even more thorough clean-up of local databases. They stress the importance of low-threshold opportunities for verification and interpretation of collected data by frontline police officers before allowing information to enter into the system.

4. What Strategy Should Be Preferred?

A final conceptual challenge is the tension between intelligence gathering and criminal law enforcement, and more specifically increasing conflict about what the best or preferred strategy should be to counter terrorism. Local police forces struggle with how to fully develop an intelligence-led counterterrorism approach and how it should relate to criminal law enforcement. This results in ambiguity and uncertainty in the field about how to act and what strategy to pursue.

At the time of the study, criminal law enforcement was felt to be the dominant approach to terrorism. On the one hand, we observed how local police forces attempt to optimise the use of this approach. When police officers suspect emerging pathways to terrorism in their jurisdiction but they have no hard facts to substantiate those suspicions, they translate their observations and intuitions into qualifications that allow the criminal justice system to act. Participants refer to this process in terms of a "*juridification* of cases" (het "verrechtelijken" van dossiers); cases or information is treated in ways that facilitate further criminal law enforcement action.

On the other hand, however, we also found that the primacy of a criminal law enforcement approach is a source of frustration and increasingly criticized and perceived as an obstacle to effective counterterrorism policing. According to the participants, the administrative approach should be much better developed and become more important in Belgium to facilitate intelligence-led counterterrorism policing.

b) Local Counterterrorism Policing Relies Too Much on Personal Relationships

In addition to a number of conceptual challenges, we found that the local counterterrorism approach is much too reliant on interpersonal relations. While informal contacts and good personal relations are to a certain extent a necessity for counterterrorism networks to be effective, they can also make counterterrorism much more vulnerable.

1. Trust and Information Management

A key element in intelligence-led counterterrorism policing is the importance of trust. The collection of data, and human intelligence in particular, depends on relations that provide access to information and enable information gathering. In turn, local counterterrorism policing is very much dependent on efficient information flows within law enforcement. Relations of trust play a crucial role in both gathering and processing information but we found that those relationships also make counterterrorism vulnerable.

Developing a relationship of trust with citizens or with other partners requires a long-term investment. According to the participants in our study, this requires a very different approach to policing; it means making a shift from a "crime fighter" attitude to a more "social" attitude toward citizens. This "social" approach is about engaging with citizens to gather information informally (sometimes in the context of the close follow-up of individuals). This is not restricted to interactions in public space, but can take place in people's homes or in other safe spaces like sports clubs where it is easier to connect.

Connecting with citizens and building partnerships requires a significant investment, commitment and interpersonal skills from the police but is, in the end, an informal non-committal commitment. A citizen who wishes to terminate this relationship with the police can do so, since it does not take place within a coercive criminal law procedure, which would conflict with gathering information informally. Moreover, establishing long-term relationships based on trust depends on a continuity in the relationship. Police officers who have developed such relationships and participate in informal networks where trust is a key issue can therefore not easily be replaced. In other words, intelligence-led counterterrorism policing depends on the personal investment of local police officers so that its success hinges on individuals and their personal relations.

When we look at information management *within* the local police forces, we found that information flows are sometimes hampered by the existence of oppositional subgroups ("eilandenwerking"). For instance, in some local police forces, communication between intervention teams and intelligence centres was often less than optimal. This was explained by the participants in terms of a perceived lack of reciprocity in information sharing. Officers in

intelligence centres have access to a lot more information about cases than intervention teams. They legitimize this based on privacy concerns and the potential harmful consequences of information sharing for ongoing investigations. Poor information management can have effects on the extent to which information can be acquired. If information is shared or disseminated too easily, it can strain relations with citizens. It can lead to first-line officers treating citizens differently when there is no reason to do so at that particular time, or it can lead to a breach of trust because it creates the impression that citizens are the subject of formal inquiry.

Members of intervention teams, however, perceive partial access to certain cases as a sign of distrust. They feel that information is not shared because the group of intelligence officers wants to maintain control over "their" information ("information as power"). This creates potentially dangerous situations during interventions. For instance, some officers described situations in which they were not informed about the radicalism-related antecedents of citizens with whom they had to interact. They felt this left them unable to prepare for potentially dangerous situations and put them at risk in case of an intervention or even in the context of a home visit (verification of domicile) by the neighbourhood police officer.   In other words, the existence of subgroups and mutual mistrust among these groups impedes a proper flow of information. This problem is not limited to terrorism and radicalisation. Its effects are also felt in other fields. And so we see how important informal, interpersonal relationships are: when there is no trust between people, it significantly hinders information management. This means that personal relationships are crucial to how local police forces function, to the extent that when there is no trust and good personal relationships, this poses a serious threat to the quality of counterterrorism policing.

2. Multi-Agency Work and Relations of Trust

Trust is also crucial for the exchange of information between the police and other actors, more specifically in the context of the consultation platforms that have emerged in counterterrorism (LTF, LIVC-R). In the three police forces, the exchange of information is hampered by the persistence of cultural differences between the police and its partners. Cultural differences create a lack of trust and this translates into shielding or not sharing information. In other words, although multi-agency work seems to have been fundamentally accepted, and mistrust between partners was initially much greater, mistrust still persists. If multi-agency work works today, this too is based on personal relationships between people: *We finally got there, but it's all about individual people. If you change the people, you have to do it all over again"*.

In short, informal contacts and relations are important for sharing and exchanging information, but these relationships have often developed because of the creation of formal frameworks for information sharing ("we have come to know each other because of these platforms"). Consequently, the importance of formal moments of consultation is recognised at the local level because they stimulate and facilitate informal forms of cooperation: *"Some departments now call each other directly now, and no longer restrict themselves to going to formal meetings. Because we know each other. If new people join, we adapt, but knowing each other is important"*.

3. Relations Between the Federal and Local Police

Finally, the gap between the local police and the federal police is often mentioned as an important vulnerability of counterterrorism policing in Belgium. In fact, in some of the police forces in our study, the federal and local police are experienced as two distinct bodies, instead of being part of one integrated police. Although people formally know the latter to be the case, they do not experience it as such in the field. Participants mention a lack of trust and reciprocity, inadequate communication and information sharing between the federal and local police about terrorism cases. From the perspective of the local police, the federal police is organised in ways that obstruct efficient cooperation between both levels, and although formally there is a clear division of labour between the local and federal police, in practice, respondents perceive it as very unclear. Here too, we found that cooperation between both levels is highly dependent on the nature of personal relations between individuals at the federal and local level.

c) Local Counterterrorism Policing Depends Too Much on a Sense of Urgency

A final important observation is that local counterterrorism policies are not static, but seem to vary over time and according to priorities in a particular jurisdiction. These dynamics seem to be largely determined by the presence – or absence – of a sense of urgency. In a climate where there is a sense of urgency, many challenges and difficulties that we identified and that are hindering counterterrorism policies, seem to disappear or improve significantly. A sense of urgency improves cooperation between people, departments and organisations, it increases investments in people and resources, there is more political support, which also makes a lot of creative problem-solving possible at the local level so that new developments can be anticipated more quickly.

However, this sense of urgency is temporary. To a certain extent, this is normal *("we can't keep peaking, you can't keep that up")*, and it needs not be problematic when a sense of urgency has led to the development of more sustainable institutional arrangements such as the development of the local intelligence architecture we have been able to observe in the field. However, when the sense of urgency fades, this does become problematic when the benefits associated with it also turn out to be temporary. Thus, we see that investments in people and resources decrease or are discontinued, staff changes occur, and this has profound effects given the great importance that informal personal relationships have for efficient counterterrorism operations. Cooperation also becomes more difficult, with oppositional subgroups re-emerging and becoming more prominent again. Information sharing and consultation are felt to be less urgent or even less of a necessity.

As the topic of terrorism becomes less alarmist, participants in our study warn of the danger of habituation and decreased vigilance, first and foremost because of the major impact this has on information management at the local level. For these processes not only occur internally, but also determine and affect information gathering and the participation of citizens (their willingness to do so) in counterterrorism.

A climate where there is a sense of urgency facilitates creative problem-solving, but experiences at the local level also suggest that over-reliance on a sense of urgency brings a lot of adverse effects. For instance, we have seen how information management has been a process of trial and

error in recent years and what effects this has had on citizens. When intelligence-led counterterrorism policing is overly dependent on informal processes and relations, a sense of urgency is, in the end, what determines its performance. The over-reliance on a sense of urgency is thus a challenge that points to the need for more structural counterterrorism policymaking.

4.1.9. Conclusion

While Belgium advocates holistic approaches to terrorism, its police strategy is highly focused on criminal law enforcement. Because of this strategic choice, much of the police's time and resources are spent on highly traditional forms of policing. Such police practices are mainly focused on uncovering ongoing terrorist activities or investigating and responding to terrorism once it has occurred, although a criminal law enforcement approach does entail two faces of prevention: deterrence and risk assessment.

We have seen that these processes make counterterrorism more vulnerable to particular forms of bias. On the one hand, the criminal law enforcement approach shifts towards uncovering terrorist activities, gathering intelligence and monitoring "radicalisation" so that suspect-oriented criteria enter the police practice which may affect due-process mechanisms in crime control. On the other hand, police participate in counterterrorism networks that favour "tailor-made" approaches. Within such networks they act as identity brokers, they assemble and negotiate identities on the basis of formal and informal criteria, and this too makes counterterrorism more vulnerable to bias. If countering terrorism implies acting under uncertainty, it is never entirely certain who the system should focus on, and this provides a context that favours a focus on profiles that are presupposed to participate in terrorism.

We suggested that if police strategies, through processes of informalization, become more vulnerable to bias and forms of selective policing, a prevention paradox emerges: the police strategies that may be thought of as useful in preventing acts of terrorist violence in the short run, risk in the long-run facilitating some of the very processes that are believed to be conducive to terrorism. If selective policing results in feelings of injustice, it potentially and inadvertently contributes to processes of "radicalisation" and polarisation and reduces police legitimacy and compliance with the law (Tyler, 2004; Tyler et. al., 2015). In other words, when the police participates in counterterrorism yet reduces its strategies to questions of effectiveness and short-term success, it paradoxically ignores the crucial preventive role it has to play in the wider counterterrorism objective.

In the second part of the report, we then examined how a counterterrorism strategy is performed at the local level, and we focussed specifically on the role of the local police.

First, we found that we cannot think of counterterrorism strategy in terms of a top down practice. What is referred to as "strategy" is better understood as the outcome of a process of "situated problem-solving action" (Garland, 2001). When issues like "radicalisation", extremism, terrorism emerge in society, they first have to be recognised as problems the police have to focus attention and action on. They have to be perceived as a problem for which a solution is needed, and both

the selection of issues and the solutions that are provided are part of a process that is based on well-established patterns of action (or what is commonly referred to as "police culture").

We have seen how, throughout this process of situated problem-solving, a range of solutions emerge, ways of dealing with terrorism, and over time, these solutions lead to new established ways of acting (they become a "strategy" and a "culture of counterterrorism"). At this point these adaptations are not only perceived as useful to counter terrorism, they have also fundamentally changed the way policing is performed.

Based on qualitative research in three local police forces we found that three important and fundamental transformations have occurred. These are adaptations that have come to be experienced as useful by local police forces in countering terrorism and have changed local policing in the process. We described (i) the emergence of a professional intelligence-led approach, (ii) more awareness about the importance of good information management and (iii) more focus on multi-agency work and cooperation between security agencies.

We also found that these adaptations have raised new issues and challenges in the field: (i) local counterterrorism policing continues to struggle with significant conceptual difficulties; it remains unclear how pathways to terrorism should be understood, what a close follow-up approach (*aanklampende benadering*) entails, when surveillance should end and which strategy to give priority to: criminal law enforcement or intelligence gathering. (ii) local counterterrorism policing furthermore relies too much on personal relationships and (iii) is too dependent on the presence – or absence – of a sense of urgency.

And so this brings us to perhaps the most fundamental observation in this report and that is that our current counter-terrorism policy relies too much on informal processes. The current approach is the outcome of a process of trial and error and while that organically grown practice has allowed us to adapt and respond to the new challenge that was terrorism, it is clear today that that approach entails a lot of risks and potentially undermines the effectiveness of a counter-terrorism policy. For that reason, the question of how to shape the future of our counterterrorism policy in ways that are much more structural and democratic, is what seems to be most urgent at this time.

4.1.10. Recommendations

> **General recommendations**
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> In general, the findings in this report suggest that while undoubtedly a professionalisation has occurred at the local level of intelligence-led counterterrorism policing, this evolution needs to be more of an explicit political choice that has to be further developed structurally and democratically. If that choice is made, there is a need to further professionalise the intelligence process, information management, multi-agency work and cooperation between agencies and departments. This implies a focus on clarifying conceptual problems, becoming much less reliant on personal relations and on a sense of urgency.

Recommendations

1. The implementation of a transparent evidence-based assessment of risks and threats

The implementation of a scientifically validated risk assessment process is an important step in professionalising local counterterrorism policing, one that mitigates a number of the difficulties that we have encountered in this study. The implementation of a risk-assessment tool can provide a much more transparent and better basis for the process of gathering information, the selection of cases and the categorisation and processing of cases, including decisions about the follow-up of cases.

The use of risk-assessment tools furthermore provides a common language to communicate about terrorist threats within law enforcement and to other security or socio-preventive partners (see also *infra*). Consequently, risk assessments have the potential to clarify a number of conceptual issues in local counterterrorism, such as the problem of detecting pathways to terrorism and when to end surveillance or how to follow-up on a case.

Ultimately, scientifically validated risk assessments can ensure that the intelligence process becomes much less dependent on personal intuition and opinions, stereotypes and ultimately bias in information gathering and case management. In this project, we found how strong stereotypes are in policing (see also Hanard, 2022). Illusory correlations and attribution errors, among other processes, play an important part in the emergence of stereotypes (e.g. Hamilton and Gifford, 1976; Pettigrew, 1979), which is why in counterterrorism policing, specific and unsubstantiated connections can emerge between religion, migration, ethnicity and terrorism. Based on such research, we know that there is a risk that police will attribute the causes of terrorism to characteristics of (potential) individual offenders when they believe those offenders are part of groups the police identify with, or when these offenders are believed to be part of majority groups in society. On the other hand, when police believe offenders to be part of minority groups, they will be much more likely to explain their behaviour as a function of the group to which these (potential) offenders belong. In others words, when intuition is the basis for assessments, important forms of bias become part of counterterrorism. One of the most obvious and immediate consequences is that too many and far more people are targeted than necessary, resulting in infobesitas and discrimination, reducing the effectiveness of counterterrorism policing.

2. Multi-agency work needs to be further developed and professionalised

Multi-agency work is an important gain in counter-terrorism, but its actual performance seems to be too dependent on informal relations of trust among stakeholders. Consequently, much more clarity and investment is needed in the development of formal procedures and guidelines for local multi-agency work. The recent EMMA-project (Evaluation and Mentoring of Multi-Agency approaches to violent radicalisation), coordinated by the Association of Flemish Cities

and Municipalities (Hardyns, 2022) provides tools and training that might support effective collaboration in this field.

However, our study does suggest that more formal procedures and tools might not suffice and that more research is needed to identify the processes that undermine trust or that act as barriers for cooperation. A better understanding of those processes and obstacles will be necessary for the further development of multi-agency work in counterterrorism. Outlining a policy for multi-agency work and implementing more formal procedures and regulations will only be effective if there is support for them in the field.

Finally, the development of multi-agency work needs to go beyond the development of procedures for more effective collaboration. It also requires the development of a *theory of change*, i.e. a model that can clarify what multi-agency work in counterterrorism aims to achieve, how that goal is to be achieved and how different partners will contribute in that process. Without such a model, it will remain unclear why cases will be selected, what follow-up should look like, what information should be exchanged, which partners should participate in multi-agency work and when interventions should end.

3. *The organizational design of the local police needs to be evaluated*

If the local police intends to professionalise its intelligence-led counterterrorism approach, it needs to evaluate and potentially rethink its organisational design. The local counterterrorism policing model as it is, is too time-consuming and labour-intensive, it lacks structural funding and is prone to compartmentalisation so that its current organisational structure seems unfit to support any structural intelligence-led strategy. Evaluation therefore needs to focus on existing management processes, work load analysis, long-term budget and funding, definition and allocation of tasks, and of cooperation within the police, in particular between the federal and local police, and with external partners, in particular CUTA and intelligence services.

In addition to a thorough analysis of its organizational design, more consideration is needed for the long-term impact of counter-terrorism, and the workload it brings, on the mental wellbeing of local police officers and staff members.

4. *A better framework for local information management*

On the basis of this study we found that local police forces struggle with information management. Their concerns essentially revolve around the question of how to collect, store and share data in ways that cause the least harm to citizens. While these concerns are to a large degree connected to the conceptual problems we identified ("why should someone be put under surveillance", "how to organize surveillance" and "when to end surveillance"), they seem very much motivated by genuine concerns about privacy and the curtailment of citizen's freedom far beyond what is strictly necessary in countering terrorism.

For very similar reasons, at the time of the study, there was a demand for a better regulation of administrative policing, not only because the criminal law enforcement strategy is often experienced as ineffective, but to have a more robust legal basis for alternative, more administrative forms of counterterrorism policing.

5. *HUMINT needs to be embedded in a community policing philosophy*

Finally, our research shows that police work is increasingly oriented towards gathering intelligence, and more specifically towards the use of information gathered and provided by human sources and interpersonal contacts (HUMINT).

It seems that HUMINT has become much more important in an environment where terrorism is increasingly experienced as a diffuse and unpredictable phenomenon. For local police forces, this means that the emphasis shifts to the assessment of danger. They have attempted to improve their information position and to better contextualize information to meet that challenge. They do so by attempting to build relations of trust with citizens. They conduct more targeted investigations and they are more aware of the adverse effects on those who are the subject of terrorist investigations.

These developments present both opportunities and threats. If efforts to build more sustainable relationships of trust are based on the idea of "community policing", then these efforts have the potential to evolve into more democratic forms of policing. However, if these efforts are purely instrumental, there is a danger that this type of policing will actively contribute to the creation of "suspect communities" and a "culture of suspicion".

Based on the findings in our study, there is a risk of the latter. In HUMINT, threats become concrete on the basis of inquiry that is rather inductive. Further research is needed to determine how HUMINT is performed in practice. At the time of our study, however, the assessment of danger was strongly based on instinct and intuition, and combined with training that focuses on recognizing symbols and behaviour as indicators for pathways to terrorism, this makes counterterrorism much more vulnerable to bias.

We therefore suggest that training that focuses on recognizing symbols or behaviour (e.g. behavioural detection) be given much less prominence in police training, in favour of initiatives that are more in line with the philosophy of community policing.

4.2. Prosecution of ("Radicalisation" and) Terrorist Offenses and Impact of Anti-Terrorism Policy on the Judicial Field

4.2.1. State of the Art

The objective of this part of the AFFECT research was to analyse the effects in the judicial field of the counterterrorist policies implemented with regard to their potential impacts on respect for fundamental rights and freedoms and on the polarisation (and the "radicalisation") of groups targeted and not targeted by these policies. To do so, it quickly became clear to us that correctional hearings on terrorism could be a particularly interesting and hitherto untapped source material on the ground in Belgium. Like what our French neighbours describe, terrorism has indeed become a subject of high-volume litigation in Belgium (Besnier & al., 2019). The absence of literature relating specifically to such (non-existent) research in Belgium could be offset by access to the results of comparable research carried out in France.

Mégie & Pawella (2017) conducted ethnographic research on court hearings for participating in a network for travelling to Syria that multiplied starting in 2015. While France has a different history of terrorism than Belgium, particularly because of the Basque and Corsican disputes, it had never experienced such a flow of cases to process. This "mass" litigation undeniably affects the criminal authorities' ability to function. The authors point out the importance of the context in which these trials take place (attacks carried out on French soil) and stress the time that passed between the acts being committed and the time of the judgment, which must be taken into account to understand these trials. Two important effects are found at the level of (1) the perception of defendants by judicial actors and (2) the judicial framework of the fight against terrorism. Therefore, the authors explain that "the perpetuation of attacks on French soil by individuals considered to be radicalised [...] seems to encourage the judicial authorities to apply heavier sentences in cases relating to armed radical Islam, often by associating them with security measures" (Mégie & Pawella, 2017, 2). "The relationship of complementarity and competition" between the judiciary and administrative justice in the context of the fight against terrorism and the prevention of "radicalisation" is also pointed out, while affirming that the criminal justice approach remains central. The changes made in recent years are considered "from the angle of the plasticity of the law and its uses in the face of profound legal, social and political transformations due to the advent of the 'war against terrorism' paradigm" (free translation). (Mégie & Pawella, 2017, 2). In the context of this high-volume litigation, the authors note the preservation of the ritual specific to the correctional trial, hand in hand with the weakening of the role of the investigating judge. The important place taken by the anti-terrorist Prosecutor's Office is underlined, in particular by the development of its preliminary investigations, whose elements lie "at the heart of the hearings observed" (pp. 5-6). At the same time, they report on the perception of lawyers who believe that such procedures demonstrate the importance of the intelligence services' vision of the definition and boundaries of the category of "terrorism". As in an earlier publication (Mégie & Jossin, 2016), the analysis calls into question the role of the judiciary with regard to "the turmoil of the new anti-terrorist surveillance regime", the use of intelligence in terrorist trials and the regime of evidence at work in these trials. The questioning relating to the shifts from the judiciary to the administrative and the dangers presented by this development "from the point of view of respect for the democratic values on which the rule of law is based" is not new to Belgium: it was underlined by the judicial authorities themselves

through the General Prosecutor of Liège, Christian De Valkeneer, in his opening speech for the start of the legal year on 1 September 2017 (De Valkeneer, 2017).

We also consulted the study by Besnier & al. (2019), "Les filières djihadistes en procès. Approche ethnographique des audiences criminelles et correctionnelle (2017-2019)" ("Jihadist networks on trial: ethnographic approach to criminal and correctional hearings (2017-2019)"). The objective of this study was to examine all eight terrorism-related cases judged from 2017 to 2019 by the especially composed court of assizes through a multidisciplinary approach with a dominant ethnographic focus. The spectrum of the initial research was also broadened to correctional hearings on terrorism and a Belgian assizes hearing that was held from January to March 2019 (trial of the attack on the Jewish Museum in Brussels). The results do not show this assize court to be an exceptional court, but rather a common law assize court tending to be specialised. The massive influx of cases has in fact led judges to specialise in this subject. The magistrates of the Federal Prosecutor's Office were already heavily specialised, strengthened by the creation of the National Anti-Terrorist Prosecutor's Office (*PNAT, Parquet National antiterroriste*). This research shows that judicial practice is experiencing a "paradigm shift in which dangerousness prevails over guilt, risk over the act committed, prevention over repression" (free translation) (Besnier & al., 2019a, 7). Researchers speak of "pre-emptive" justice in which only anticipation counts, which must not be encumbered by "legal obstacles" to be effective (Besnier & al., 2019b, 158). The role taken by intelligence in criminal trials is revealing in this development. The risk put forward by the researchers is that someone could be prosecuted because of what they are thought to be likely to do and not because of what they have actually done. Each hearing observed thus tends to show tension between a context of the fight against terrorism (in general) and the judgment of individuals (in particular), with the public prosecution at the front of the fight and the judge striving to individualise the act of judging with the help of the lawyer. One of the particular contributions of this study was to give visibility to controversies over qualifications within the judiciary. However, the researchers conclude that continued respect for the values of the judicial system (visible in the judicial ritual) shows that it remains anchored to fundamental rights in its confrontation with the most violent terrorism (Besnier & al., 2019b, 162).

4.2.2. Introduction

The research process in the judicial field required cross-analysis based on diversified research material from four main sources: observations of hearings (39 hearings, concerning 49 different defendants), interviews with lawyers (11), interviews with magistrates from the Federal Prosecutor's Office (10) and a quantitative analysis of case law on terrorism from 2003 to 2019 (179 cases concerning 540 defendants, giving rise to 570 decisions handed down by trial courts).

The objective pursued was to "triangulate" the various analyses carried out from each of these sources. This is why the presentation of the results does not report separately on the examination of each type of data, but is rather organised around a few main lines that emerged from the cross-analysis as structuring categories. (1) The first set of results concerns "the décor, the scene and the atmosphere" of correctional hearings on terrorism. (2) The second set relates to the conduct of the investigations and prosecutions. (3) The third set concerns the examination of the litigation

concerned, first from a quantitative angle (based on the analysis of case law) and then from a more qualitative perspective, by focusing on the legal qualification of the facts (the charges) and on their nature, as well as on what emerges with regard to the defendants' convictions and motives. (4) The fourth set concerns the social reaction to acts of terrorism and gives rise to observations and thoughts on the scale of sentences and additional security measures and their challenges and to a quantitative analysis (based on case law), making it possible to objectivise the sentences and measures actually taken with regard to these cases, as well as the factors influencing their application. Particular attention is paid to forfeiture of nationality, which on this subject is a particularly important issue.

4.2.3. The Décor, the Scene and the Atmosphere

In view of the way in which trials are conducted in the vast majority of cases submitted to criminal courts, terrorism trials have specific aspects that are important to emphasise, as they mark the context of decisions in the penal process differently and directly or indirectly influence the exercise of rights and freedoms. These particular aspects show up first of all at the level of the central actors of the trial scene (public prosecution, courts and tribunals, protagonists and their counsel), (the presence of) peripheral actors (judicial police services, intelligence services, CAPREV), the media and, last but not least, the security arrangements.

4.2.3.1. The Actors' Specific Aspects

a) The Central Role of The Federal Prosecutor's Office: Centralisation, Specialisation and Collective Work

While in "usual" correctional hearings, the public prosecution is represented by the Crown Prosecutor and his deputies, in matters of terrorism, it is generally the *Federal Prosecutor* and the federal magistrates who take over, acting on the basis of the criterion of security (Article 144ter, §1, 2nd of the Judicial Code). In terms of the organisation of work at the level of the Federal Prosecutor's Office, the handling of this "terro" litigation also differs from other litigation by the *centralisation* of cases at the Federal Prosecutor's Office, the *specialisation* of federal magistrates and *collective work* inside their "Terrorism" section of the Federal Prosecutor's Office[24]. The emphasis is placed on the importance of *teamwork* and the search for a *collective position* with the aim of achieving consistency in the criminal policy carried out.

b) Courts and Tribunals: Decentralised Treatment, (Official) Non-Specialisation and Collegiality

Although Belgium has a Federal Prosecutor's Office, it does not have a federal court. It is therefore the correctional judges of the courts of first instance of the country as well as the advisors of the jurisdictions of the courts of appeal in the event of appeal who are competent to judge or rejudge federal or federalised cases. Formally, no specialisation is planned but in practice, some chambers

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[24] In 2022, the Federal Prosecutor's Office has nine federal magistrates for its Terrorism section, including five French-speaking and four Dutch-speaking magistrates. It was boosted significantly starting in 2015 due to the increase in cases. In 2022, their number is rather decreasing.

have *de facto* specialised and equipped themselves for the cases they have had to deal with, which makes things easier according to the magistrates of the Federal Prosecutor's Office. Practically also, we note that most of the "terro" cases have been dealt with in two districts: Brussels and Antwerp.

A specific feature of terrorism cases is that they are mostly judged by a correctional chamber made up of three judges (which the federal magistrates consider preferable). It is also called a collegial chamber, even if legally, "terro" litigation is not automatically assigned to these chambers. While the federal magistrates are not in favour of the establishment of a single, centralised "super court", like the Federal Prosecutor's Office, there are several, including the Federal Prosecutor, who back a proposal for decentralised federal courts. They do this for three reasons: to strengthen both human and financial resources, to open the possibility of easier specialisation and to improve security management.

c) The Defendants

One of the most striking features of terrorism trials is that many (41%) of the **defendants** are absent – known as "in default" *(défaillant)* – during their trial. This unprecedented situation arose starting in 2015, coinciding with the criminal prosecution of the first individuals who left for the Iraqi-Syrian zone. Without it being possible to precisely quantify the different situations (presumed dead, still alive on site, detained abroad, etc.), it seems most often that the defendants are presumed dead. Unlike Germany, for example, Belgium allows judgment by default, and like France and the Netherlands, it has developed a systematic practice of judgments with the defendant absent (Renard, 2021). While a confirmed death is indeed a legal cause for terminating public action, uncertainty surrounding the death of the person prosecuted is too great and prompts the authorities to prosecute. Unlike in France (Besnier & Weill, 2019), no specific judgment procedure has been put in place in Belgium. Pragmatic or **strategic** justifications have nevertheless been put forward by the magistrates: they facilitate procedures by obtaining a conviction, they prevent cases from getting shelved, etc. Finally, this type of social reaction towards absentees, regardless of their status (dead or alive), is also more broadly part of a *pre-emptive approach* that has been particularly significant in recent years in the fight against terrorism (Moreau, 2021). Be that as it may, as Besnier & Weill (2019) point out for France, the trials of these "absentees" are singular and disrupt the ritual of the trial. Two of the usually unavoidable actors are not present, the defendant and the lawyer[25], and the benches reserved for the public are generally empty. These trials therefore take place in closed sessions between the public prosecutor and the sitting judges, which has "the direct effects of seeing the ritual of the hearing cut off from its primary identity, the contradictory debate" (free translation) (Besnier & Weill, 2019, 71). The expeditious nature of these trials is also noted, as well as the relatively invariable nature of the decisions rendered in this case[26].

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[25] The analysis of the case law of the last 10 years shows that only three individuals who were "in default" during their trial were represented by a lawyer.

[26] Always a prison sentence of five years during the hearings observed (in three cases out of four in all the case law), a fine of several thousand euros, often the suspension of civil and political rights for five to 10 years, sometimes the forfeiture of Belgian nationality and sometimes a custodial sentence or detention.

The **defendants present** during the observed hearings were detained and appeared free in a little more than half the cases (52%), or were conditionally released, in a little less than half the cases (48%). With regard to all the hearings covered by the analysis of case law, the sample of hearings observed shows a particularly high percentage of defendants detained at the time of the hearing[27], while the observations took place at a time when the cases arriving at the hearing were considered "less significant" by the judicial actors and therefore concerning (as was understood) defendants with "less worrying" profiles.

d) The Lawyers

The **lawyers** acting in "terro" cases also present certain specific aspects both in terms of the way in which they are solicited (their media coverage for example, knowledge of a useful language/cultural affiliation) and the various reasons why they are involved in those cases: the conviction that everyone deserves a defence, concerns about preventing the expansion of the criminal justice system (net-widening) in this regard where risk appears to be increased, interest in a new subject or simply follow-up on services provided to a long-time client. These lawyers also experience specific difficulties such as the traumatic experience of a personal failure with a client (for example, if their client participates in an attack after they considered him or her rehabilitated), the fear of losing other clients by defending this type of clientele, the regard of those around them in the emotional context of the attacks and even proximity to a victim. Finally, all lawyers report the extremely time-consuming nature of terrorism cases due to the volume of cases, specific procedures in prisons and the significant interference of foreigners' rights or administrative aspects. This therefore affects the cost-benefit ratio of their work and the compensatory attractiveness of this type of case, especially since most of the time it takes place within the framework of legal support procedures *(pro deo)*. Both the emotional corollaries and the low financial attractiveness mean that terrorism cases are certainly not a "niche market" for criminal lawyers.

e) Victims and Civil Parties

Although a few rare trials for acts of terrorism have taken place before the assize courts, most of them take place before the criminal courts and there are generally no or very few **civil parties** and/or identified victims. The initiative for public action therefore almost always comes from the public prosecution. This absence of victims also means that the Federal Prosecutor's Office generally acts alone to represent society and defend the general interest against the defence. The magistrates were unanimous in saying that this configuration is not problematic for them and is even quite comfortable. This role of the defender of the general interest that they assume also becomes a role to protect society, the objective being that there are no victims. This vision is part of the *pre-emptive approach* stressed previously, following from legislative changes in recent years aimed at taking action increasingly upstream. Charging a suspect with participation in terrorist activity does not require the existence of a victim. From this perspective also emerges a

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[27] The percentage of detainees at the hearing was the highest in 2015 (50%), then it dropped to 27% in 2019.

new status, that of the "pre-victim". A magistrate suggested examining whether the Belgian government could not bring civil action for these cases.

The rare cases where we find civil parties are, for example, police officers who are victims in the course of their duties, a politician threatened with death on social networks, a state government or even parents whose children have gone to Syria. Several magistrates we met also noted a "legislative shortcoming" in this regard, insofar as many requests for civil action filed by parents of young adults who left for Syria under the influence of recruiters were declared inadmissible.

Taking the victims of terrorism into account is however not absent in the judicial system: it is particularly present through the "national victim unit" *(Cellule nationale victims/ Centraal Loket voor Slachtoffers)* created after the of 22 March 2016[28]. This unit is part of the *support section* of the Federal Prosecutor's Office, whose jurisdiction is not reserved for terrorism. The Federal Public Prosecutor's Office in fact wished to divide things between magistrates who deal with the investigation and the perpetrators (the difficulty of "bearing" the victims' suffering while at the same time ensuring that the investigative work is emphasised) and magistrates who take charge of the victim component[29]. While the advances in the rights granted to victims of terrorism are welcomed, the Federal Prosecutor's Office stresses that they nevertheless have perverse effects: if the acts are not qualified by the public prosecution as "terrorist", then the victims are not recognised as having this specific status and do not have *de facto* access to the new provisions introduced.

f) Peripheral Actors

Although they are not actors in the hearing, strictly speaking, certain "peripheral" actors take their place on the benches reserved for the public. These are first of all **investigators** of the judicial police services, which are regularly though discreetly present. They have many motivations: to see the outcome of the investigation, to learn how to best build their cases, for example, by observing how their minutes are used during hearings, or even to collect useful information. Their presence is also sometimes requested by a magistrate of the public prosecution, but the magistrates' positions are divided on the subject, with some considering the role of the police closed at this stage. **Security and intelligence service** agents (sometimes from foreign countries) are also commonly present, the trial being an exceptional place for them to gather information, as it is for the investigators. Workers from the Centre for Assistance and Support for People Affected by Violent Radicalism and Extremism **(CAPREV** - *Réseau de prise en charge des extrémismes et des radicalismes violents*) set up in the Wallonia-Brussels Federation[30] are also regularly present in French-speaking hearings in the country and are frequently mentioned during the hearings. The service's involvement appears in the discourses (especially of the defence) as a guarantee of rehabilitation, even if the observations do not make it possible to assess the impact on the judge's decision. Finally, the **media** were present, but not en masse and only for a minority of the trials observed. The presence of audiovisual media has systematically led to tension,

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[28] But inspired by previous (non-terrorist) experience of caring for victims.
[29] This split has even leaked into communication.
[30] There is no equivalent in Flanders.

sometimes leading to action taken by the president (closed doors, refusal to allow photographs to be taken, etc.). The cultures seem to differ, with a figure of the "star lawyer" more significant in the Dutch-speaking media than in the French-speaking media. Lawyers on both sides of the linguistic divide stress issues that can put pressure on communication, *a fortiori* immediately: in addition to the fact that this constitutes an additional burden, the journalistic prescriptions (brevity, catchphrases) mean that the image conveyed by the terrorist is often a caricature and helps to stigmatise this group in society. The resulting publicity can harm both the client and his or her lawyer, sometimes with effects on their privacy. As for the magistrates, contacts with the media are regulated and ensured by a team of "press" magistrates. This organisation fully satisfies them, sparing them from having to interact personally in such sensitive matters.

4.2.3.2.   Security Devices in "Terro" Trials: A Striking Exception

While terrorism hearings take place according to a ritual relatively similar to other types of correctional litigation (Mégie & Pawella, 2017), there is one point on which the impression of exceptionality is striking for any observer: security arrangements. While for some years now, in the post-attack context, the organisation of security arrangements has shown a certain consistency at the entrance to and around courthouses, the geometry varies at the entrance to and within courtrooms, where terrorism trials take place. At the entrance to the courthouses, checkpoints are almost systematic, like those implemented in airports, with a particularly time-consuming effect for all external actors who cannot access a specific entrance. Yet at the entrance and in the courtrooms, the security configurations are highly variable, random and with no apparent logic. Thus, a large number of police officers may be present, the public may be searched and have their mobile phones confiscated and the defendants may sometimes be handcuffed, wearing bulletproof vests and balaclavas during transfer and escorted by several police officers. Sometimes, there do not even appear to be any particular arrangements. These variable configurations sometimes seem to raise questions for the judges themselves. The federal magistrates have provided several clarifications and thinking on the criteria justifying these arrangements. Procedure provides that CUTA (contacted by the NCCN for each hearing) is responsible for assessing the threat and notifying the police zone to implement the appropriate measures. The president of the chamber is also responsible for policing the hearing and may need to take some action in this respect. The factors motivating increased security measures may include the fear of a large presence of the defendant's family, which has always claimed his innocence, to people's aggressiveness as experienced in the council chambers, the symbolic target that such and such a hearing may represent for a terrorist group, or disturbing information held by the magistrate that cannot appear in the court case. While these arrangements are likely to impress the public and outrage some lawyers, they are also completely acceptable to the magistrates as part of their professional environment. They also agree that terrorism litigation is privileged over other types of litigation for which the risk of an incident is sometimes just as high or even greater. While highlighting the relative effectiveness of these arrangements (limited in space and time), the magistrates highlight their strong preventive effect, which is not merely symbolic.

4.2.3.3.   The Weight of Context

The judicial actors interviewed unanimously highlighted the importance of the context[31] in the way to approach terrorist litigation. This context was both perceived as a *facilitator* that allowed the demands of the judicial world to be heard and made concrete. Some saw it as a *generator of fear,* favouring the demand for repression at the cost of respect for certain fundamental rights and democratic balances. Finally, it was perceived as a *catalyst* in the sense that it was enough to explain or justify the action and decisions taken. During the observed hearings, a contextual reframing was generally carried out, with the actors taking different positions to highlight both the geopolitical developments giving behaviours another meaning (at the start, for example) and the developments linked to time, which was necessary for the justice to rule (and may have had an effect on the situation to reintegrate the defendant and the judicial decision to be made).

4.2.4.   Investigations and Prosecutions

4.2.4.1.   *Investigating Acts of Terrorism*

A "terro" case can be opened in **many different ways**. The predominant way is **proactively**: this is based on a report by the Belgian or foreign intelligence services or police following an investigation sparked by content published on social networks or found directly in combat zones ("battlefield evidence"), but also by statements from detainees or *returnees*. However, a **reactive** procedure is also often observed in a quite singular form, namely when the report is made by the family of a person who has gone to the Iraqi-Syrian zone. This report can then be explained by two hypotheses: either by the fact that concern for the family member outweighs the wish to protect the person concerned from judicial reaction, or by the fear that the judicial authorities will turn against the family because it did not come forward when it knew that a family member had left the country for the Iraqi-Syrian zone.

The fight against terrorism has been an extremely fertile ground for legislative amendments (Remacle & Vanneste, 2019), particularly concerning **special research methods**[32] *(Méthodes particulières de recherche (MPRs)/Bijzondere opsporingsmethoden (BOMs))* and other surveillance measures[33], which are considered to be particularly detrimental to respect for the right to privacy as well as the adversarial principle (Beernaert et al., 2021). Hearing observations show frequent use of these MPRs/BOMs and other measures, particularly telephone tapping and the interception of written communications via applications such as *WhatsApp,* or encrypted means of communication such as *Telegram.* The use of the latter by the defendants is then considered by the prosecution or the judge as indicative of a desire to conceal and retained as an

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[31] By context, we mean: the first departures of Belgian nationals to the Iraqi-Syrian zone, the occurrence of attacks in France and Belgium, the increase in the threat level, the Brussels lockdown and the ever-evolving phenomenon of "radicalisation". It is therefore about the ambient societal context in Belgium but more broadly in Europe and in the rest of the world.

[32] Observation, infiltration, civil infiltration, use of informants (Article 47ter, § 1er, al. 1er, of the Criminal Investigation Code (hereinafter, CIC)

[33] Amendment of Article 90ter of the CIC allowing the investigating judge, on an exceptional basis and when the requirements of the investigation so require, to listen to, take cognisance of and record, during their transmission, communications or private telecommunications, and extension of the field of application to all terrorist offences.

incriminating element. Computer searches also take an important place and observation in case of imminent danger. These measures are the subject of debates during the hearings as to their proportionality and even their legitimacy.

Hearings (auditions) are one of the preferred means of collecting information when the defendant is accessible. They are then **repeated** in view of the difficulty of obtaining information through other channels, the influx of large amounts of information coming from other files, but also because of the potential threat. According to defence lawyers, since their clients are suspected of opposing the rule of law and democratic values, their words are met with much more **suspicion** by the police and the prosecution. In the context of the cases of people who have left for conflict zones, the family and relatives are generally interviewed and fear that they will also be disturbed.

More specific criminal investigation strategies are also observed. **(1) The notes of Belgian and foreign security and intelligence services** are used heavily and occupy an important place during the trials. As described by Antoine Mégie and Ariane Jossin (Mégie & Jossin, 2016, 55) in France, "the way in which these elements are used and debated during the hearings provides essential insight into the judicial uses of intelligence" (free translation). The attention paid to this information is explained by the difficulty in certain cases of providing proof of acts that took place abroad and/or acts whose materiality is difficult to discern. At hearings, this information is mainly used by the prosecution to extract evidence against the defendants. The debates testify to the lawyers' suspicion that the public prosecution selects certain elements in these notes from the intelligence services. Lawyers question the legitimacy of these notes as evidence in court cases and the use of these documents is a recurring complaint in appeals. Criticism focuses on the use of information that is formulated in the conditional and offered with reservations, the evolution of information over time, the origin of certain information and the conditions under which it was obtained, contradictions between different notes, a lack of precision and the use of information collected from *returnees*. When gathering information in a case, if notes coming from the intelligence services appear beneficial in particular for cases where access to certain information is difficult, legitimate questions arise as to their use in the context of a criminal trial and especially if they become the main evidence or even the sole piece of evidence.

(2) Information coming from other cases is another strategy specific to this issue. By means of the snowball effect, defendants' statements or other elements contained in certain cases are mobilised to build new proceedings against other people. This is particularly the case in *returnee* trials. This practice is clearly facilitated by the centralisation of cases within a single prosecutor's office and by the teamwork carried out by all the federal magistrates. This way of proceeding gives rise to debates on how the cases are built and interwoven. The lawyers thereby highlight the need to take into account the trauma of people who have returned from a war zone and the interactions, rivalries and settling of accounts between the parties, which can affect the credibility of certain statements.

(3) Another specific strategy is the use of **open sources**, such as Wikipedia, which lawyers criticise when the general information included is applied to a particular case that demands an individualised response.

4.2.4.2. Prosecuting Acts of Terrorism

Compared to other types of litigation, **cases dropped** with no further action appear to be very **limited** in matters of terrorism. As this is a matter essentially dealt with by the Federal Prosecutor's Office, the cases have already been subject to a kind of preliminary sorting, and case dismissal without further action is moreover subject to a series of specific directives in the Federal Prosecutor's Office (with greater control) and must be more motivated than by the prosecutors of the correctional courts. The difference is therefore significant, as 63% of cases on average were dropped with no further action from 2012 to 2021 in correctional prosecutor's offices, whereas only 27% were dropped during the same period for "terro" cases[34]. Furthermore, 94.5% of the dismissals were due to technical reasons (making prosecution impossible), whereas these reasons only explained 64% of the dismissals of cases submitted to correctionnal prosecutors.

While most terrorist offences are crimes, the bulk of the litigation is handled by the correctional courts by **reducing the crimes to misdemeanours,** which has an impact on the scale of the sentences that can be pronounced. Indeed, the procedure before the assize courts would not allow for cases to be dealt with, essentially for **reasons of feasibility**. This downgrading ("correctionalization") is not specific to crimes of terrorism and is a reality for most crimes. The principle is at the heart of a debate between the Federal Prosecutor, who has publicly spoken out in favour of abolishing the assize court, and the lawyers who are its fervent defenders, emphasising that the pragmatic argument of the inability to stem the influx of cases is also used for other purposes.

The way that the **case is built** is also debated during the hearings, namely the decision to **combine** proceedings in a single file or to **split them**. In fact, it is the intertwining of stories and court records as a result of an investigative strategy that results in records that are either combined or split. The proceedings are generally combined in the same file for the people prosecuted because they are united by a case in the same space-time. In many other proceedings, the investigations are split into several individual files. Less commonly, a file may be split for the same person prosecuted, such as because of a deferred period of offence, for example. This is not limited to technical aspects alone, as it could also **depend on the information** to which lawyers do or do not have **access**. The lawyers report the discomfort they feel as a result, even evoking the feeling of an **"inequality of arms"** (unequal playing field) with the Federal Prosecutor's Office, which controls all the information. Lawyers regularly ask for cases to be combined so they can refer to documents to which they do not have access due to the secrecy of investigations in other cases. Some lawyers then wonder about some judges' refusal to follow them on this point. There is also frustration with the refusal to call certain witnesses who appear in other parts of the investigation. In the end, what worries the lawyers is that the Federal Prosecutor's Office has a head start in being able to select the information in the files. Furthermore, even when the cases and files are combined, the volume and complexity of the information is such that lawyers feel like they are in an unequal position compared to the prosecution, which knows all the files and has them "at

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[34] We would like to thank the Federal Prosecutor's Office and the statistical analysts of the public prosecution for providing the figures that made this calculation possible https://www.om-mp.be/stat/corr/start/f/home.html

its fingertips" and has (according to them) more significant human resources. Meanwhile, the Federal Prosecutor's Office puts forward arguments of feasibility (human resources) and timing (duration of the proceedings) to explain splitting proceedings into separate files.

Finally, in a more general way, lawyers criticise the dominant role that **presumption** seems to play in proceedings on terrorism compared to a process granting a central place to the establishment of objective evidence. This operation, which undermines the quality of the investigation's results, is a major obstacle for the defence, which cannot in this case argue on objective grounds nor demonstrate that evidence was obtained improperly. Moreover, the application of Article 32 of the CiCr (law of 24 October 2013) makes it difficult to nullify irregular evidence because of the balancing of the seriousness of the facts and risk on the one hand, and a procedural flaw on the other. Lawyers also complain that the mere suspicion of terrorism can allow for very visible acts such as searches and arrests that result in an enormous stigmatisation effect. In the same vein, they decry what they consider the prosecution's very unilateral reading of the case when the defendant is not considered in his totality: he has gone to Syria of course, but he is also the victim of certain facts in Syria. In summary, what is denounced is the fact that important democratic principles are ignored in the name of presumptions or suspicions, thereby eroding the rule of law.

4.2.5. "Terro" Litigation

4.2.5.1. *Quantitative Analysis of Case Law*

A quantitative analysis of case law from the years 2006 to 2019 provides an image of the profile of "terro" litigation handled by the criminal courts.

A significant **change** in the number of cases (files) can first be observed: very rare until 2014, they were constantly growing from 2015 to 2019[35]. This development is not similar from the point of view of the number of defendants involved: it is 2016 that marks the peak at this level and then drops significantly. To understand these developments, we must take into account both the changes in the nature of litigation and case-building practices, as well as the passing of judicial time

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[35] Seventeen in 2015, 31 in 2016, 33 in 2017, 41 in 2018 and 43 in 2019.

Figure 2. Number of "terro" cases (files) handled by the trial courts per year
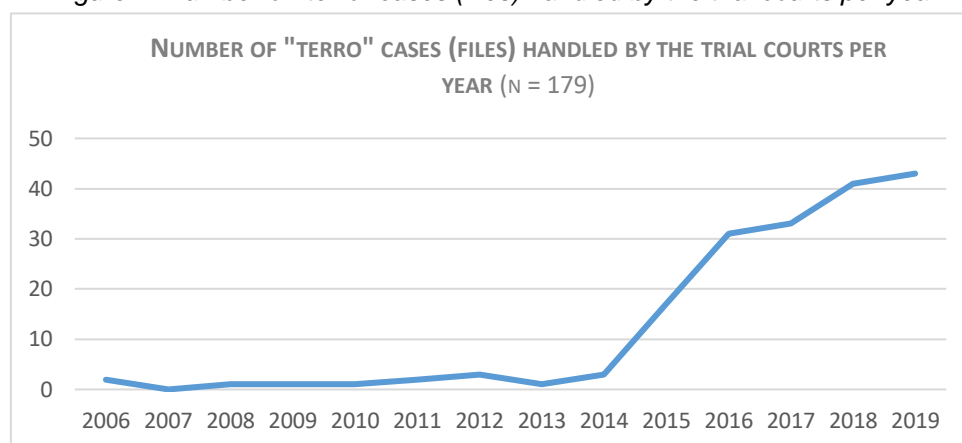
Nearly 70% of the 179 cases were handled in the judicial districts of Brussels (81) and Antwerp (40), 57.5% of the cases by **French-speaking** courts and 42.5% by **Dutch-speaking** courts.

Out of the population of 540 involved, the proportion of **men** accused (84%) is on the whole much higher than that of **women** (16%) but there are proportionally more of the latter during the last two years considered. Taking into account the **age** at the time that the first decision was pronounced, the most represented age group is from 26 to 35, followed by 18 to 25 (the average age is 20.7 and the median age is 29). The **nationality** of the defendants is mentioned in 84.4% of the cases. Of these, 65% have Belgian nationality and possibly dual nationality, while 35% do not.

Taking into account the information available about the **status of the defendant** at his or her trial (527), 41% of the defendants are "in default", 35.5% appear free (with or without legal conditions, whether after a period of pre-trial detention or not) and 23% appear detained (in pre-trial detention or because of a conviction for other crimes). The status of "in default" is linked to the year of the judgment: the year 2015, which marks a turning point, is also the one with the highest proportion of people "in default".

The charges that justify prosecution and judgement (in the first instance) are listed in Article 140 of the Penal Code for 86% of the defendants (at least once). Otherwise, other charges of terrorist offences are filed in 2.3% of the cases. Finally, 8.3% are prosecuted exclusively on the basis of non-terrorist offences. Due to the higher criminal tariff to which they are liable (15 to 20 years), it will be more relevant to subsequently distinguish the defendants who are prosecuted on the basis of Article 140 §2, allegedly for participating in a terrorist group as a leader (15% of the whole) from those who are prosecuted on the basis of another terrorist offence (77%) and from those, finally, who are only prosecuted on the basis of non-terrorist offences (8.3%).

Civil parties only appear in 6.7% of the cases. Considering only verified reports, 59% of the defendants are assisted by a **lawyer** and 41% are not. The assistance of a lawyer is strongly linked to the status of the defendant at his or her trial: when "in default", the defendant is almost never assisted by a lawyer.

4.2.5.2.   Nature of the Facts and Charges

Without detailing all the stages of these modifications in this final report (2013, 2015, 2016 et 2019) (Remacle & Vanneste 2019), since 2003, the date of the first Belgian legislation on terrorism, Belgian provisions in this area evolved significantly to incorporate the specific criminalisation approach advocated at the supranational level. A table summarising the terrorist offences successively introduced appears in Appendix 1. The scope of (specifically) incriminated conduct has been gradually widened, the list of terrorist offenses extended, the criminal procedure modified and the possibility of administrative and related measures increased, globally solidifying the legal arsenal for this particular litigation. This legislative inflation has nevertheless raised many questions about respect for fundamental rights and individual freedoms.

Despite the proliferation of new articles of law defining new terrorist offences and the diversity of crimes alleged against the defendants, both our observations of the hearings and our analysis of case law lead to the conclusion that Article 140 §1 of the Penal Code, introduced in 2003 (and summarised by the actors under the term of **participating in a terrorist group's activities**) remains the legal basis most frequently used, with it being very **rare to draw on new articles** specifying the forms of participation.

This is a puzzling finding. According to both the magistrates and the lawyers we met, most of the charge-focused **changes made** in recent years were **not necessary** in the context of prosecutions for acts of terrorism and had above all a **political use** motivated by the need to respond to supranational injunctions and to demonstrate that the executive branch is acting. Incidentally, according to the actors, the under-use of new charges would also be guided by ease, by greater mastery of existing case law, by the principle of non-retroactivity of new charges and by the precautionary principle with regard to possible appeals to the Constitutional Court.

A particular aspect of charging suspects with participating in a terrorist group's activities is the **need for the existence of a terrorist group**. If the public prosecution prosecutes on the basis of this charge, it must therefore provide proof that the group in question is indeed a terrorist group. This question is therefore subject to debate. While in some countries, such as Germany, the political authorities decide whether a group is considered terrorist or not, in Belgium this decision belongs to the judiciary. Asked about this situation, all the magistrates said they are uncomfortable. Having to determine the nature of the group is sometimes complicated. Indeed, the geopolitical context is constantly changing: a group considered moderate and non-terrorist can drift closer to a group considered terrorist at any given moment and get reclassified as a terrorist group and vice versa. The trial courts must therefore deal with these developments and be aware of them while ensuring the differences between the time that the offence was committed and when it is judged. In case law, the first judgments rendered are very detailed to establish whether or not a group is terrorist. Over the years, the judgments and decisions are more succinct and refer to previous ones. Recent decisions are generally either made with a copy/paste of previous decisions or with a very laconic mention to establish the terrorist nature of the group. During the hearings observed, it very often happened that no analysis was offered as to the terrorist nature of the group.

In this regard, during the interviews some criminal **lawyers** questioned the **limits between the law and politics**: faced with citizens' right to question the state, there is a clear field of tension between the "legal interpretation" of a problem and the "political path" of finding solutions (Bekaert 2019). Yet at hearings, the defence most generally does not even try to go against the definition of the group as terrorist. The reason given is strategic in nature: by opposing this charge, they are unlikely to achieve their desired result and risk being used against the client during sentencing. Some lawyers nevertheless try to challenge this depiction during the trial by providing context to the group in relation to the situation in Syria, in particular with regard to a (possible) change over time. Another approach taken by the defence during the first trials was to question the jurisdiction of the Belgian justice system over facts related to the Syrian conflict, advancing an argument of the primacy of international justice (Geneva Convention). However, this was not accepted and case law has confirmed the competence of Belgian law in this area.

Whatever the issue may be, our observations show a robust **use of case law** both in the indictments of the prosecution and during the lawyers' arguments. As previously emphasised, the fact that the Federal Prosecutor's Office, which conducts all investigations in the matter (and is attentive to the continuity of the jurisprudential line), is particularly well aware of the case law and has access to all the decisions, which is rarely true for the lawyers, has regularly given the lawyers a **feeling of an uneven playing field** between the prosecution and the defence during the trial.

The articles of the charges retained in case law could give an image of uniformity. This only seems to be true: the **diversity of the facts** found in the cases is striking. Based on observations from 2019 to 20121, five main categories of acts of terrorism have been identified under the banner of the charge of participation in a terrorist group activity: propaganda and proselytising, departures to conflict zones, peripheral aid including financial contributions to the terrorist group and finally the preparation of an attack, each of which raises legal discussions that cannot be detailed here. The charge of **leadership** of a terrorist group (Article 140 §2) has a special status since it increases the required sentence. The debate then focuses on the meaning and responsibility linked to this function, the issue being that of the scale of penalties.

4.2.5.3. *Convictions and Motives for Charges*

Since extremism, and more specifically Islamist extremism, is considered to be at the heart of the creation of terrorist groups, even if there is no legal text to support this assumption, beliefs and motives are often mentioned during the discussions, from various angles.

Some remarks or questions explicitly evoke **religious convictions.** Three ways to approach "radicalisation"[36] have been identified: the first explicitly addresses the issue of "**radicalisation**" but without ever defining it; the second tries rather to measure the extent of the possible "radicalisation" process under way by focusing on external signs, a way of life or even attachment to certain religion-based norms and visions; and the third is pragmatically concerned with

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[36] By using this term, we are not ignoring the debates to which it is subject, nor the polarisation of the related literature. It is used here to identify how actors put forward this concept during hearings or interviews.

knowing whether the "radicalisation" is "successful" in the sense of the defendant's attachment to the societal form of Islamic State.

This consideration of convictions is also the **subject of questioning** in the name of **freedom of thought, conscience and religion**. Beyond freedom of thought, a lawyer regretted that criminal law does not make it possible to recognise the "share of legitimacy" that there may be in defendants' approaches insofar as their objective is to react to an iniquitous situation. For people who departed for Syria, the **outlook on the situation in Syria** is the subject of attention and debate. The reason for leaving: "to Syria on the one hand" (contributing to "a good cause" versus the risk of a "staged" misunderstanding of the situation), leaving "from Belgium" on the other hand (perceived or experienced discrimination, the group effect, the search for an identity), as well as the reasons for staying there (meaningful of a state of mind?), including the specific situation of female defendants (perceived as dependent on men) are all subjects of debate. Also subjects discussed are the defendant's awareness and distancing from initial convictions, the defendant's assumption of responsibility for and path of "deradicalisation" or "disengagement" - depending on the terms used -, the defendant's prospect of social reintegration and finally any potential danger to be taken into account. These factors are sometimes central in discussions during hearings or in interviews and sometimes they are not considered relevant at all. This is a subject that seems to make some professionals uncomfortable while others approach it frankly, even if sometimes awkwardly. In any case, the subject seems to constitute a delicate balancing act for justice that not all courts approach in the same way.

4.2.6. The Social and Penal Reaction to Acts of Terrorism

4.2.6.1. The Scale of Penalties and its Issues

a) Scale of Penalties and Imposition of Penalties

In terms of terrorism, the **scale of penalties** appears to be an important issue and the **principle of "correctionalization"** plays an essential role there. As already pointed out, while most terrorist offences are crimes, all "terro" litigation is massively dealt with by the correctional courts. This state of affairs is explained by the possibility of referring a series of offences, whether terrorist or not, to the correctional court rather than to an assize court. The table in Appendix 2 presents a summary of the terrorist offenses likely to be referred to the correctional court. For most of the magistrates we met, this scale of penalties is **problematic** and may lead to frustration. Above all in the interviews, they expressed a desire for a wider range of sanctions and measures in order to individualise the social reaction as well as possible, in particular because of the very different profiles that make up the criminal category of persons prosecuted on charges of participating in a terrorist group's activities. Some magistrates do not particularly question the scale of sentences by rather fatalistically pointing out the inability of the penitentiary system to rehabilitate individuals.

The Federal Prosecutor draws attention to the procedure of the assize court and *de facto* to the "correctionalization" mechanism. This "correctionalization" has the **effect of reducing the**

maximum threshold of the range of sentences (above), but going through an assize court for these offences would be concretely **impracticable**, particularly due to the cumbersomeness of such a procedure[37]. A lawyer[38] supports this position by raising arguments related to the **potential emotionality** of a popular jury faced with acts of terrorism. Others are more reserved and believe that the assize court has an important **educational role** in a democracy.

In terms of indictments, the principle of "correctionalization" in the context of this litigation helps to explain that the **maximum sentence** requested, and finally handed down, is **regularly reached**. The expected reforms of criminal law and the law of criminal procedure providing for different grades of punishment are perceived by the judiciary as a way out in this area.

b) The Period of Unconditional Detention

The **period of unconditional detention (security period)** established by the **law of 21 December 2017**[39] must be understood as "the part of the custodial sentence that must be served before an early release can take place" (Kuty, 2018, 573). This period is similar to a **form of incompressibility** of the custodial sentence. It is possible, though not an obligation, for the courts and tribunals to attach the sentence handed down to a period of unconditional detention: the consequence is that the convicted person will remain in detention for longer than the minimum time provided for by law. Presented in this way, the period of unconditional detention can be seen as a way to toughen sentences considered by some to be "too light" as soon as the conviction is handed down. Our observations show that it is particularly requested for people "in default" because of their presence in the Iraqi-Syrian zone, but it is also required to a lesser extent for people present at their trial who did not travel abroad. It should also be noted that in the decisions handed down for the French-speaking trials that we attended and in the context of which the Federal Prosecutor's Office requested a period of unconditional detention, the courts and tribunals *never* acceded to its requests, relying in particular on doctrine (Kuty, 2018). The judges of the criminal court therefore do not intend to encroach on the jurisdiction of their counterparts at the sentence enforcement courts (TAPs). In another decision, the advisors of the court of appeal point to circumstances specific to the case to justify their decision not to hand down a period of unconditional detention. Several federal magistrates have highlighted a change in the practice of indictments. Others question the real impact that they can have given that those convicted of acts of terrorism clearly tend to go to the end of their sentence, just as common criminals increasingly do. Encroachment on the jurisdiction of the TAPs is also underlined. As with forfeiture of nationality (below), several magistrates have pointed out that a criminal court has openly

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[37] F. VAN LEEUW, "Carte blanche: 'Supprimer la cour d'assises, un pas vers une Justice plus moderne et humaine'", Le Soir, https://plus.lesoir.be/342026/article/2020-12-06/carte-blanche-supprimer-la-cour-dassises-un-pas-vers-une-justice-plus-moderne-et, viewed on 7 December 2020

[38] J. ANTONISSEN, "Sven Mary: 'Ik ben hard geweest voor de ouders van de Reuzegommers. Tegelijk begrijp ik hen.'", De Morgen, 28 December 2020

[39] This figured in the government agreement following the elections of 25 May 2014, which were held the day after the murderous attacks on the Jewish Museum of Belgium in Brussels. Law of 21 December 2017 amending various provisions with a view to establishing a period of unconditional detention and amending the law of 20 July 1990 on preventive detention with regard to immediate arrest, *M.B. 11 January 2018.*

positioned itself against this period of unconditional detention and therefore does not hand it down.

4.2.6.2.   Forfeiture of Nationality

The broadening of the possibilities allowing the forfeiture of Belgian nationality for people convicted of terrorist offences results from a federal government announcement in January 2015 with a view to combating terrorism and preventing "radicalisation". Forfeiture of nationality imposed following a conviction for a terrorist offence already existed in our legislation, but the authorities wanted to extend the possibilities and facilitate the procedure. The Belgian Nationality Code was therefore amended in this sense by the law of 20 July 2015 aimed at strengthening the fight against terrorism. The new Article 23/2, now dedicated exclusively to terrorist offences, is also only addressed to "certain Belgians". A distinction is made between two categories of citizens depending on how their Belgian nationality was acquired: those whose nationality can never be withdrawn and those from whom it can be withdrawn (Beernaert, 2015). While this distinction may seem discriminatory in nature, a decision of the Constitutional Court handed down in 2009 found that it is not[40].

It appears from the first observations that when the defendant met the conditions **requiring** forfeiture of nationality, it occurred **automatically**. Indeed, a directive note from the College of Public Prosecutors dated 3 May 2018 (confidential document) enjoins magistrates to automatically request forfeiture of nationality when the conditions for requesting it are met. Although this note has not been revised, magistrates' practices have clearly evolved, particularly because some of them were uncomfortable with this measure.

On the merits, this practice therefore divides the public prosecution, but whether for it or against it, for various reasons, the vast majority of the magistrates we met pleaded for a **return to the use of civil procedure** before the court of appeal and the abandonment of the new mechanism of Article 23/2 of the Belgian Nationality Code allowing a ruling on it at the criminal trial stage. They put forward several **arguments**, such as the desire for a procedure separate from the criminal trial so that the debates are not "parasitised" by this potential forfeiture of nationality, which could be considered calmly after criminal conviction, the procedural difficulties encountered in criminal proceedings, the differences in the procedures raising questions both in terms of the legal certainty of litigants and the differential treatment to which they may be subject, the differences in the practices of the various courts (Dutch-speaking courts tend to apply it more often), the need to share responsibilities and respective powers and even the eminently political nature of forfeiture of nationality. Current debates about forfeiture of nationality are centred on the **problem of the repatriation** of Belgian nationals who left for the Iraqi-Syrian zone, mainly women and their children, for which the forfeiture of Belgian nationality has direct consequences.

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[40] Decision no. 85/2009 of the Constitutional Court handed down on 14 May 2009 considers that these different modes of acquiring nationality "justify that the possibility of forfeiture be excluded only for Belgians covered by the provision in question, to whom Belgian nationality was automatically granted because of the particularly strong ties that unite them to the national community and can, on the other hand, be applied to Belgians who acquired nationality after the age of 18 and who cannot justify such close and long-standing ties with Belgium".

In the context of the hearings observed, when the public prosecutor requested revocation of the nationality of the person prosecuted, the **lawyers'** arguments were given importance, highlighting its consequences for the person and his or her entourage (Remacle, 2022). The **importance** of forfeiture of nationality is also observed when it is the motivation for lodging an appeal. The lawyers also stress its impact on actually serving the sentence, as illegal residence status is an obstacle to granting conditional release. Forfeiture of nationality also plunges the person into administrative uncertainty, with possibly serious consequences, such as expatriation or difficulties in accessing medical care. Some present it as an additional penalty, a form of relentlessness. The fact that it is required (in a standardised way) without any prior investigation having been carried out as a foundation is also criticised, as it goes against a principle of individualisation of social reaction.

Our observations show that the people directly affected by forfeiture of nationality have a systematically poor experience, at least those who may have been present during their trial to express themselves.

Regarding the figures, there is no official census available of forced forfeitures of Belgian nationality in Belgium. It is therefore not easy to get access to exhaustive figures. At our request, the College of General Prosecutors[41] asked the various public prosecutor's offices to list the forfeitures of nationality imposed from 2008 to the present day in the context of civil procedure (Article 23 of the Belgian Nationality Code) and the Federal Prosecutor's Office with regard to the forfeitures handed down in criminal cases (Article 23/2 of the Belgian Nationality Code) since the new system entered into force in 2015.

On the basis of Article 23/2 of the Belgian Nationality Code (criminal), 34 forfeitures of Belgian nationality were imposed between June 2018 and May 2022. Among these, 26 are definitive, four are the subject of an opposition and four are still within the time limits for legal remedies. Twenty-seven or 79% of the total were handed down by Dutch-speaking courts (mainly Antwerp n = 18) and seven by French-speaking courts. Twenty-five were imposed by default and nine were handed down in an adversarial way. At the time the decision was made[42] the 34 people concerned were between 21 and 72 years old (median age: 31). They were 22 men and 12 women. The nationalities of origin (i.e., the first nationalities acquired) of people who were deprived from their Belgian nationality are as follows: Moroccan (n = 13), Belgian (n = 12), Turkish (n = 2), Russian (n = 2), Tunisian (n = 1), British (n = 1), Algerian (n = 1) and no data (n = 2). In the context of this criminal procedure, more than 35% of the persons concerned whose Belgian nationality was forfeited were born in Belgium. This state of affairs confirms the concerns expressed by some during the legislative amendments made in 2015 (above). We will see below that the configuration is not the same in the context of civil proceedings.

On the basis of Article 23 of the Belgian Nationality Code (civil), 86 decisions were taken by courts of appeal concerning requests for forfeiture of Belgian nationality between 2008 and 2022. Thus, 78 requests for forfeiture of nationality arrived before courts of appeal (eight are set or have

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[41] We would like to thank the College of Prosecutors General for this initiative.
[42] In the event of an appeal, the date of the first decision is taken into account to calculate the person's age.

yet to be set). Of these, 65 were imposed and 13 were unsuccessful. The breakdown between courts shows that nearly 77% are dealt with by the court of appeal in Brussels (n = 66). Among the latter (n = 56), at least 30 (54%) were affected by the Dutch language role and 21 by the French language role[43]. The decisions were taken in an adversarial way in 62.8% of cases and by default 26.7% of the time.

Observing changes over time, the year 2020 appears pivotal, with 31 decisions taken, followed by the year 2021, with 10 decisions. The year 2022 has not been considered because it is not yet over, but the trend seems to be on a downward trajectory. The 65 people who were forced to forfeit their nationality were between 22 and 58 years old at the time of the decision (median age: 31.5 years). We have no information regarding gender. Moroccan nationality is by far the first nationality of origin at 68.6%.

4.2.6.3. *Penalties and Measures in Figures*

As a reminder (see 4.2.5.1), for this analysis we had all the case law of the criminal courts of the country bringing together the decisions rendered between 2006 and 2019. Among the lawsuits that came before the trial courts, for these years we were able to quantify and examine successively the acquittals, the sentences of imprisonment handed down, their duration (criminal tariff), the reprieves granted, the suspended sentences and the forfeitures of civil and political rights. We have also analysed the impact of several variables on each of these decisions: gender, age category, having Belgian nationality, the year of the judgment, the linguistic role of the procedure, the status of the defendant at the hearing, the nature of the charges and even the presence of a lawyer. The impact of the variables was examined by cross-tabulations confirmed by statistical tests as well as by logistic regressions to assess the impact of the variables, with "all other things being equal". Other decisions were accounted for without further examination: community service and fines, appeals and oppositions.

The following tables show the decisions accounted for and their respective weight among the different possibilities available to the courts.

Prosecutions brought before the courts: 570 (100%)			
Inadmissible	Acquittal		Acknowledgement of guilt
2 (0,3%)	1st Inst: 60 (10,5%)	2d Inst: 50 (8,8%)	518 (90,9%) (1ère Inst)

Acknowledgement of guilt - Decisions in 2d Inst: 518 (100%)	
Prison sentences	486 (93,8%)
Suspension of the sentence	23 (4,4%)

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[43] The information is missing for the rest of the sample.

Community service	4 (0,8%)
Statement of guit	1 (0,2%)
Internment	1 (2,2%)
Fine (only)	1 (,2%)
No data	1 (0,2%)

Prison sentences – 2d Inst: 486 (100%)	
Sentence duration	
Less than 5 years	182 (37,4%)
Equal to 5 years	223 (45,9%)
Ober 5 years	79 (16,3%)
No data	2 (0,4%)
Reprieve (full or partial) – 1st Inst: 476 (100%)	
Yes	123 (26,6%)
No	340 (73,4%)
No data	13 (2,7%)
Forfeiture of civil and political rights – 1st Inst: 476 (100%)	
Ye	288 (60,5%)
Non	179 (37,6%)
No data	9 (1,9%)

Appeals from decisions in 1st Inst: 568(100%)		
Appeal	126 (22,2%)	(126) 100%
Confirmation 1st Inst		37 (29,4%)
Upward revision		32 (25,4%)
Downward revision		40 (31,7%)
No data		17 (13,5%)

These overall descriptive tables indicate that acquittals are infrequent but nevertheless represent a proportion of 10% in the 1st instance to 9% in the 2nd instance. Among the acknowledgments of guilt, prison sentences are predominant (94%), of which 37% are for less than five years, 48% are equal to five years and 16% are for more than five years. A full or partial reprieve is granted in 27% of the cases. The forfeiture of civil and political rights is applied in 60% of the cases.

The analyses carried out to assess the impact of the different variables at each stage of the decision-making process allow the following conclusions to be drawn (summary table in Appendix 3).

(1) **Gender** has no bearing on the likelihood of an acquittal. On the other hand, it has a weak impact, favourable to women, on handing down a prison sentence and the duration of the sentence. In the same way, women are favoured in receiving reprieves and suspended sentences. However, the gender variable is never decisive on its own, all other things being equal. Its incidence is therefore due to its interference with other variables.

(2) The **age category** has little impact on most decisions affecting defendants, except for acquittals, the proportion of which seems to increase with the age of the persons concerned.

(3) **Belgian nationality** has no effect on the likelihood of an acquittal, a prison sentence, the duration of a sentence or suspension of the sentence. Only **reprieve** is granted more to defendants with Belgian nationality and it is then a determining variable, having an impact independent of any other. **This observation deserves reflection with regard to a principle of equality in the exercise of justice.**

(4) The **linguistic role** has a weak effect on the probability of acquittal (more likely in the Dutch-speaking format), but this impact alone is not decisive. It has no impact on the issue of a prison sentence or on the criminal tariff. On the other hand, it does have a decisive impact, all other variables remaining constant, on the granting of a **reprieve, a suspension of the sentence and the forfeiture of civil and political rights**. It cannot be observed that one linguistic format is more repressive than the other since while reprieves and suspended sentences are granted more often in procedures conducted in French, the forfeiture of civil and political rights is also imposed more frequently. The observation of these independent influences on penal characteristics also deserves **reflection with regard to a principle of equality in penal treatment.**

(5) The **status of the defendant** during his or her trial is a judicial marker that has an impact on all the decisions observed with the exception of the forfeiture of civil and political rights. Its impact is **determinant** (it has an effect independent of any other variable) on the probability of an acquittal, a prison sentence and the criminal tariff adopted. The defendant who appears **free** has a better chance of being acquitted, of not being punished with imprisonment and, if it applies, of benefiting from a sentence of less than five years. The defendant **"in default"** has a much lower probability of being acquitted and is systematically punished with a prison sentence that is more often for five years or more. The defendant who appears **in detention** is acquitted less often and receives a prison sentence more frequently, which more often lasts five years or more. Its impact is also observed when a reprieve or suspended sentence is granted, but in these cases the impact does not operate independently of other variables.

(6) The **nature of the charges**, classified into three categories, has an impact on several of the decisions observed. On three of them, it has a decisive impact. On imposing a **prison sentence**, it is systematic when Article 140 §2 is invoked, for activity as a leader of a terrorist group, and much less frequent when no offence is defined as terrorist. On the **duration of the sentence**, it is more significant with Article 140 §2 than with another terrorist offence and lower when no terrorist offence is invoked. Finally, on the **forfeiture of civil and political rights**, it is more often pronounced with Article 140 §2 than with another terrorist offence, and less often with an offence not belonging to this category. The nature of the charges also has an impact, but not a decisive one, on receiving a suspension of the sentence (never in the case of Article 140 §2 and most frequently for non-terrorist offences).

(7) The **presence of a lawyer** has a decisive impact on the likelihood of an acquittal. It also has a non-decisive impact on the imposition of a prison sentence, the criminal tariff, the granting of a reprieve or a suspended sentence. This variable is strongly associated with the status of the defendant (whether "in default" or not).

(8) The **year of the judgment** has a partially decisive impact (namely only certain years) on the granting of an acquittal on the one hand and the imposition of a prison sentence on the other. It also has a low to medium non-determining - due to its interactions with other variables - impact on all decisions, except when relating to the forfeiture of civil and political rights. These findings cannot be interpreted unilaterally in terms of development in one direction or another. Distinct observations were in fact made respectively with regard to each type of decision. However, it can be noted that **the year 2015** appears to be a particularly more repressive year, probably due to the specific litigation involving only defendants on the basis of Article 140 §2. Conversely, the years 2017 to 2019, and especially **2019**, stand out with a decreasing proportion of prison sentences and a higher proportion of suspended sentences. This development was felt by the magistrates, who evoked the impact of the judicial treatment of the *fonds de tiroir* in connection with the suspended sentences. According to them, the changes observed are linked both to the nature of the litigation and to a change in practices due to the growing distance from the atmosphere after the attacks or to the passing of a period that is beginning to exceed what is "reasonable". Yet while the actors do perceive an overall change, it remains difficult for them to define.

In **summary and conclusion,** we can see that the use of the "correctionnalization" procedure results in situations where the main **sentence** handed down only rarely exceeds five years of imprisonment (16.3%), which is relatively short compared to sentences in other countries like France (Besnier & al. 2019, 79). The criteria influencing decisions are predominantly criminal and judicial markers (related to the nature of the litigation or the defendant's status during the trial), which rather tends to support the idea that justice is exercised with respect for the equality of citizens' rights and to generally rule out the possibility of discriminatory judicial practices. Some findings nevertheless raise questions: this is the case of the decisive impact of the linguistic role on certain decisions (reprieve, suspension of the sentence, forfeiture of civil and political rights), which then effectively poses a problem with regard to the principle of citizen equality in

the exercise of justice. Gender is never decisive in itself, but nationality (Belgian) is decisive in granting a reprieve, which is also questionable.

But more than the main penalties or actions taken, it is above all the **additional measures** that give rise to debate. The forfeiture of civil and political rights indeed accompany nearly 60% of the decisions while the possibility, interest and relevance of applying it is debated by various actors, lawyers and even magistrates of the public prosecutor's office. This is also the case of the forfeiture of Belgian nationality decided against 34 people (between June 2018 and May 2022) in the same criminal proceedings. The same happened to 65 people between 2008 and 2022 in one civil proceeding. In a way, these additional measures reflect a desire to mark the person beyond the sentence, thereby creating a "lower" administrative status: stripped of Belgian nationality and/or subject to administrative restrictions. The application of these additional measures clearly raises questions about respect for fundamental rights and freedoms and social cohesion.

4.2.7. Recommendations

At the end of this study, the results lead us to formulate 17 recommendations which we have divided into four blocks.

I. (Re)thinking the policy response and anticipating the consequences
1. To systematically include **evaluative clauses** in legal texts (Jacob & Varone 2003). This general recommendation is all the more relevant when the new legal provision is adopted in an emergency context, as was the case with terrorism.
2. To affirm the importance of judicial procedures ensuring **democratic guarantees** and fundamental rights in the face of the trend towards the justice system's growing focus on anticipation ("pre-emptive" justice).
3. To question the significant investments made in **legislative innovations** (such as those relating to new terrorist offences), which ultimately prove to be only rarely used in practice, due to the fact that previous provisions already meet needs.
4. To examine the possibility of entrusting **the identification** of a group as terrorist to a body other than the judiciary, as is the case in other countries (such as Germany).

II. (Re)thinking the procedure and the judicial system
5. To think about the meaning of pursuing legal proceedings against **people "in default"** or "presumed dead", particularly with regard to the human and financial costs that this can have for the justice system.
6. To think about the advisability of granting the **status of civil parties** in the future to the parents of young people who have left for combat zones.
7. To maintain the protection put in place by the judicial organisation **against media pressure**.
8. To examine the proposal (made by the Federal Prosecutor) to set up **decentralised federal courts** at the level of the five appeal courts. This set-up would have the advantage of making it possible to reduce costs in terms of security systems, to put in

place reference magistrates on terrorism, to enhance the means of these courts and generally to promote the formation and circulation of knowledge on terrorism.

9. To begin to think about the use of **intelligence service notes** in criminal trials or about the possibilities of defining their uses in order to preserve the value of the evidence in a criminal trial.

10. To start considering the possibility of providing the defence with **more balanced access to information**, particularly in terms of access to specific case law on terrorism.

11. To provide for (the possibility of) recourse to **"context experts"** independent of the political, administrative and judicial powers, so as to counterbalance the only expertise currently used during these trials, which is linked to these different powers.

III.   **(Re)thinking the penal and social response**

12. To provide for **individualisation modalities** of sentences and measures particularly with regard to the wide range of behaviour likely to be prosecuted on the charge of participating in a terrorist group's activities, regardless of the positions defended in relation to the systematic use of "correctionalization" in "terro" litigation.

13. To take care not to obstruct the possibility of adjustments during the execution of the sentence as soon as it is handed down to avoid encroaching on the jurisdictions of the sentence enforcement courts (TAPs) and to avoid harming the possibilities of reintegration later on. This recommendation particularly calls into question the possibility for the sitting judge to order a **period of unconditional detention**.

14. To promote a debate on the merits of **forfeiture of nationality** with regard, on the one hand, to a principle of equal treatment of litigants and, on the other hand, to a principle of effectiveness in the fight against terrorism. In the immediate future, to question the advantages and disadvantages of both procedures (criminal and civil) that currently exist.

15. To develop a reflection on the **unequal treatment** observed according to **linguistic roles**, in particular with regard to the granting of a reprieve, suspension of the sentence and forfeiture of civil and political rights.

16. To develop a reflection on the inequalities of treatment observed with regard to the granting of a **reprieve** depending on whether or not the defendant has **Belgian nationality**

IV.   **(Re)thinking practices for research purposes**

17. To examine the possibilities for systematic and standardised **collection of information** useful for evaluations and research **in judgements.**

4.3. Prevention of "Radicalisation" in Prison and Impact of Security Measures on the Penitentiary System

4.3.1. State of the Art

This part of the research aimed to evaluate the action plan against radicalisation in prisons presented by the Belgian Minister of Justice on 11 March 2015 and to examine its impacts. A few observations in this regard, firstly on the hypothesis of prison "radicalisation" and secondly on the problem of "managing violent extremist prisoners" (UNODC, 216).

While, in the eyes of the Minister of Justice and other actors such as the European Counter-Terrorism Coordinator (de Kerchove, 2015), it is a fact that prisons are a breeding ground for "radicalisation", this is a point on which the scientific literature is divided: some scholars assume that they *really* are (Neumann 2010; Basra and Neumann 2020); others state that this is how they are *defined* (Jones 2014). The nuance is important: as Thomas' theorem reminds us, any situation defined as real is defined as real in its consequences; and, in this case, these consequences are particularly severe, in terms of prison regimes and prisoners' rights, but also, given the stigma reversal mechanism, in terms of (de-)"radicalisation" or (dis-)engagement. As it stands, four findings are certain: 1) there has been "*considerable speculation about the imprisonment-extremism nexus*" (Decker and Pirooz, 2020, 2); 2) *there is "little systematic analysis of this relationship*" (*idem*); 3) much of the work on this topic is based either on "*'expert' opinio*n" or on the "*perceptions of correctional officers or staff*" (*idem*); 4) evidence remains anecdotal, relying on some "*spectacular few*" (Hamm, 2013).

Although the issue of managing violent extremist prisoners has received renewed attention since 2001 (UNODC, 2016), it is, as De Vito (2014) has shown, anything but new. On this second point too, the scientific literature is divided: some approach the problem from the perspective of the specificities of terrorist or terrorism-related prisoners; others, from the perspective of the specificities of the prison institution. The former insist that terrorist and terrorist-related prisoners are not "ordinary offenders" (Neumann, 2010; Basra and Neumann, 2020). According to them, the main difficulty in dealing with them is that they do not define themselves as criminals, but as "soldiers, freedom fighters, volunteers, supporters, resistance" (Silke, 2014, 4); they would therefore use their time in prison 1) to "radicalise" and recruit other inmates, targeting the most vulnerable and offering them material benefits or protection (Khosrokhavar, 2013) ; 2) to mobilise support from outside ; 3) and even, when the opportunity is given, to set up networks, create or recreate an operational command structure and, in some cases, organise attacks from inside to be carried out from outside (De Vito, 2014). From this perspective, the problem calls for a security-first response, involving two prison regimes: either concentration and segregation, or isolation. The latter emphasises the inadequacy of the prison institution (Bulinge, 2016), which they see less as a space where "radicalisation" takes place than as a "radicalising institution". Adopting a social movement theory approach, some of them, in line with the former, see prisons as "mobilising structures" (Wiktorowicz, 2004); but it is through "what prison as an institution does to individuals" that they explain "what individuals do with it in terms of who they are" (Venel, 2013). Others stress how "prisons and their moral experience" (Liebling and Arnold, 2004) help IS frame to resonate with prisoners' experience, increasing its empirical credibility and personal salience. In any case, the response that is called for is, from this second perspective, a prison regime of dispersion and "*the development by staff of positive relationships with prisoners based*

on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners" – that is, "*dynamic security*" (Council of Europe Committee of Ministers, 2003, *in* UNODC, 2015).

4.3.2. Introduction

The research on the prison field aimed to assess the implementation of the Plan P and to identify its effects, both intended and unintended. As stated by Thomas Renard (2020), "Belgium did not adopt specific policies to deal with terrorism and radicalization in prison until recently". In fact, "(…) it is only in the context of the threat linked to Islamic State (IS) that Belgian authorities developed specific policies and tools to address this challenge". Aside from the growing number of "returnees", two events seem to have precipitated its inclusion in the political agenda. The first one is the attack on the Brussels Jewish Museum perpetrated by Mehdi Nemmouche on May 24, 2014; the second one, the attack foiled by the special forces of the federal police in Verviers on January 15, 2015.

The Belgian "Action plan against radicalisation in prisons" (hereafter, Plan P) was issued on March 11, 2015. It identified ten "action points": the first one was the improvement of the inmates' living conditions; the next four concerned the detection, collection, analysis and exchange of information; the sixth, the placement policy for "radicalised" inmates; the seventh, their specialised supervision; the eighth, the systematic involvement of religious and philosophical counsellors in this supervision; the ninth, de-"radicalisation" and disengagement programs; and the tenth, strengthened cooperation links with the local level, federated entities and Europe. The coordination of the implementation of the plan was entrusted to two ad hoc groups: on the side of the General Directorate of Prison Facilities (hereafter, DG EPI), to an "Extremism Cell" (hereafter CelEx); and on the side of the State Security Service (hereafter, VSSE), to a section in charge of the prisoners' "radicalisation" problem. The former was installed in March 2015, and the latter in August 2015 (Brion, 2018).

Downstream of the plan P, "instructions concerning extremism" were sent by DG EPI to the local directions on April 2, 2015; they specified that "inmates linked to terrorism" meant not only "all inmates prosecuted or convicted "for acts related to terrorism" but also inmates whom CelEx and the Regional Directions suspected, "on the basis of available information", to "present a serious risk in terms of radicalization (active or passive) and/or [to] engage (more) in armed struggle for religious or ideological reasons". This second category, the instructions added, should be "assimilated (...) to detainees linked to terrorism".

4.3.3. The Extremist Offender Population in Prison: an Overview

Interestingly enough, the CelEx inmates' classification system transformed over the years.

- From 2014 to 2016, DG EPI distinguished between F- (for "fighters") and T- (for "terrorists") inmates; all of them were further classified from A to D, based on their assumed dangerousness and activities[44] (Brion, 2018).

- From April 2016 on, CelEx inmates were divided into four categories: the "terrorists", who were prosecuted or convicted for a terrorist offence (category A); the "assimilated", who were neither prosecuted nor convicted for a terrorist offence but who, "on the basis of their detention order, ha[d] a clear link with terrorism and/or who, by words or actions, strongly demonstrate[d] that they belong[ed] to the profile of violent extremists according to an assessment by CelEx" (category B); the "foreign terrorist fighters" ("FTF"), who had fought abroad or wanted to do so and, as such, were included on a list drawn up by CUTA (category C); and the "radicalised", who were suspected of "being radicalised or of radicalising others" (category D). A fifth category, that of hate propagandists, was added shortly thereafter.

- Since 2020, DG EPI has largely adopted the nomenclature of the common database "Terrorist Fighters". The objective was twofold: to integrate the lists used by the various services and, in doing so, to improve the monitoring of persons on file by the authorities responsible for their surveillance. As a result, CelEx uses now the same categories as CUTA, alone or combined: "Foreign Terrorist Fighter" (FTF)[45]; "Homegrown Terrorist Fighter" (HTF)[46]; "Convicted Terrorist" (CT)[47]; "Potentially Violent Extremist" (PVE); and "Hate Propagandist"[48].

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[44] T-inmates were categorized as TA ("leader, central figure"), TA+ ("central figure, having committed an attack"), TB ("having committed an attack"), TC ("having provided basic support"), and TD ("member of [an] organization, group, cell, network; logistical support"); and F-inmates, as FA ("recruiter, preacher"), FA+ ("also encouraging the commission of terrorist attacks in Belgium"), FB ("militant returnee"), FC ("passive returnee") and FD ("belonging to a network of recruiters without actively recruiting himself, supporting role, facilitator").

[45] According to the Royal Decree of July 21, 2016), Foreign Terrorist Fighters are "persons residing in Belgium or having resided in Belgium, with or without Belgian nationality, who, with the aim of joining or providing active or passive support to terrorist groups, are in one of the following situations:
a) they have travelled to a jihadist conflict zone
b) they have left Belgium to go to a jihadist conflict zone
c) they are on the way to Belgium or have returned to Belgium after having travelled to a jihadist conflict zone;
d) they have, voluntarily or involuntarily, been prevented from going to a jihadist conflict zone;
e) they intend to travel to a jihadist conflict zone, provided that there are serious indications of this intention".

[46] According to the Royal Decree of 23 April 2018, homegrown terrorist fighters are natural persons with a link to Belgium as long as at least one of the following conditions is met:
(a) there are serious indications that they intend to use violence against persons or material interests, for ideological or political reasons, with the aim of achieving their objectives by terror, intimidation or threats;
b) there are serious indications that they intentionally give support, particularly logistical or financial support, or for the purpose of training or recruitment, to the person referred to in the above point or to persons listed as FTFs for whom there are serious indications that they intend to carry out violent action.

[47] According to Royal Decree of December 20, 2019, Convicted Terrorist") are "all natural persons with a link to Belgium who have been convicted by a judgment that has become res judicata for an act of terrorism as listed in articles 137 to 141 of the Criminal Code or who have been interned for such acts. It should be added that CUTA only considers convicted or interned terrorists with a threat level of 2, 3 and 4 (the threat level being determined by CUTA).

[48] According to the Royal Decree of April 23, 2018, "hate propagandists" are natural persons, legal persons, de facto associations, regardless of their nationality, place of residence or place of establishment, as long as they meet the following cumulative conditions:
(a) they have the objective of undermining the principles of democracy or human rights, the proper functioning of democratic institutions or other foundations of the rule of law;
b) they legitimize the use of violence or coercion as a means of action
c) they propagate their beliefs to others in order to exert a radicalizing influence;

While these changes draw attention to the social construction of the problem that Plan P intends to solve and to the actors who are interested in it, they also make it impossible to describe in detail the evolution of the group of inmates that it concerns.

Fig. 3 was prepared by CelEx and shows the change in the number of CelEx inmates from February 28, 2014 to May 31, 2022 on a three-month basis.
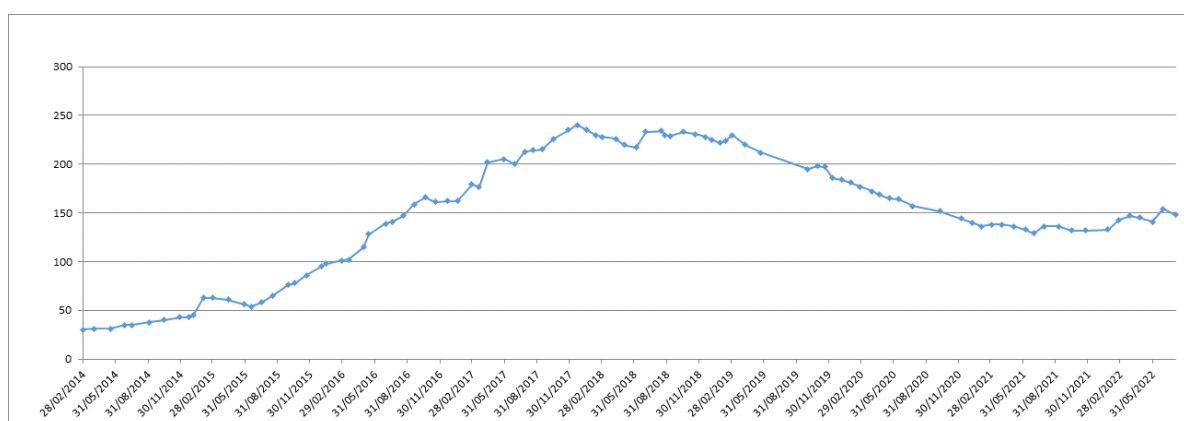
Fig 3. Evolution in the number of CelEx inmates on a three-months basis, 2014-2022

According to Thomas Renard (2020), the increase in the number of inmates monitored by CelEx from 2014 to 2018, on the one hand, and the share of returnees among CelEx inmates, on the other, indicate that *"the unprecedented magnitude of radicalisation in prison is linked to the unprecedented mobilisation for the jihad in Syria and Iraq"*.
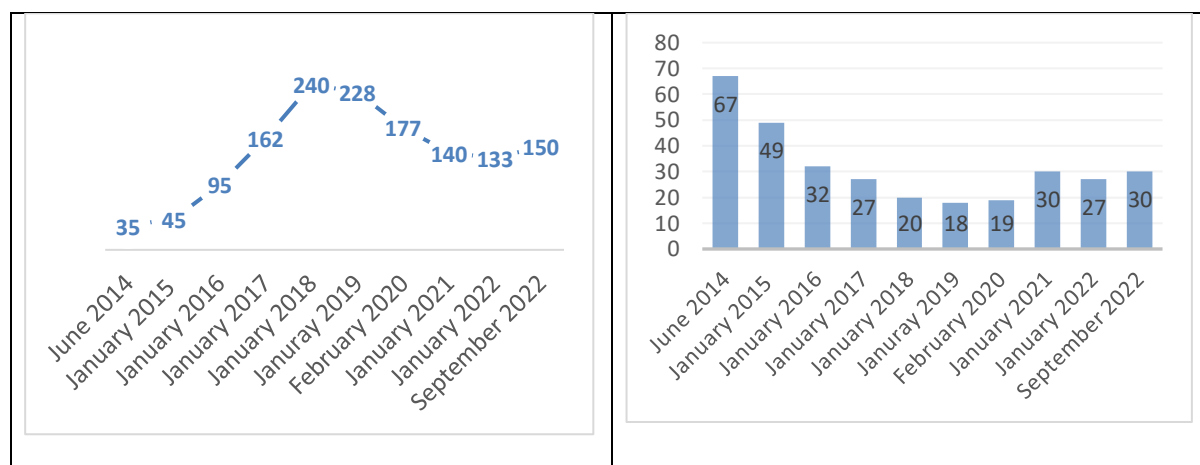
Fig. 4. Evolution in the number of CelEx inmates on a one-year-basis, 2014-2022

Fig. 5. Percentage of returnees among CelEx inmates, 2014-2022

While this statement is undoubtedly true, it should be added that both phenomena are also testimonies to a political choice that is little debated, even though it is eminently debatable: the choice to favour the paradigm of the war on terror over that of armed conflict and asymmetric

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d) they have a link to Belgium.

warfare, and the weapon of criminal law over the perhaps more appropriate tool of international humanitarian law (Cesoni, 2018). From this point of view, the "*unprecedented magnitude of radicalization in prison*" is also linked to, and conditioned by, firstly, the "*pernicious confusion*" (*idem*) between "*terrorist*" and "*fighter*", which are distinct *categories,* and secondly, *the* presupposition that all the people who left for Syria or wanted to do so in the aftermath of the failed Syrian revolution intended to join ISI, ISIL or IS and to take part in violent actions, either there or here.

Whatever the understanding, on September 5, 2022, there were 150 inmates in the Belgian prisons who were related to terrorism or "radicalisation": 129 men (86%) and 21 women (14%). The CelEx inmates made up 1.4% of the prison population: 1.2% of the male inmates, and 4.5% of the female inmates. 45 of the CelEx inmates, or 30%, were *returnees* labelled "FTF". While this was by far the largest category of female CelEx inmates (16 out of 21, i.e 76,2%), the same was not true among male CelEx inmates. In this second group, the most numerous categories were, in descending order: "potentially violent extremist"[49] (33 out of 129, i.e. 25,6%); "foreign terrorist fighters" (27 out of 129, i.e. 22,5%); "potentially violent extremist – EPI" (23 out of 129, i.e. 17,8%); "homegrown terrorist fighters" (15 out of 129, i.e. 11,6%); and "hate propagandist" (12 out of 129, i.e. 8,5%).

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[49] According to Royal Decree of April 23, 2018, "Potentially Violent Extremists" are with a link to Belgium who meet the following cumulative criteria: [a) + b) + at least 1 of c)]:
(a) the person has extremist views that justify the use of violence or coercion as a method of action in Belgium;
b) there are reliable indications that they intend to use violence in connection with the views mentioned in a);
c) they meet at least one of the following conditions:
1. systematic social contacts within extremist circles;
2. psychologically unstable;
3. violent criminal record (the person has committed crimes/offenses affecting or threatening the physical/psychological integrity of others)
4. the person has received training or instruction in the manufacture or use of explosives, firearms, other weapons or noxious or hazardous substances, or other specific methods and techniques that increase the risk of terrorist violence.
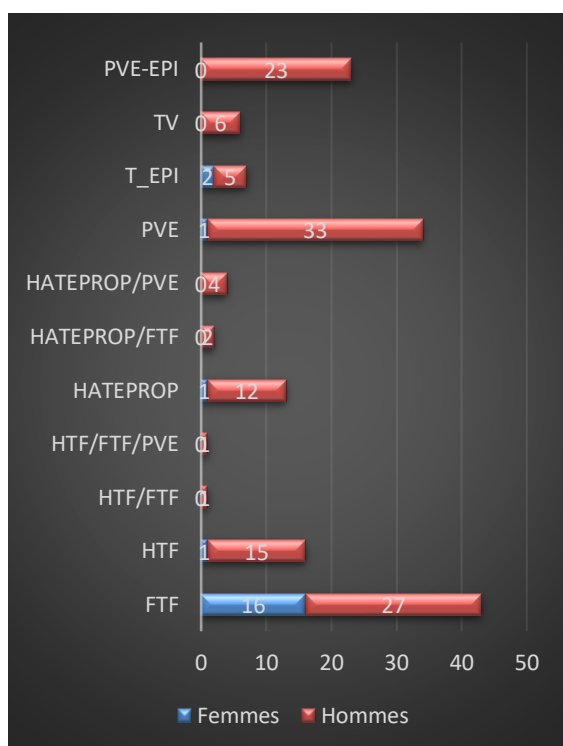
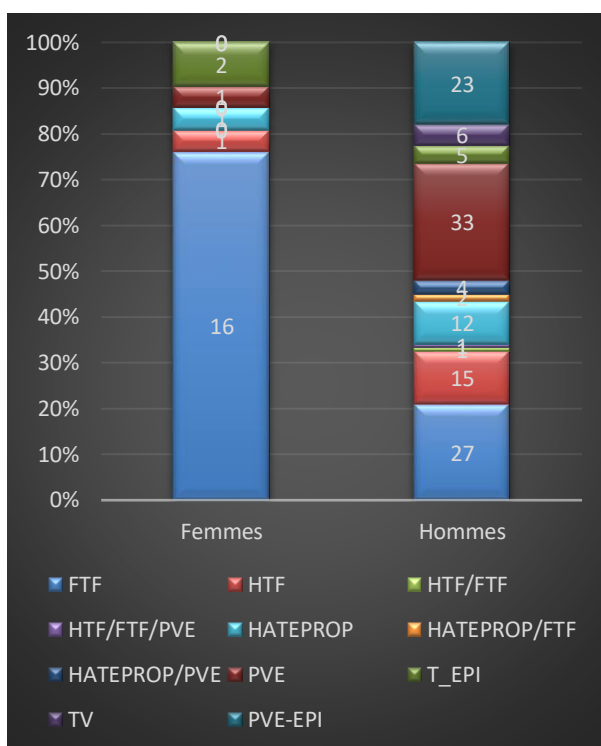Fig. 6 CelEx inmates by CUTA categories and gender, Sept. 5, 2022

Fig. 7 CelEx inmates by gender and CUTA categories (%), Sept. 5, 2022

An early analysis based on the data recorded by DG EPI on 15 March 2015 (N = 63) highlighted the youthfulness of most F- and T-detainees: 30% were under 25 years old and 56% under 30 years old, with a median age of 29 years. The changes in the ways in which Belgian nationality is transmitted or acquired explain why the percentage of Belgian citizens varied according to age: they represented 88% of F- and T-detainees who were less than 25 years old, 52% of those who were between 25 and 34 years old, and 20% of those who were 35 years old or more. Belgian and Moroccan nationals represented respectively 52% and 28% of the detainees linked to "radicalisation" or terrorism. With the exception of six, all Belgian F- and T-detainees had an immigrant background and were bi-national, most often Belgian-Moroccan bi-nationals (Brion, 2018).

A second analysis conducted on the data recorded by CelEx on December 18, 2018 (N = 243) yielded similar results, in a population that had become almost four times larger (N = 243). It also highlighted differences between CelEx inmates categorized C, on the one hand, and B or D, on the other.

- 61% of C's inmates were Belgian. The median age was low: one fifth were under 20 years old when they left or tried to leave Belgium to go to Syria; three fifths were under 25 years old. Most C inmates (62%) had entered prison in 2016, 2017 or 2018. C inmates were suspected of having been "radicalised" prior to their incarceration; they had been prosecuted or convicted for committing an offence; according to Thomas Renard (2020), most had been sentenced to 3-5 years in prison.

- Categories B and D were much more heterogeneous in terms of age, nationality, date of entry into prison, offences committed and sentences handed down.

These differences are a discreet trace of what "preemptive security" does to law and to prisoners' rights. Surveillance was extended to two different phenomena, more or less circumscribed in time: high-risk activism in the context of the Syrian conflict, on the one hand, and "radicalisation" in prison, on the other. Inmates categorized as B or D, while not prosecuted or convicted for having committed a terrorist offence or for having fought in a "jihadist conflict zone", were nevertheless included in the CelEx database –with consequences that will be described later– because they were suspected of being dangerous, based on signs of "radicalisation" or on general assumptions such as the crime-terror nexus hypothesis. The logic behind this inclusion is one of precaution which goes hand in hand with practices of preventative incapacitation. Technically, neutralisation takes various forms: refusal of any form of early release, but also, when these inmates arrive at the end of their sentences, execution of older sentences which had not been carried out due to overcrowding.

The same analysis revealed the very small number of foreign terrorism-related inmates who still had the right to reside in Belgium. While it is possible that some of them were never allowed to do so, this was not the case when the right of residence was withdrawn or its withdrawal was considered, situations that concerned one third of foreign inmates "assimilated to terrorism" (category B), and nearly one third of those labelled FTF (category C) (Brion, 2018). This finding is worrying, both in terms of respect for Human Rights and in terms of security. Firstly, while the average length of sentences handed down to C inmates indicates a shift from a logic of neutralisation to a logic of retribution or even correction, at least on the part of certain courts, the decisions to withdraw the right of residence show on the contrary that, on the part of other actors[50], the dominant logic remains that of neutralisation through removal from the Belgian territory, whatever the CUTA or CelEx category. Secondly, this logic applies also to younger inmates, despite their frequent dual nationality: indeed, most of them cannot renounce their second nationality (e.g. Moroccans); they therefore fulfil the conditions to be stripped of the Belgian one, before being, as foreigners, deprived of their right to reside in Belgium. Thirdly, as the authorities of the state whose nationality they retain (e.g. Morocco) refuse their "return" to a country where they were neither born nor raised, decisions depriving them of the Belgian nationality or right of residence just make them disenfranchised foreigners on the Belgian soil, filled with anger and a sense of injustice, and hard to monitor. Fourthly, these decisions convey the message that EU citizens whose parents or grandparents migrated from third countries are still "conditional citizens" (Brion, 2014), who can be stripped of their citizenship and related rights and liberties without having benefited from all the safeguards that are the hallmark of a rule of law.

As of November 2020, 398 people included in the CelEx database when detained had been released: in descending order, 122 (31%) "terrorists" (category A); 103 (26%) "FTFs" (category C); 63 (16%) "assimilated" (category B); 47 (12%) "radicalised" (category D); and 18 (5%) "hate

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[50] One thinks of the Immigration Office, but also of the College of General Prosecutors, whose confidential directive note dated May 3, 2018 we discovered thanks to interviews carried out by Coline Remacle.

preachers" (category E). The remaining ten percent were distributed among various CUTA simple or mixed categories: 5 HTFs ("homegrown terrorist fighters") and 5 "HTFs/terrorists"; 3 "hate preachers/terrorists"; 3 PVE ("potentially violent extremists"); 2 "hate preachers/FTFs"; 2 CTs ("convicted terrorists)"; 1 FTF/PVE; and 1 HTF/FTF. According to Thomas Renard, evaluations by CUTA suggest that while "a small number of die-hards will remain active across successive waves of jihadi militancy"; most convicts reportedly linked to terrorism, however, "simply leave terrorism behind after prison". The added value of rehabilitation programs "should perhaps be reconsidered if terrorists are found to disengage on their own", he argues. Indeed, the same could be said of prison: except for some early birds "moving in and out of the country at regular intervals, effectively commuting to jihad" (Hegghammer and Zelin, 2013), most FTFs had probably already left armed struggle or Jihad behind after leaving Syria.

4.3.4. Governing Extremist Offenders in Prison

As noted, the Action Plan sets out 10 action points. Particular attention will be paid to those relating to the management of detainees who have been included in the CelEx database and to those concerning actions to promote "de-radicalisation", "disengagement" and reintegration.

4.3.4.1. Observation and Risk Assessment: "Awareness and Basic Training for Better Detection"

a) A New Set of Missions for Penitentiary Personnel

According to Sallé and Chantraine (2014), prisons have become an "informational panopticon". Information and intelligence gathering through observation of prisoners by guards and members of the psycho-social services seems to be a new function of imprisonment and sentencing (Brion, 2001, 426: Brion, 2019), and correctional institutions have become the observation room of the intelligence services (Crahay, *forthcoming*). The accumulation of an "informational capital" is central to "premptive security" and its precautionary logic. As far as "radicalisation" is concerned, it is deemed to demonstrate the exceptionality and the seriousness of the threat; in a more mundane but equally worrying way, it is also supposed to help "classify" allegedly "radicalised" inmates: to help determine their dangerousness and constantly define and redefine the resources to be allocated to them according to how they respond to the "treatment" they (are forced to) receive. Despite the initial intentions, the so-called "specialised management of CelEx inmates" mainly consists of subjecting them to constant observation. In order to feed its system of categorisation and hierarchisation of behaviours, Plan P contributes to "extracting" institutional knowledge from these inmates through extensive observation and evaluation reports. An important part of this observation is carried out by prison guards and the PSS.

Sections 5 and 7 of the Plan P promote, respectively, "raising awareness and training with the aim of better detection" and "specialised management of radicalisation with the aim of an individualised approach". Downstream of the plan, "extremism instructions" sent by DG EPI to local directorates (LDs) on 2 April 2015 stated that LDs should supplement the information provided by intelligence and security services for each "terrorism-related inmate" with "their own

findings wherever relevant". Following the initial period of segregation, prison staff are required to systematically report observations to the prison administration – which will in turn pass it on to CelEx – by means of an observation sheet containing a series of standardised items. Requests for visits from immediate family members and relatives should be forwarded to CelEx for information; other requests for visits should be submitted to the RD for decision; the RD should assess them on the basis of information from the intelligence and security services, taking into account "networks that prisoners might create among themselves through their visitors".

A circular containing the instructions on extremism of 16 April 2016 as amended on 9 June 2017 provides details of the screening procedure to which terrorism-related inmates are to be subjected. The models to be used to draw up the observation sheets on the basis of which the assessment reports on "terrorism-related" inmates are completed are attached to the circular. They define the items to be taken into consideration: attitude (is the inmate "docile, rebellious, polite, demanding, arrogant"?); clothing, hairstyle, tattoos, wounds and visible scars on the forehead (allusion to tabaâ or zabiba, a forehead callus generated by the regular practice of prayer), other wounds; state of the cell; work setting; contacts with other inmates and possible problems with them; contacts with the staff and possible problems with them, in particular with female staff; contacts with the outside world (phone, correspondence, visits, financial support); feelings of frustration, feelings of being a victim of injustice, rejection of Western values, acceptance of violence as a solution, lack of empathy and compassion for non-members of the in-group; signs of deradicalisation) (Brion, 2019).

With the explicit scope of raising awareness and assisting with the evaluation of the necessity to establish individual security measures or to place an inmate within a D-Rad:ex unit, prison personnel were trained for radicalism-specific observation methods based on the « CoPPRa » (Community Policing and the Prevention of Radicalism) model originally initiated for police services[51]. One of the objectives of the training was to teach the staff of the specialised sections how to write observation reports for the local PSS and the Local Directorate (LD), and teach the staff of the specialised sections how to write observation reports for the Regional Directorate (RD) and the intelligence and security services. It has to be noted however that the CoPPRa model – and thus, the observation forms filled out by prison officers – are based on a pyramidal view of radicalisation along the lines of Moghaddam's "Staircase to terrorism". As noted before, this has however proven to be inadequate in that it supposes that "behavioural radicalisation" necessarily requires prior "cognitive radicalisation", and therefore that engagement in violent action can be prevented by keeping a firm grip on the "radicalisation" of ideas.

b) The Impacts of Observation Practices on Individual Trajectories

When first introduced in 2016, the observation sheet generated a lot of commotion among prison officers, giving way to the reporting of a multitude of information of all kinds. Fairly banal details such as eating a particular meal, wearing traditional clothing, contact with a fellow inmate or even the inmates' mood of the day, were suddenly interpreted through a logic of suspicion. As

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[51] CoPPRa, funded by the European Commission, was initiated in 2010 by the federal police to detect and manage early signs of radicalisation through partnerships with local communities.

one prison director testified, the practice has quickly turned into a "witch hunt" for some guards, where "the slightest fact [could] be interpreted as a sign". As an example, one guard declared herself able to recognize "invisible prayers" and said she was never mistaken in detecting a "radicalised" person: "you can see it in the posture, the look in his eyes, the distance he puts on, the length of the beard and the hair. The beard is trimmed in a certain way that indicates the level in the hierarchy. There are the very long beards, these are the preachers. Those with short beards, who blend in, are the little hands" (June 25, 2020). The main challenge linked to this new practice was thus the processing of the information by the prison administration. Gradually, however, interest in these observation forms has diminished, due to the redundancy of information communicated and the difficulty of distinguishing what constitutes a "radical" practice from an ordinary practice of Islam. Some guards have even decided to stop filling them out, convinced that they were fostering institutionalised Islamophobia.

The relationship to the observation missions entrusted to prison officers depends, however, on the type of regime in which they operate (Crahay, 2022). Indeed, in the concentration regime, the terrorist label and the "proselytising" status of inmates coupled with the ultra-secure detention regime crystallizes the idea of their necessary dangerousness. The reduction of contacts offers fewer possibilities of exchange allowing for personal bonds between staff and residents. Officers' knowledge on inmates is therefore rooted in mistrust rather than in an unbiased experience of their person. Caught in a vicious cycle, surveillance fosters suspicion which, in turn, supports the logic of maximizing surveillance (Guittet and Brion, 2017). Indeed, every little element of everyday life can be interpreted in a way which feeds the representation that their being labelled "terrorist", "terrorist-related' or "radicalised" forces them to embody: that of individuals rejecting democratic values, operating with the sole aim of recruiting to their cause and striving to conceal their true intentions. The use of the category of taqiya – which by definition focuses on suspicion or dissimulation – highlights and aptly signifies the institutionalisation and Islamicisation of suspicion.

Additionally, assessment missions are maintained by the members of the psycho-social services. The latter are responsible, in collaboration with the local management, for drawing up a bimonthly assessment of all CelEx inmates, inspired by the VERA-2R risk scale. As an item of this scale, the notion of taqiya is, for instance, an integral part of the assessment conducted by the PSS. Although, admittedly, the PSS already carries a mission of assessment, this new requirement places its members in a position of observation and control. This position is all the more uncomfortable since the investigations were initially intended to be conducted without informing the inmates of their purpose. As reported by the personnel, this trickery to obtain information in a roundabout way without directly addressing the issues of interest, in turn generated important mistrust towards the PSS on the part of the inmates.

Mistrust and suspicion, already strongly present in the prison universe (Chauvenet and others, 2008), are significantly amplified by counter-radicalisation policies. The institutionalisation of suspicion through the implementation of detection, intelligence, and surveillance policies is thus at immediate risk of leading to an infra-penalisation of Islam in prison (Brion, 2019), and is perceived by Muslims as State islamophobia. This is not without effect on inmates. Being labelled

a terrorist or "radicalised", changes the way one behaves in detention and transforms relationships with other inmates, disrupting trust and reinforcing the isolation of CelEx inmates: on the one hand, CelEx inmates progressively avoid other inmates for fear of being suspected of "radicalising" and proselytising, and are avoided by others who fear that this type of contact will be detrimental to them; on the other hand, the terrorist label forces inmates to develop certain mechanisms that can be seen as adaptations to the conditions of detention generated by the label itself.

One adaptation mechanism consists of minimising religious involvement, even regarding the most elementary practices of Islam such as prayer and fasting. During interviews with the PSS, some detainees declared that they perform their prayers in an irregular manner, that they have never completed Ramadan, that they drink alcohol or keep ham for their fellow inmates. They avoid contact with other prisoners of the Muslim faith and, even more so, with other prisoners. Due to the controversial image of Islam routinely associated with "radicalisation", these inmates try to neutralize the stigmatizing effects of the label linked to their religion by displaying a distant practice. This attitude must be understood as an adaptation strategy in the face of a reality where the rights to freedom of thought, conscience and religion seem to be compromised in the name of the fight against "radicalisation"[52]. Instead, the notion of taqiya, defined as "(attempting) to conceal or even hide one's belief in 'radical' Islam (as seen in behaviour, appearance or language) and adopting conforming behaviours (actions) that suggested adherence to Western norms and values", is used in an effort to establish inmates' degree of "radicalisation".

The second attitude is characterized by resignation and stems directly from the difficulty to access temporary leaves of absence or early release for the purposes of the preparation of reintegration. As our research shows, openings are indeed rare in the cases of CelEx inmates[53]. If the investigations can give rise to in-depth analyses which, for certain files, are met with positive opinions from the PSS and the local Directorate, the requests are, most of the time, refused at the level of the Directorate General for Detention (DGD). Stuck and stigmatized with the terrorist label, these inmates have given up on the idea of obtaining early release and are determined to go to the end of their sentence. Thus, driven by the relational difficulties with the PSS stemming from new assessment missions – fearing that cooperating could ultimately be detrimental to them -, as well as repeated refusals of temporary leaves and early release, some prisoners give up efforts to work towards reintegration with the PSS. In this context, it is important to note that the loss of faith in the judicial system and prison personnel which fuels this resignation, is ultimately liable to increase the very risk of recidivism that the DGD strives to prevent. Indeed, we can refer to Thomas Renard who, in addition to an altogether extremely low rate of terrorist recidivism, points out that the period in which ex-inmates are the most vulnerable to recidivism, is during the

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[52] The same phenomenon is observed in France by Franck Bulinge (2016, 191-192). In his eyes, guards themselves contribute "to the reaction of the prisoners, who change their mode of social expression according to the reactions of their environment, according to the systemic principle of autopoiesis". The French Prison Administration, he adds, has 'implicitly recognis[ed] the inadequacy of the initial tool' [observation sheets].

[53] Of the 24 inmates prison files accessed, 14 had applied at least once for furlough or prison leave. The opinions of the PSS and the management were not always positive at the first request. However, in 50% of the cases, the requests eventually resulted in positive opinions. The proportion of positive opinions is higher in the dispersal scheme. Systematically refused by the Direction Gestion de la Détention (DGD), it is the Tribunal d'Application des Peines (Court for the Execution of Sentences) that seems to be the actor that can unblock situations. In 3 cases, it granted the detainee a leave of absence or a leave of absence cycle via article 59.

months immediately following liberation. Yet, in the case of these inmates definitively liberated at the end of their sentence, this most vulnerable period is left without supervision and ultimately puts former inmates at a higher risk of reoffending.

4.3.4.2.   "A Well-Considered Placement Policy Based on Sensible Selection"

a)   Segregation, Dispersal and Individual Security Regimes

A brief presentation

There are three broad categories of regimes for convicted terrorists: placing all extremists together ("concentration"); dispersing them among the regular criminal population ("dispersal"); isolating them from each other and the regular criminal population ("isolation"). While full and permanent isolation is illegal, prison services across Europe have experimented with different regimes and it has become increasingly popular to have a mixed approach, which involves concentrating or separating the most dangerous inmates while dispersing the remainder (Basra, Neumann, 2020).

According to the literature, some of the main purposes of the selective placement of inmates are preventing the "radicalization" of (non-terrorist) inmates; preventing the maintenance and/or recreation of operational command structures; preventing the exploitation of the prison environment for the purpose of mobilising outside support; providing opportunities for disengagement (Neumann); but also preventing violent actions from the outside, aimed at freeing imprisoned members of the armed group and/or terrorism-related prisoners (or supposedly "radicalized" common-law prisoners); limiting, severing (or documenting, from a security services' perspective) links between free and imprisoned members of the armed groups (De Vito).

Based on the idea that prisons are a breeding ground for radicalisation and recruitment, the Belgian government set out to "prevent inmates from becoming radicalised while in prison" and "ensure a specialised management of individuals while in detention". In this perspective, action point 6 of the Plan P recommends a "well-considered placement policy based on sensible selection", consisting of dispersing in ordinary sections those "radicalised prisoners" for whom it seems that "the radicalisation process can be controlled", on the one hand, and of concentrating in specialised sections those prisoners who "constitute a serious risk in terms of radicalisation (active or passive) and/or who are (or continue to be) involved in armed struggle for ideological reasons", on the other. Within this mix, dispersal tries to stimulate disengagement by favouring contact with detainees who are not "radicalised", while concentration aims to limit the possibilities of recruitment, prevent the spreading of radical ideas and hamper "the entanglement of radical networks with 'ordinary' criminal networks".

In order to "create sufficient research capacity", it has been decided that six satellite teams, located in five prisons – Andenne, Lantin, Saint-Gilles, Bruges and Ghent– would manage "radicalised" prisoners who were not placed in a specialised section. These teams were intended to be unique in that a pair of PSS workers and a member of the management team would be specifically trained

to deal with "radicalised" detainees. The five facilities were thus seen as observation chambers for screening detainees and determining the most appropriate detention regime[54].

D-Rad:ex : an alternative to isolation?

Prisoners who represent "a constant threat to the internal and external security" of the institutions can be placed under a "special individual security regime" (SISR), in isolation.

Downstream of Plan P, the "extremism instructions" sent by the DG EPI to local directorates (LDs) in April 2015 stated that terrorism-related inmates should initially be placed in isolation for at least two months; assessments of the special individual security measure or regime (hereafter SISM/SISR) were to be forwarded to CelEx and the RD. In the wake of the 2014-2016 terrorist attacks, one of the first measures taken to combat "radicalisation" was to systematically subject CelEx inmates to a special individual security measure or regime. Many of them were kept in solitary confinement for months, and some even for years[55].

In fulfilment of the Plan P, two specialised "D-Rad:Ex" sections were commissioned in Ittre and Hasselt in April 2016, each with a capacity of twenty places. They were presented not only as places where the most "radicalised" inmates had to be concentrated, but also as an alternative to SISM and SISR, or even as a solution to allow CelEx inmates to exercise rights provided for by the Law of Principles (such as two hours a day in a yard, table visits or access to the gym). This was an illusion, for two reasons. Firstly, the introduction of the D-rad:ex sections did not eliminate the use of the SISR or SISM for terrorism-related prisoners dispersed in other prisons, nor did it reduce the length of the periods of isolation to which they were subjected. Secondly, while placement in a D-Rad:ex unit does not equal individual isolation in the sense of a SISR, the proximity between the two regimes cannot be ignored.

Although the Plan P itself insisted that these units should not be considered as maximum-security units, the opposite was observed with little evolution – if not for the progressive emptying of D-Rad:ex since 2020 (the unit in Ittre currently houses a total of 3 inmates, while the one in Hasselt is already empty). It is true that, in contrast with most inmates under SISR, D-Rad:ex inmates were first given access, under strict supervision and for two hours a day, to an individual prison yard with a surface area of twelve square meters. More recently, they were also given access to the main prison yard outside the hours provided for other inmates, at least when possible in terms of movement management. Held in individual cells within the secluded unit, they do not, however, have access to any other spaces. While efforts have been made to improve their living conditions – for example, by giving them the opportunity to be exposed to sunlight; or by setting up an office for intervention sessions and a makeshift gym – although equipped with an unreliable ventilation

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[54] An attempt was made at putting in place a specialised supervision programme oriented towards disengagement. The most "vulnerable" and "influenceable" CelEx inmates were identified as the target audience for this programme, as the inmates potentially most "open" to disengagement initiatives. While the first phase, effectively implemented in satellite facilities, focused more on information collection and observation, the rest of the program, which was geared towards actual disengagement work with inmates, never materialized and the project was thus abandoned

[55] At the time of our observations in Prison 2, one prisoner had been subject to an ISSR for almost four years, and another for three years; in Prison 3, a third had been subject to an ISSR for five years. Some S.A.D., working in prisons 2 and 3 but also in other prisons, testified providing support for prisoners that had been in isolation for up to four years.

system –, they are still far from matching those of an ordinary unit. The n + 1 security rule imposed on the movement of D-Rad:ex inmates has the effect of momentarily paralysing prison sections, imposing on the management staff daily negotiations regarding the rights that these inmates will be able to exercise or will have to sacrifice (worship *vs* gym *vs* courtyard *vs* visit). Correspondence and telephone numbers used are subjected to screening and authorisation. Besides, as prisons lack sufficient infrastructure, visits to D-Rad:ex inmates take place in the main visiting room, with the addition, however, of screens behind which they are required to sit. Again, not only does this special treatment have highly stigmatising effects on inmates and their families, it also undermines the inmates' right to maintain social contacts[56].

Despite – or because of – their highly restrictive nature, D-Rad:ex sections are dysfunctional with regards to their initial purposes. Confinement hardly hinders the dissemination of IS discourse, which is well known to all prisoners. But it does hinder the process of "de-radicalisation" of D-rad:ex inmates, while the existence of sections specifically dedicated to the war against "Islamic extremism (jihadism)" (Teper, 2018) contributes to their heroisation and to the polarisation of the prison population. As one inmate pointed out, prison policies that physically segregate Muslim inmates and Muslim inmates only, carry the risk of having them integrate the assigned label. As Benford and Snow (1988, 1992) have long demonstrated, feelings of injustice grounded in the lived experience of discrimination help build and maintain the "frames of injustice" that social movement organisations need to mobilize and take action, violent or not; this also applies to Islamic activism, inside and outside the walls (Wiktorowitz, 2004; Crettiez, 2001, 2017). Strong feelings of grievance towards perceived injustices and discrimination, unaddressed, can turn into anger and comfort radical beliefs (Bonelli & Carrié, 2018). Since imprisonment constitutes a process of radical exclusion from society, its effects contribute to making prisoners more vulnerable to influences. As for the security services, the regime is so strict that there is nothing to observe except the ability to resist a dehumanising environment.

b) Categorisation and Placement Decision: "Sensible" and "Individualised"?

The coordination of the screening of "detainees with a radicalised profile" and the decision of their placement in specialised units, is entrusted to the central PSS, in consultation with the services concerned (LDs, local PSSs, police and security services). As soon as an inmate is identified as "CelEx", the local PSS is given the task of drawing up a portrait, essentially identifying the characteristic features of their personality. The instrument chosen to do so is VERA-2 (Violent Extremism Risk Assessment-2) which, according to its developers, makes it possible to distinguish between "ideologues" ("unlikely to disengage"), "followers" ("possible to disengage"), and "criminal opportunists" ("likely to disengage"). This evaluation is intended to differentiate, categorise and prioritise behaviours according to a level of dangerousness. Specific training is

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[56] The criminal court of Brussels, following a summons filed by a group of CelEx inmates detained at the Ittre D-Rad:ex unit, recognized that the conditions to which the applicants were subjected were in fact constitutive of an SISR, without presenting the corresponding legal guarantees. Indeed, since the regime on D-Rad:ex sections is assimilated to an ordinary regime, it is not subjected to a bi-monthly re-evaluation in the same way as an SISR would be. The transfer to the D-Rad:ex section without the application of the SISR guarantees was thus recognized as contrary to the Law of Principles. The Belgian State was condemned to pay a symbolic compensation of one euro to the inmates residing in this section.

provided for the staff of the specialised sections and for the management and PSS of the prisons where they are located.

According to Fabienne Brion (2019), who refers to Léa Teper (2018), an undated note from DG EPI specifies, after recalling that the objective is the "containment" of certain "radical elements" or "extremists" in order to prevent the "radicalisation" of so-called "vulnerable inmates", that the basis for placement in a D-Rad:ex section is "Islamic (jihadist) extremism". Two categories of detainees are more particularly targeted: those who "represent a serious risk in terms of radicalisation", such as "zealous converts with a jihadist motive and recruiters with a jihadist motive"; and those who "engage (continue to engage) in armed struggle for religious and/or ideological religious and/or ideological motives". Various criteria for placement in a D-Rad:ex section are listed: having been convicted as a leader of a criminal organisation according to article 324ter, § 4 of the Penal Code; having already led a rebellion or collective action; intervening in discussions with other prisoners as a mediator or advocate defender; openly challenging the authority of the imam; being designated by other inmates or designated by other inmates or staff as the leader of his or her section; being a source of inspiration for other inmates considered radical; being placed under arrest or warrant, or convicted of one of the offenses defined in articles 140 § 2, 140bis and 140ter of the 2, 140bis and 140ter of the Criminal Code; having sought to establish contacts with "vulnerable detainees" who are later found to be "in the process of being radicalised or radicalised"; being considered as a recruiter by the staff. The placement decision is made by the Director General, based on the opinion of the RD. This decision cannot be subject to any appeal.

While, in principle, the above listed criteria – and especially the risk of proselytising – are supposed to motivate the choice of concentration and isolation rather than dispersal, it appears that, in fact, this choice is often based on the offences for which the detainees placed in the D-rad:ex sections had been convicted and the CelEx categories they had been assigned[57]. When behaviour in detention is taken into consideration, little to no consideration is given to facts behind qualifications and categorisations. The prevalent reference to convictions and the use of ready-made categories thus makes it inherently difficult to speak of an "individualised" approach. The risk of proselytising as a reason for concentration and segregation is part of a logic of preventive neutralisation that claims to be able to anticipate behaviour in prison on the basis of the grounds for conviction. Following this logic, it is not surprising that the management of D-rad:ex inmates is based on a security approach centred around the collection of information through surveillance and intelligence, on the one hand, and on the removal of inmates deemed to embody the danger generated by the clash of civilisations, on the other.

4.3.5. "Deradicalisation": The Systematic Implication of Muslim Counsellors

Recognising that there is little known on what "disengagement work" should look like, the Plan P nonetheless identifies two main areas of intervention for the specialised supervision of

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[57] Most D-Rad:ex inmates were convicted of having joined or attempted to join a jihadist combat zone, but also of having participated or assisted in the recruitment of others to such zones. They were therefore categorised simultaneously as FTFs and HTFs.

"radicalised" prisoners: the systematic involvement of Muslim chaplains and the development of "deradicalisation" and "disengagement" programmes. The first strand of work resulted in a change of status for faith and lay advisers working and/ or volunteering in prisons. The second objective remains more diffuse and mostly unachieved (see footnote 54), but has sometimes involved external services of social help to detainees, and will therefore be occasionally tackled in point 4.3.6.3 (Specific Incarceration Regimes, Specific Rules, Specific Ways of Working).

Heir to a long catholic tradition, the presence of chaplains and lay advisers in prisons aims at respecting the detainees' rights to freedom of religion and philosophy. Indeed, they offer the latters spiritual/ philosophical assistance, whether individual or collective – through the organisation of religious or secular celebrations or other collective activities. This right was confirmed by the Law of Principles (2005, art 71), which was followed by the royal decree of the 25th of October 2005. This royal decree marked the pluralisation of spiritual assistance in prisons in Belgium, as it recognised Muslim chaplains and lay advisers the same professional status – and therefore access and income – as Catholic chaplains who had been predominant until then. As we will see later, this relatively young professionalisation has impacts when it comes to negotiating their space in penal institutions.

If religion in prisons has long been seen as calming – and therefore appreciated as an element of "dynamic security"[58] (de Galembert, Béraud, Rostaing, 2018, 298) because of the support it gives prisoners –, the focus on "radicalisation" has increasingly made it suspicious, therefore, an aspect that should be controlled/ supervised, just as the people who practice it. More specifically, the "radicalisation" risk being associated with "radical interpretation of Islam" (Plan P, 16), the Plan P deems Muslim chaplains intervening in prisons necessary in the fight against "radicalisation". Indeed, these actors are targeted not only for their capacity to support detainees (mission of appeasement), but also for their ability to supervise practices (mission of ideological reframing) as well as detecting and reporting "radical" inmates (mission of detection). Hence, the status of Muslim chaplains, lay advisors and chaplains has been reviewed, resulting in the Royal Decree of the 17th of May 2019.

As Louis-Léon Christians (2019, 1) notes, the most visible part of this new decree is the increase of chaplains and advisers and the enhancement of their status. Muslim chaplains especially saw their workforce increase from 17 to 26 FTE (full-time equivalents). However, the core of the new decree targets "the trust relationship between the inmate and the chaplain, faith adviser or lay adviser" (AR, 60660, ch 2 rapport au Roi). In a context of "radical" drift suspicions, the royal decree traces a framework whose outline intends to ensure the trustworthiness of chaplains and lay advisers who have access to detainees "in a confidential setting" (Principle Law, 2005, art. 73 §2). Indeed, this framework should allow for the new detection and ideological reframing missions to be operational.

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[58] In the same direction, we can think of the deputy Lebeau (1812-1882), who would have said: "one village priest is worth more than a hundred policemen to maintain public order". Quoted by Keunings (2013, 44)

4.3.5.1. Security Attests

Among other criteria, the appointment of chaplains and lay advisers is conditioned to a security attest (art. 3 §3 1°) and to the condition of "respecting the democratic and constitutional order in their speech and acts" (art. 3 §1 4°). The security attest has a validity of 5 years (art. 3 §3)[59], after which it has to be renewed. However, the Minister of Justice can put an end to the designation of the chaplain or lay adviser at any time, amongst other reasons, "if the conditions enunciated in article 3 are no longer fulfilled" (art. 30). Among the actors we met, these requirements seem to be a problem mainly for Muslim chaplains, and to a lesser extent, for lay advisers, impacting their recruitment capacity/ process as well as their practice inside prisons.

When it comes to recruitment, some lay advisers regret the time gap between the moment they decide to hire someone and the moment the security attest arrives, resulting in the loss of some candidates.[60] They also had cases in which the people were not granted this attest. In the case of Muslim chaplains, the need for the security attest is seen as one of the main obstacles to effectively hire 26 FTE, as provided for by the royal decree. As the report "Mesures et Climat" from UNIA (2021) highlights, Muslim chaplains are not the only Muslim professionals facing difficulties, when it comes to security attests[61].

The problems are not only found at the recruitment phase, however. Indeed, Muslim chaplains and some lay advisers talked about colleagues who, from one day to another, lost access to the prisons they were working in, without it always being really clear to the person – or to the directors of the prisons they were working in – what could have been the cause of this[62]. Several mechanisms come into play inside and outside prisons and suggest that the problems stem from suspected "ideologies": some Muslim chaplains seem to be suspected of carrying (and spreading) "radical" ideologies, lay advisers of being too "human-rightist". The Catholic and Protestant chaplains saw this challenge as one "that others had to face" and that didn't impact them. In their own words, they benefit from the legitimacy given by a long tradition, which is probably reinforced by the fact many of them see themselves not as chaplain to prisoners, but prison chaplains, therefore being there for the personnel as well.

These experiences of lost access have an impact on – and are reflected in – the practice of the actors we met. For lay advisers, the main impact is their reluctance to insist on their right and duty to see prisoners who have been put in solitary confinement following an incident[63]. This is

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[59] Since the beginning of the 2000s, a security investigation was already taking place for these actors. The new decree adds the need for the attest to be renewed every five years.

[60] It is interesting to note that the supervised internship system put in place by Catholic chaplains allows them to introduce potential future chaplains to the work, while waiting for the attest.

[61] UNIA thus concludes its analysis regarding security attests, stating that: "In the climate of insecurity following the terrorist attacks, it is logical to seek the protection of the population at all costs. However, this must be done in respecting the fundamental rights of all citizens, *including those from the Maghreb, who have an Arabic-sounding name or who are Muslim.*" (we highlight) (Unia, 2021, 12)

[62] In the interviews, the Muslim chaplains and lay advisers who talk about colleagues who lost access to prisons do not always say if it was because of the loss of the security access. Sometimes, the phrasing can suggest that the attest was not lost, which could mean the access was lost based on art. 3 § 1 4°.

[63] Art. 73 §1 of the Law of Principles provides: "The persons referred to in article 72 [chaplains and lay advisers] have the right to visit detainees who have made a request in their living space, and to correspond with them without control within the prison. In compliance with security rules, they meet prisoners who request it, and *as a priority,*

reinforced by the seemingly general non-intervening attitude that the Foundation representing them has decided to take in case of conflicts[64].

Still, the problem of security attest is most acute for Muslim chaplains, as they need to proactively prevent suspicion on their regard both inside and outside the penal institutions. As we will see later, the need to regularly meet with directors seems to be a way to protect oneself from accusations inside. Precautionary dispositions have to be taken outside as well. Indeed, it seems that only taking part in a conference or going to certain Mosques has already resulted in the loss of security attests. Although an appeal system exists, the proceedings can be cumbersome, and the result uncertain[65]. As a consequence, one Muslim chaplain told us he was now careful about which Mosque and conferences he was going to, being afraid that he would end up being suspected of "radicalisation" by association (Ericson, 2008, 61) when he is not necessarily able to know in advance if the place and the people present are considered as suspicious. This thin ice on which Muslim chaplains appear to be constantly walking reminds what Ragazzi calls policed multiculturalism. This policed multiculturalism functions through multiple categories of suspicion and entails the category of the "trusted Muslim" – as well as the ones of the 'victim' or the 'risky' (2015, 731). The main techniques of government regarding the "trusted Muslim" – "necessary for the state to ensure its legitimacy" (731) – "are those of 'empowerment', 'partnership' and 'community policing'" (734). However, Ragazzi points out that, "[i]f 'trusted Muslims' fail to align with the interests of professionals of security or professionals of politics, they can rapidly fall in the 'victim' or 'risky' categories: the 'politics of recognition' can quickly become a 'politics of reconnaissance' in the military sense of the term" (734). Hence, these "Muslim whose 'conduct' can be 'conducted' [...] occupy a similar function to that of the local leaders trusted by colonial powers to properly carry out the demands of indirect rule" (731). The situation for chaplains, or its representative organism, the Exécutif des Musulmans de Belgique, is not made easier since the latter and/ or its successive (vice-)presidents[66] have been accused of links with foreign lands, of "fiddling" or of promoting extremist views.

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prisoners who are placed in solitary confinement following a special security measure, an individual security regime individual or a disciplinary sanction." (we highlight).

[64] This tendency to non-intervention in localised "personal" conflicts is justified, it seems, by the wish to avoid a general conflict between lay advisors and prison staff responsible for security.

[65] From the analysis made by UNIA of several appeal cases to lost or suspended security attests, we learn that: "The technical and formal nature of the procedure as well as the deadline for lodging the appeal, which may be very short (in some cases, only 8 days), constitute significant obstacles. For those who do not have the financial means to pay for a lawyer, this obstacle is even more difficult to overcome. Furthermore, few lawyers master this particularly technical subject."

Another problem is the difficulty for the people targeted to understand what they have been accused of. The applications received by Unia often presented the same motivation, namely the fact that the interested parties presented "links with radical circles". When consulting their file with the appeals body, the applicants did not however have access to the whole of it, so that it was very difficult for them to defend themselves adequately. People who have lost their appeal clearly mention the difficulty of having to defend oneself against accusations that do not specify what which they are accused of.

These cumulative obstacles worry us in terms of the rights of defence and the right to an effective appeal. Unia draws attention to the judgment of the Council of State of January 11, 2018 […] which recalls the need to respect the rights of the defence and in particular the principle of prior hearing ("audi alteram partem")."
https://www.unia.be/files/Documenten/Publicaties_docs/2021-03_Mesures_et_climat_TERAD_2020_FR_maro.pdf

[66] In 2020, Salah Echallaoui put an end to his mandate of vice-president following accusations of links with Morocco. In 2021, Mehmet Üstün was accused of spreading radical ideas. There seems to be no dialogue anymore between the Minister of Justice, Vincent van Quickenborne and the EMB, other than through the press – which a chaplain

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4.3.5.2. Professional Secret

Muslim chaplains were targeted partly for their ability to detect "problems relative to radicalisation" (Plan P, 17). The Plan P was indeed regretting the absence of any form of official report to authorities. This absence of reports is due to professional secrecy: chaplains and lay advisers are among the professionals that have always had to respect it, its breach being penalised (art. 458 Penal Code). Their mission is one of assistance, i.e. *care* for prisoners. If this is reminded in the new status of chaplains and lay advisers, the emphasis is nonetheless put on its limits, i.e. the state of necessity. This emphasis is described by a Catholic chaplain as the suggestion that "it would be very much appreciated that [chaplains and lay advisers] play the submarine in the cells". This is stressed by the fact that the training on "radicalisation" organised for chaplains (other than Muslim) and lay advisers was about detection, and that some Muslim chaplains had to justify at the federal level why they did not report some cases. These invitations and security accents show how "*flexible*" – to re-use the word of a Muslim chaplain – the notion of state of necessity becomes in an environment where suspicion and surveillance prevail. Professional secrecy being the necessary condition to the ability of building trust relationships, this new emphasis on the state of necessity in service of a detection mission has a direct impact on the work of chaplains and lay advisers.

Another pressure comes from directors and guards. Guards, who have to daily fill in observation forms, are sometimes unsure about the meaning of what they have seen or found. Some choose to call the Muslim chaplain so he can evaluate the practice or material found. This could be seen as positive as it translates an attitude from guards that refuses lumping together various situations. However, lay advisers and Catholic chaplains denounce this practice, as it places chaplains in a position of surveillance and control, therefore breaching the trust built through spiritual assistance. Yet, three mechanisms probably come into play and explain why Muslim chaplains sometimes collaborate in those instances.

First, any information reporting "radical" material or "radical" practice could result in significant obstacles to the prisoners suspected on their rehabilitation process. In the absence of relevant and precise enough knowledge, the observations made by guards could be written down vaguely and later interpreted negatively. Indeed, as will be seen in point 4.3.7. (Delayed Decision-Making in Early Release Procedures: a Denial of Justice?), an analysis of the TAP files has shown that much of the information circulating about these detainees and which appear throughout the decision-making and opinion-providing bodies is already characterised. It is then impossible to know which incident, text, practice is denounced, and therefore, extremely difficult for people accused of "radicalism" to defend themselves.

Second, as we have seen, Muslim chaplains are not exempt from being suspected themselves. During the ethnographies, it was observed that in two carceral institutions, both characterised by their high level of security and the high discretionary power of guards, the silence of Muslim

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interviewed in 2022 deplored. In September 2022, the Belgian state was condemned for pushing Salah Echallaoui to quit. Vincent van Quickenborne has said he would appeal, which then led the EMB to lodge a complaint in front of various international organisations of human rights defense.

chaplains after they met inmates was interpreted as suspicious and could lead to complaints to directors. An effective way of preventing being accused of spreading themselves "radical" ideologies is then for Muslim chaplains to meet directors more proactively and "talk about the kind of work they do". It is important to note, however, that directors have to provide an evaluation about CelEx inmates every other month, hence they need information. Therefore, these meetings can take on another dimension in the eyes of detainees filed as "radicalised". Indeed, this evaluation requirement can persuade some of these directors to ask "how the encounter went" not only to Muslim chaplains, but also other chaplains and lay advisers after they met a CelEx prisoner.

Finally, all Muslim chaplains encountered for interviews explained having to research regularly on theological texts and speeches said to have been held on some Mosque, and therefore having to work outside of prisons as well. In some institutions, it was observed through the ethnographies that directors tend to more proactively look for the Muslim chaplains than for other chaplains and lay advisors, sometimes complaining when they are not to be found. These accusations of hours supposedly not worked, probably exacerbated by the 2019 Decree's provisions that "all absences are directly reported to the director of the prison" and that "competent representative bodies put any [absence] justifying document at the disposal of the General Direction" (art.11), have sometimes led some Muslim chaplains having to justify, more than their colleagues from other faiths and philosophical movements, the hours worked outside – and therefore, going into the content of their work with directors.

However, the breach of secrecy has consequences. Indeed, hanging in the balance is the possibility for chaplains and lay advisors to assure detainees they can be trusted. The most dramatic consequence was that a Muslim chaplain had to be discharged, as his safety within the carceral institution was impossible to maintain after he shared some information. In other cases, lay advisers, Catholic and Protestant chaplains all testify being called for by Muslim inmates who were either afraid of having a file on them opened for calling the Muslim chaplain, or that what they would share would then be reported somewhere else. When it comes to Muslim chaplains, several mentioned taking "safety measures" for themselves outside.

4.3.5.3. Spiritual Assistance on Demand

Spiritual and philosophical assistance in prison is a right that inmates keep despite their incarceration. This is offered on demand. Yet, chaplains and lay advisers face two challenges when it comes to this specificity: access and proactivity.

Catholic chaplains, mainly, lament the fact that access to prisoners is increasingly difficult. With the pluralisation of spiritual assistance, the right to possess the keys was lost for chaplains and lay advisers. Besides, with rationalisation efforts, in closed carceral institutions, access for chaplains to cells or access for prisoners to the office of chaplains and lay advisers is significantly reduced. Indeed, any movement can paralyse the prison, therefore impacting how many inmates chaplains and advisers can see in a day. This is aggravated in the case of detainees described as "radicalised". Indeed, not only is the prison then "paralysed" but the movement of the latters is

only made possible when the number of guards supervising them is of one person more than the number of detainees walking[67]. In some institutions, access to prisoners tends to be limited to office hour, i.e. 9 to 5. This is regretted by many chaplains who saw the benefits of being there in the late afternoon and evening, "when tensions and frustrations of the day are ready to explode" – reminding us their role in dynamic security.

On the other hand, Muslim chaplains face a challenge regarding a certain proactivity with CelEx prisoners. As no one is allowed to ask of which faith prisoners are, chaplains and lay advisers should not either. However, when it comes to CelEx prisoners, Muslim chaplains tend to be sent to/ go proactively meet these persons. This can create mistrust and/ or defiance, especially for those who are suspected of "radicalisation", not condemned for any terrorist infraction, and not aware of being put on a surveillance list. Regarding inmates who are under long-term confinement measures and aware of the surveillance they are subjected to, Muslim chaplains are sent to accompany them regularly[68], becoming one of the few professionals and people these prisoners see[69]. However, the intensity of their meetings, together with the often known general difficulty of access to other detainees do not go unnoticed. This can again create suspicions that assistance is offered for the sake of surveillance (detection) and control ("reformatting", as a Muslim chaplain said), more than for the sake of care. The trust relationship between Muslim chaplains and inmates is again severed. As a consequence, some Muslim inmates turn to chaplains and advisers other than Muslim for fear of consequences. Yet, one should note that most Muslim chaplains we met attested to the possibilities of overcoming this initial distrust with time, when they could prove their dedication to care for prisoners. Care, which, in some cases, needs to go way further than for detainees other than filed for "radicalisation", because the obstacles on the way to reintegration seem to be countless and almost insurmountable with the traditional requirements only.

4.3.6. Reintegration: "Reinforced Cooperation with Local and Federated Entities"?

The Plan P vowed to reinforce links to and with local and federated entities so as to "carefully prepare detainees to their transition from prison to society as well as to make sure that they can build a new existence and develop a new social network after their incarceration in order to prevent recidivism and their going back to extremism" (2015, 19). In Belgium, if security missions are still a federal competence, help and support to prisoners, however, lies with federated (and local) entities.

In the Fédération Wallonie-Bruxelles, social help to detainees in prison, whether they are in preventive detention or condemned, is provided for by a series of "external services", i.e. services whose employees are not employed by the penitentiary administration but who work, partly, within carceral institutions with prisoners. They also work outside, in the offices of their structures,

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[67] So, for the movement of one inmate filed as "radicalised", two guards are needed, for the movement of two, three guards are needed, etc.

[68] One of them was long assigned to D-Rad:ex only, when this section never comprised of 20 prisoners, its maximum capacity. As a comparison, other carceral establishments might have only one Muslim counsellor (not necessarily working full time) for a general population of 300 to 900.

[69] In this regard, unlike lay advisers who testify having difficulties to access prisoners in solitary confinement

where they can meet (ex-) prisoners and/ or people who have a modality of their sentence's enforcement. In what follows below, we will focus on the services whose missions are providing social help, psychological help and help to bonds ("aide aux liens") and who do so on a voluntary basis from detainees. These "external services" differ from the PSS and the justice assistants inasmuch as PSS and justice assistants are mandated by penal institutions; PSS have an evaluative mission and justice assistants a double mission of help and control, while external services are there only to provide help to prisoners and have no evaluation missions.

The institutional landscape in which these services find themselves is complex (Nederlandt, Remacle, 2019, 387-398). In our analysis, we focused on three types of services: the S.A.D., the specific services and the CAPREV. The services referred to as "classical" S.A.D. offer non-specialised psychosocial help to all persons imprisoned in the penitentiary institutions of the judiciary division in which they are officially recognized and intervene. These services are organised as non-profit organisations and are officially recognised by the French Community. The specific services specialise on some issues (such as addiction) or on specific publics (such as prisoners coming from a certain municipality). They can usually intervene in more than one judiciary division. The authorities officially recognizing them and/ or funding them are varied, depending on their specificity and the type of work they do. They can be linked to municipalities, regions, receive European social funds, etc. The CAPREV, created in 2016 and operational since January 2017, provides psychosocial help to persons under the jurisdiction of a court and (ex-)prisoners who are filed as being "radicalised" (CAPREV, 2021, p. 5).

4.3.6.1. "Radicalisation" and its Impacts on Funding

In order to address the perceived problem of "radicalisation" in prisons, the WBFG (Wallonia-Brussels Federation Government) first created the RAR (Réseau Anti-Radicalisme) in 2015, which then developed into the "Réseau de prise en charge des extrémismes et des radicalismes violents", comprising of two operational services, one of them being the CAPREV[70] (CAPREV, 2021, 6-7). Inscribed within the general mission of the AGMJ, the CAPREV's missions are to "contribute to social inclusion and to the protection of society, by proposing individual and personalised support, to private individuals and professionals affected by themes of violent extremisms" (CAPREV, 2021, 20). Amongst its public are detainees and people under the jurisdiction of a court. Within this particular mission, the CAPREV multidisciplinary team intervenes in any carceral establishment within the judiciary divisions of the WFB at the demand of a prisoner listed as "radicalised". Unlike other external services, however, when providing help to someone under the jurisdiction of a court, they systematically sign a tripartite convention with this person, the justice assistant attached to the case and their service[71]. This convention makes provision for six factual types of information the actors exchange, four of which are listed in their report (CAPREV, 2021, 22): the dates of meeting with the beneficiary, whether there are (un)justified absences,

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[70] CAPREV : Centre d'Aide et de Prise en charge de toute personne concernée par Extrémismes et Radicalismes Violents. This could translate to Centre of Help and Care for any person touched by Violent Radical Extremism.
[71] Such conventions are sometimes signed with other S.A.D., but justice assistants interviewed said they would not necessarily prioritise the signature of such conventions with other actors than the CAPREV, even when these services follow a person filed as "radicalised".

information about the one-sided end of the support and situations that imply a serious risk for the beneficiary or for other people.

Alongside the CAPREV, some S.A.D. received specific funding in 2018 for working with prisoners filed as "radicalised"[72]. In our sample, four S.A.D. received such subventions and we interviewed five of their workers. Out of these five employees, four of them are identified as working specifically with the prisoners filed as "radicalised", and are sometimes even referring to themselves as "radicalism referents". Three of these workers are intervening in prisons in which exist high-security wings, to which access is limited. One is working in a semi-open carceral institution but access to prisoners filed as "radicalised" is also limited. The fifth worker of these S.A.D. we interviewed explained their organisation has made the choice not to have a specific worker assigned to this targeted public. Although that person justified this decision on ethical grounds, one should note that in the carceral institutions in which the workers of this organisation are intervening, there is no structural need for a specific person to be supporting prisoners filed as "radicalised", access being granted equally to all of these workers, no matter the security regime the prisoners they support are under.

Workers – whether from the CAPREV or from an S.A.D. – specifically tasked with helping detainees filed as "radicalised" say the advantage of their role for these specific inmates is that "instead of waiting 6 months to one year to be able to see someone", they can have someone there for them "within a month" (16 et 17) or even "the following week" (11). This, however, creates negative feedback from prisoners in general, who see resources allocated to a tiny proportion of inmates, while they are on very long waiting lists to see social workers and work on their reintegration plan[73]. Thus, a social worker (1) explains: "For me, [...] this way of isolating people said to be "terro", it's creating proselytism in regards to other inmates. [Where I work], they are 450, and there are 8 of them [in isolation regime], and the 442 other inmates are on waiting lists to see social workers, external services, to work on their reintegration plan. They don't see anyone. And the administration hires one person for eight people. [...] So I'm in front of people who tell me 'what should I blow up to be able to see a social worker?'". Another social worker (3) adds: "I have the feeling it is a test public. [...]. Strangely, it is a public for which it is possible to get colossal budgets [...] but at the same time, they have rights to nothing in the end! And other detainees, who represent... I think about addicts, for example, who have a high proportion of recidivism, they don't get these kinds of budgets and research. So it's a discrimination in both ways".

Although the specific "radicalisation prevention" funding to S.A.D. was not renewed anymore, but sometimes translated into structural funding, the "radicalism referent" role perpetuates in

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[72] From the information we collected, eight of the seventeen "classical" S.A.D. received specific funding, as well as the Relais Enfants-Parents. While we know that one of these services did not receive specific funding, we cannot exclude that others also received funds and that we were not given the information.

[73] On this matter, see the article of Olivia Nederlandt and Coline Remacle already mentioned, as well as the two reports of the CAAP (Concertation des associations actives en prison), quoted in the same article, « L'offre de service faite aux personnes détenues dans les établissements pénitentiaires de Wallonie et de Bruxelles » (2015) and « Sortir de prison…vers une transition réussie ? Des dispositifs existants en matière de (ré)insertion à l'hypothèse des "maisons de transition" » (2017). Amongst other problems, is highlighted the significant lack of services offering social help to detainees, compared to the amount of detainees. (Nederlandt, Remacle, 2019, 415)

some cases, as these workers have already started to follow up the beneficiaries and have integrated the special working habits linked to the particular security requirements around these persons.

4.3.6.2. Specific Incarceration Regimes, Specific Rules, Specific Ways of Working

When asked if there are specificities to the work they do with prisoners filed as "radicalised", all the actors from the "classical" S.A.D., specific services and the CAPREV answer they "haven't changed their way of working" (16 & 17), "their frame of intervention" (4) or "their line of conduct" (9 & 10). The reason given for this is that their work can be effective *only* if they consider all aspects of a person's life, and support their beneficiaries as people who "have to reintegrate a family, who [sometimes] have a problem with training/ education, [sometimes] have problems for finding a place to stay, who maybe had drugs/ alcohol problems, maybe have a judicial history, maybe had previously committed immoral acts, etc" (7). Therefore, reducing the prisoners they support to only one issue – here, "radicalisation" – would fail to take all necessary aspects into account for support to be effective. Several of these psychosocial actors were occasionally questioning the need for specific follow-ups, asking if "differentiating these people in the way they are supported will help them get closer to the norm" (7), and saying that the problem with specifying help is that "it stigmatises" (5).

Yet, these workers also often attest to the need of adapting their working practices when working with inmates filed as "radicalised". The particularities, however, stem mostly from the repressive measures taken against these detainees, *not* from specificities that would be inherent to the perceived issue of "radicalisation". Indeed, according to these psychosocial actors, being labelled "radicalised" or "terrorist" has three main impacts on the carceral experiences of the inmates: isolation, facing opacity while being under constant surveillance and a lack of perspectives. These three aspects influence the work of S.A.D., specific services and the CAPREV.

a) Isolation

As seen before, one of the regular consequences of being condemned for offences linked to terrorism, as well as being suspected of "radicalisation" is being put in isolation for long periods of time. While under this regime, few contacts are possible for these inmates and there are very few activities they can attend to. It is also almost impossible to follow trainings or have any work within carceral institutions. One of the workers interviewed described these conditions as "putting [these inmates] into the fridge" (5). Yet, the isolation is not reduced to these cells. Following cases of people being added to the prisons' list of suspicion or the CelEx list for what seems to be only "talking to the wrong person" (5), other inmates now try to protect themselves from being suspected of holding similar views that are seen as ideologically problematic. Therefore, they do not talk to those inmates they know are on the lists; the latter facing social isolation when they are in (more) open regimes.

This social isolation is made worse when these prisoners experience further isolation from their family, either because they are forbidden to contact some of their members, visits are possible only under the surveillance of guards or because families "cut the ties" "to protect themselves from the gaze of relatives, neighbours and society in general", or even from criminalisation (9 & 10). Whereas the workers from S.A.D. and specific services are used to see families taking reputational self-protecting measures when one of their members committed a serious offence, they consider the need for families to protect themselves from criminalisation by association as specific to the repression of "radicalisation" and sometimes denounce it[74], saying families were first abandoned when they called for help, and then criminalised, which led to a mistrust towards the different institutions (5, 9, 10, 12).

The impact of the isolation of the detainees filed as "radicalised" is threefold, when it comes to the work of the S.A.D., specific services and the CAPREV. First, these psychosocial actors see the need for more intense follow-ups, i.e., follow-ups that are both more regular and involve more than one worker, in order to prevent further negative consequences to this isolation[75].

Second, isolation creates and/ or increases a need for therapeutic help[76]. While the most serious consequences are relatively rare[77], these workers observe that, because of isolation, inmates present troubles such as stuttering, incapacity to communicate properly, tendencies to paranoia, personality disorders, etc. They also observe consequences after isolation, such as agoraphobias (and therefore inability to work or attend any kind of training program). Depending on how serious the symptoms and disorders are, these workers will focus solely on psychotherapeutic work or also work on building a reintegration plan with the prisoners. It is also for this reason that several see the advantage of working by teams of two; a social worker together with a psychotherapist. Others, who work alone due to structural reasons, define their practice as providing psychosocial help, more than either psychological or social help.

These two first aspects are also bringing ethical questions for these workers. One said some of her beneficiaries in long-term isolation regime put a stop to their meetings because they saw the fact that they were followed by a therapist was being used to justify the prolongation of their

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[74] Although data needed for statistics were not made available to us, a justice assistant explained that out of her 20 follow-ups of people filed as "radicalised", all of them had at least one family member also condemned or under investigation. On this point, see also point 4.2.4.1. Investigating Acts of Terrorism of this report.

[75] Many of the psychosocial workers interviewed said they would meet prisoners in isolation cells two to four times a month. In comparison, when they meet other inmates, they tend to meet them only once a month. Furthermore, when several actors are meeting a same person, instead of rationalising things as they usually would do by questioning why adding one more follow-up, here, they see the need for this multitude of actors, with some wishing inmates could even see one person a day.

[76] Although focusing on long detentions of "common rights" detainees, and not isolation regimes, Noali notes that those detainees imprisoned for long sentences, are "likely, like victims of prolonged detention of any other nature, to present all the clinical symptoms of post-traumatic stress disorder (PTSD), which not only threatens to affect heavily and irreversibly their mental equilibrium, but also their chances of (re)integration and of desisting from crime" (2016, 2). He therefore talks about the "sentence after the sentence". Because the phenomenon seems to be too little investigated, he calls for more studies on the matter.

[77] Even though they are rare, they are nonetheless dramatic enough to question the practice. One of the prisoners followed by an S.A.D. was committed to one of carceral psychiatric wing after being isolated for suspicions of "radicalisation" (he was removed from the suspicion lists after a couple of months). The said detainee was later diagnosed with the Ganser syndrome, a syndrome mostly characterised by the approximative answers given to the simplest questions (Andersen, Sestoft, Lillebaek, 2001; Dieguez, 2018). Another social worker said he was helping someone who had been acquitted after years of trial and isolation regime, and who now lives half in the streets because of his trauma and having lost all ties to his relatives.

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isolation regime (7). While this worker said she could not put an end to their sessions herself, because she saw how much the people needed it, she was agreeing that her presence was somehow instrumentalised by the carceral institution against these detainees. Another worker (3) said she finds it problematic that actors around certain detainees are multiplied to compensate for the rights they have been deprived from. In her opinion, the first thing to do would be "to give them back their rights, like for other prisoners".

Thirdly, the work with families can be impacted too. As "families are the first place [they] go to for building a reintegration plan" but links to families have often been severed, there is a need to "rebuild the relationships" (11), "support and reassure families in the process of reintegration" (9 & 10). The impact of regular (foreseen) police visits at home once their member is out of prison is particularly heavy[78] – even more so when young children are there – and can create doubts as to welcoming this person back into their home or not. What is more, families sometimes face administrative problems if they welcome their member home and have little means to defend themselves (see point "When the perspective is an endless sentence"). Specific services, especially, seemed to pay particular attention in supporting families.

b) Opacity vs Ubiquity of the Surveillance Gaze

Until 2019, it was not systematically told to filed inmates that they were on a "suspicion file" (whether CelEx or a prison file). Several S.A.D. testify that they did not know either that some of the prisoners were suspected of "radicalisation" and only reached to the conclusion after seeing numerous of what was, to them, unexplainable negative answers to demands of temporary leave of absence. The same actors say that other inmates, condemned for offences linked to terrorism, although they know they are filed, are still facing opacity as they receive "always the same [evaluation] document […] saying the situation ha[s] not changed", "something that [is] ready-made, quite depersonalising" (5). In general, S.A.D. supporting inmates filed as "radicalised" – whether or not they are condemned for offences linked to terrorism – say the reintegration plans presented "[are] never enough" "with [the inmates] having to justify things that aren't anything" (8).

This perplexes these psychosocial workers, several of whom express the need to develop a "better understanding of the judiciary process" as a result of "the obscure things that are happening behind the scenes or at the level of the DGD, etc" (16 & 17). Besides deepening their understanding, several say they call on lawyers more than they do in other cases. They do so either to know if what the inmates are living "is legal" (8), to provide information to the lawyers of the beneficiary they meet, hoping these lawyers can unblock situations that they cannot (9 & 10, 5, see also point below "When the perspective is an endless sentence"). It has also happened that they go together with a lawyer from their service to directly defend the rights of their

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[78] On this point, it is worth noting that, if in some of the police forces studied by the VUB team, many police officers consistently wear body armour for instance so as to feel more secure, these same body armours have, according to S.A.D. and specific services, a traumatic impact on families of detainees, and particularly on children. This point should be taken into account in the balance of any evaluation of this practice.

beneficiaries in any institution or service that would deny these rights (16 & 17, see also point below "When the perspective is an endless sentence").

Contrasting with this opacity they face, which causes them a lot of problems to defend themselves and/ or to prepare a reintegration plan deemed robust enough, the inmates filed as "radicalised" experience the ubiquity of the surveillance gaze, as has been seen in previous points and as is pointed out by several psychosocial actors. While most of the S.A.D. managed to defend the confidentiality of their meetings with these beneficiaries, it is not the case for all of them[79]. Besides, after their meetings, questions are sometimes asked either by directors or by guards who want to know "how it went" – which is similar to what chaplains and lay advisers experience. Furthermore, before being allowed to call any number while working on the reintegration plan of these detainees, many of these workers say they need to ask for permission – which is given within one to three weeks –, including when they call well-known public institutions (such as Actiris or the Forem), and are sometimes asked why they want to call these numbers. All these aspects touch on their professional secret, which is either breached or has to be more proactively defended than in other cases. The last aspect also creates further delays and difficulties to build reintegration plans – which, at the same time, have to be more detailed and complete than others for them to be granted any modality of the sentence's enforcement.

The combination of general opacity together with the ubiquity of the security gaze creates a paranoid environment in which it can be difficult to build the trust relationship needed for these psychosocial actors to do their job properly. This issue of trust manifests itself in various ways.

In some cases, it is hard for detainees to trust the psychosocial workers they meet. The problem is made more acute where doubt has been cast on the possibility itself for these prisoners to receive support to reintegration. Indeed, the role of justice assistants with prisoners filed as "radicalised" seems to have been focused more on control and information-collecting than providing help – even though their mission is of control *and* help. As an example, a justice assistant told us that in the first years of following these cases, they had "to play like acrobats" (14 & 15) to make inquiries and social investigations with the prisoners themselves or their families, since questions were asked but most of the inmates filed as "radicalised" would not obtain even the shortest temporary leave of absence anyway. Hence, the families and prisoners understood these investigations were led for intelligence purposes, not for assessing a situation and adapting help and control accordingly. This, together with the information collecting missions of PSS made it hard for people to believe help offers could be sincere and benevolent. Not only did some stop wanting to meet PSS, some S.A.D. saw themselves impacted by the lack of trust ensuing from the PSS and justice assistant roles being reduced to control and information collecting. This was especially denounced in two of the carceral institutions in which the Césure programme[80] had

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[79] Some have experienced constantly "having an agent in front of the door" (8) with the agent "coming in and out, and passing his nose through the door" while meeting a beneficiary, others can only meet the inmates at the gates where at least one agent can be present as well (3), and others, still, can meet these prisoners only in a room from which nothing can be heard outside of it but into which agents can constantly look through, also impacting the confidentiality atmosphere of the meetings (11).

[80] All workers that were included in this experimental "disengagement" programme, including those for which negative impacts could be controlled, talk of this programme as a failure because it did not take into account the most basic organisational limits of carceral institutions, such as movement restrictions, access to rooms that are fit

been organised. In one of the prisons, the S.A.D. lost many beneficiaries they had been following for years after this programme was proposed. Indeed, because eligibility to the programme was assessed by SPS but led by the S.A.D., the boundaries between the work of these two services was blurred. The S.A.D. saw as highly problematic any programme that would link these services in this way, because of how it brings the confidentiality of their work into question as well as the benevolence of their help because of the evaluation processes included in those programmes. In the other prison, the S.A.D. ended up working a lot more transparently[81] with the inmates filed as "radicalised" to remedy the fear of the latter that anything they said in their interviews would end up in some report.

By contrast, other S.A.D., for whom it did not seem difficult to build a trust relationship with the detainees filed as "radicalised", said nonetheless they themselves had to check their own paranoia, and hope they were not being listened to without knowing it, while at the same time, sometimes facing accusations from guards that "they are not respecting rules" (2) or "are too close to the inmates". Beyond accusations, some expressed feeling harassed by guards, being subjected to additional checks of their belongings and refusals of access when they had not printed the authorisation of visit – which they never have to do for other inmates. These dynamics result in a struggle for these actors not to fall into the logic of "us [(pro-)detainees] against them [(pro-)guard]", which they often see as sterile and counterproductive.

Finally, a couple of workers from S.A.D. testified that, as soon as they knew someone was filed, it was hard for them to trust the inmates themselves as they were constantly wondering if those were "practicing dissimulation" with them (8). Once again, we find here the trace of the *taqyia* notion linked to the impacts of being filed, with "the security imperative colonising the social action" (Michon, 2020, 51) and resulting in suspicion feeding itself. When asked about this, other actors from the sector found the introduction of the *taqyia* notion particularly preoccupying, saying that dissimulation can happen with any detainee – no matter their culture or religion, or what offense they committed. Convinced that when doubt is introduced into it, no social work is possible (9 & 10), those actors explain that "trust has to come first from the worker, not the detainee" (11). To support this view, one S.A.D. talked about one case of a prisoner filed as "radicalised" for which things started to unblock and go in a positive direction "because he could work on some things with his therapist from the SPS, *who really created a climate of trust*, [...] even if he knew that there would be reports written and evaluation on him made" (we highlight).

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for virtual reality sets (since the programme relied on one) or the relevance of such virtual reality programmes, which are impossible to use with people who have (temporary or permanent) mental problems. The amount of money that was put in this programme was also criticised as grotesque compared to the budget the S.A.D. services usually have to work with. As a comparison, a worker explained how she has to cut her labelling stickers for her folders, so she can use less of them for more folders, but then receiving two laptops for a programme that could not be put into place for the aforementioned reasons. Some of these criticisms echo assessments made by Olivia Nederlandt and Coline Remacle, who wrote: "Working conditions in prisons remain an obstacle: the work is often inefficient due to the fact that social workers do not have access to a meeting room, a telephone, a computer..., the activities of the services are cancelled, the social workers cannot have access to the prison because of union actions by prison officers, etc. Changes in the organization of the prison are taken without consulting the social workers even if these changes have an impact on their work. Such unpredictability in the organization of social assistance in prison leads to the fact that it remains very precarious." (2019, 417)

[81] For example, she would print any email that she would write regarding these prisoners while working on their reintegration plans, so that she could show them these emails.

c) Lack of Perspectives

The third biggest challenge these psychosocial workers observe for inmates labelled "radicalised" is the lack of perspectives. Out of the 13 psychosocial workers interviewed, 9 of them said the biggest part of their beneficiaries filed as "radicalised" were imprisoned until the completion of their sentence (fond de peine)[82]. As will be seen in point 4.3.7., temporary leaves of absence and modalities of enforcement of the sentence are granted with extreme precaution – and therefore, significant delays. If a slight improvement has been observed by some S.A.D. and specific services in the last couple of years, the general rule still seems to be that these inmates will go almost to the completion of their sentence and obtain temporary leaves of absence, or occasionally conditional release, only a few months before the end of their sentence.

The lack of perspectives is aggravated when the inmates are facing the loss of their right of residence in Belgium and/ or the deprivation of their nationality. These particular measures also impact negatively the ability for detainees to build a reintegration plan as well as the possibility for them to be granted temporary leaves of absence and conditional release. One person from the CAPREV thus explained that "there is the judiciary logic and there is the administrative logic, but these do not communicate. [...] It is really two different systems and there is not necessarily a coherence in between the two."[83] In those cases, families are also impacted inasmuch as they face either losing the right to live together with their member, or having to all move to another country – which they do not necessarily know – and having to start anew.

All of these elements have an impact on the S.A.D. and specific services, who say that this lack of perspective is like they have been stolen their working tools. When people are deprived from their right of residence or nationality, S.A.D. and specific services also seem to lose the administrative ability to provide social help to these inmates, as funding apparently does not cover this part of the work. Therefore, some make the choice of offering psychotherapeutic help – and provide social help by transferring relevant information to the lawyer defending the prisoner. Others, however, decide not to help these inmates, as they cannot justify it as work and would then do this job voluntarily.

The situation seemed to be less blocked for detainees who are followed by the CAPREV. This resulted in some S.A.D. encouraging to add the CAPREV amongst the actors supporting these prisoners. Indeed, to some of them, it looks like it is the only possibility for the latter to hope obtaining any modality of their sentence's enforcement. Although the CAPREV tries to defend

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[82] Two other S.A.D. workers interviewed did not talk about the topic. One had only one follow-up with someone filed as "radicalised" and it was unclear if, but not unlikely that he would complete his sentence in prison at the time of the interview. Only one person said the beneficiaries followed were not necessarily going to the end of the sentence in prison, and this person was from the CAPREV.

[83] This is also highlighted by Mine, Jonckheere, Jeuniaux and Detry (2022) in their analysis of the impacts of "terro" cases on the work of justice assistants. They write: "Regardless of the defendant's wishes, many conditions are difficult – if not impossible – to comply with, due to their wording or the defendant's administrative situation. [...] How can a defendant respect a ban on travelling to Brussels when the hearings before the investigating courts for another case in which the defendant is charged are taking place there? To which authority are we referring when we prohibit a defendant from leaving Belgian soil without the agreement of "the authorities"? what does "psychological and/or religious guidance inhibiting radicalism" mean? How can a defendant find a job when he is staying in the country illegally or when his criminal record mentions conviction for terrorism? How can a defendant not have contact with co-defendants when one of them is his father or child? These and many other examples illustrate the translation difficulties faced by justice assistants." (Mine, Jonckheere, Jeuniaux, Detry, 2022, 14)

itself from becoming a mandatory probation condition for prisoners filed as "radicalised", there has been cases in which at least one other service had their follow-up with some beneficiaries being put to an end because they were not the CAPREV, and therefore were considered unfit to the task by the probation conditions. This service especially decried this condition, saying the specialisation tendency was "exploding services, [even though they] do the same work." If workers from several S.A.D. and specific services can see the advantage of specialised structures[84], they also regret that these structures stigmatise *because of* their label and that the specialisations reduce help to care/ therapy, when social help is also a real need – and sometimes, the only real one for the beneficiary. The actors from the CAPREV were also critical. They questioned that "therapists seem to have become, in spite of themselves, the guarantors of society" in the first place, and that now the justice system needs to put labels on therapists themselves. They see this as problematic as "[no] therapist will say 'Oh yes, no problem, I will do disengagement work with you'". The result of these probation conditions being that some prisoners put an end to some follow-ups that had been built over years or that some prisoners "are stuck [i.e., they do not obtain temporary leaves of absence or conditional release] because their therapists cannot say [they] do disengagement work, but they started working together already" (16 & 17).

d) When the Perspective is an Endless Sentence

Once released – whether on conditional release or at the end of the sentence –, the perspective can remain discouraging to ex-inmates filed as "radicalised" and their family. What the psychosocial actors from S.A.D., specific services and the CAPREV highlight is that these persons often face not only heavier conditional devices, but also peculiar administrative problems that other ex-prisoners do not encounter. First, as highlighted by Mine and al. (2022, 13), "The general trend in recent years has been for conditions device to become more cumbersome, particularly implying an increase in the number of conditions imposed."[85] This can lead some of the S.A.D. to wonder how the people filed as "radicalised" should have the possibility to lead a normal life between mandatory therapeutic follow-ups, home police visits, meetings with probation officers, and other obligations or prohibitions.

Second, and more puzzling for these actors, are the administrative problems many ex-detainees filed as "radicalised" as well as people who were never condemned to prison sentences but nonetheless filed seem to face. The problems witnessed include: 1) difficulties or impossibility for many of these ex-inmates to register at their CPAS, – with the consequence that these people do not have access either to the article 60 working contracts, when those working contracts can be a way to get back onto the job market; 2) impossibility for more than 200 persons filed as "radicalised" (sentenced to prison or not) to open a bank account; 3) several cases of people being "red-flagged" by temporary job agencies (interim) and therefore unable to get work there; 4) removal of rights to social housing[86] to some people who were condemned or under investigation

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[84] They were also referring to Praxis, the CAB, etc.

[85] The focus of their research was the impact of terrorism cases on the work of justice assistants. It is interesting to note that they highlight similar problems as S.A.D.

[86] According to the actors we interviewed, in at least one case, this right was removed as a consequence of "someone talking too much in a LIVC-R".

for suspected "radicalisation"; 5) isolated (resolved) case of a family member losing their right to family allowance.

Although all examples are not systematic, the logic justifying these denied rights seems to be recurrent and having to do with institutions, employers, banks, etc. wanting to protect themselves from "suspicion by association", i.e. being "suspected because they know someone who is suspected" (Ericson, 2008, 63)[87]. We see here the impacts of counterterrorism policies that « ignor[e] *mens rea*, the legal principle that criminalization must be based on a specified criminal act." (Ericson, 67) The self-protection measures taken by various actors and institutions show the logic stretching itself to other domains than the penal one. What we observe here is not only "criminalization [that happens when it] appears necessary for national security, [with] no other justification [...] needed and established legal principles [being] pre-empted, finished" (Ericson, 67)", but also the removal of other rights, including administrative. This is particularly worrisome for two reasons: the little resources available for people to defend these particular administrative rights and the obstacles put into their reintegration path. Indeed, when it comes to many of the administrative rights, the overall feedback we get from the psychosocial actors is that no one seems to know how the people affected by these measures could reclaim their right or capacity. For example, as private institutions, banks have the right to refuse some clients. Yet, not being able to open a bank account is a significant obstacle to rebuilding a normal life and reintegrate fully and properly. Second, all these obstacles show how hard it becomes for these particular ex-prisoners to reintegrate into society. Yet, as Webber et al. have pointed out, "effective deradicalization should utilize a multipronged approach that empowers detainees *and reconnects them with mainstream society*" (2018, 551. We highlight). Hence, if our legally constituted state wants to prevent "radicalisation" – or polarisation –, the first thing to do, maybe, would be, as this social worker said "to give prisoners back their rights", as prisoners, human beings and citizens.

4.3.7. Delayed Decision-Making in Early Release Procedures: A Denial of Justice?

4.3.7.1. Early Release Procedures and Reintegration: An Introduction

Before dedicating our attention to the results of our analysis, it is crucial to present an overview of the different types of early release procedures, as well as of certain mechanisms and stakes at hand when it comes to the preparation of reintegration into society – which is precisely the primary *raison d'être* of these procedures.

Firstly, two types of temporary leaves of absence can be granted, either as a one-time decision or a recurrent provision, by the Minister of Justice whose competence is delegated directly to the Directorate responsible for detention management (Direction Gestion de la Détention/DGD) within the DG EPI. A "Permission de sortie" (furlough) entails permission to leave the prison for

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[87] For example, the temporary job agencies apparently try to protect themselves from the accusation of financing terrorism. A woman was denied family allowance for several months, the office in charge saying they could not give money as long as her husband – condemned for offences linked to terrorism – lived with her; they could not take the risk this money would be used to finance terrorism. Even though she was given all the allowance retroactively, she saw her rights denied for several months.

up to 16 hours within one day, and can be granted at any time for exceptional administrative or medical reasons, and during the two years preceding eligibility for conditional release specifically with a view to preparing reintegration. A "Congé pénitentiaire" (prison leave) allows for the detainee to be absent from prison for up to 36 hours, up to three times per trimester during the year preceding eligibility for conditional release, with the specific aim of preserving social contacts and preparing reintegration. The two types of leaves and the conditions of their granting are defined in articles 4 to 14 of the Law of 17 May 2006. The related articles define a set of three legal contraindications – risk of escape, risk of recidivism during the leave, and risk of bothering victims – which are evaluated subsequently by the prison Director, the Prosecutor (both providing informed opinions) and the DGD. Subsidiarily, when they "*appear absolutely necessary within the preparation of a forthcoming conditional release*", these provisions can be granted by the probation court (Tribunal de l'application des peines/TAP) according to article 59 of the Law of 17 may 2006.

Secondly, a series of other measures, namely conditional release, electronic monitoring or limited detention can be granted by the TAP only, upon evaluation of both risk of recidivism and protective factors. When evaluating a detainee's request for these measures, authorities assess the presence of a set of legal contraindications dictated by article 47§1ter of the Law of 17 May 2006 – absence of reintegration perspectives, risk of committing further serious crimes, risk of bothering victims and the inmate's attitude towards victims – which are prohibitive unless they can be put into perspective or counterbalanced by the definition of specific conditions within the release provision. The TAP is responsible for collecting written opinions from the local prison Director and the in-prison psycho-social service (SPS), the Prosecutor, as well as Justice Assistants who meet with family and assess the environment that will host the detainee during their conditional sentence or probation, in order to appreciate these risks. Additionally, the TAP will take into consideration any other available information, such as CUTA evaluations, plans and agreements relative to rehabilitation, as well as reports written by services such as CAPREV or CAW (Centrum Algemeen Welzijnswerk) regarding an ongoing in-prison or probation guidance towards disengagement. Based on all available information, TAP judgements granting early release will list a number of conditions the detainee must comply with, and can thus be revoked in the event of breach of one or several of those conditions. In most cases involving terrorist convicts, at least one of these conditions refers to guidance with specialised care services during the probation period. Additional conditions such as limitation or prohibition of contact with individuals formerly or currently incarcerated for terrorist offenses or known as "radicalised", or travel bans to specific foreign countries, may be of application.

Although previously defined as a "favour", temporary leaves of absence were consecrated as an individual right for every inmate who meets legal conditions, in 2013 (*Cour de cassation, 15 November 2013*) – meaning that, during the period of eligibility and in the absence of legal contraindications, the DGD is in principle legally bound to grant the provision requested by the inmate. Throughout the years, Belgian researchers in law and criminology (Mine and Robert 2013, Malengreau 2014, Beernaert 2014, Brion 2021) have continuously highlighted the progressive nature of release provisions, and thus recognized temporary leaves of absence as

critical tools in re-establishing social contacts and preparing reintegration into society due to their role in the process of obtaining larger provisions such as conditional release, and ultimately in achieving rehabilitation. Research shows nonetheless the difficulty, for terrorist convicts especially, to effectively obtain these provisions, causing this category of inmates to stay in prison on average longer than those convicted of common offences, and very often to experience definitive release without ever having the chance to appropriately prepare for it (Comité T 2019, Brion 2021). Based on the qualitative analysis of aforementioned TAP files, the following sections will highlight and elaborate on a number of mechanisms contributing to important delays in the granting of early release, complimenting those recently laid out by Fabienne Brion (Brion, 2021).

4.3.7.2. *When in Doubt...*: Undermining the Presumption of Innocence

Although the past years have seen a significant effort of information collection deployed in the fight against terrorism, it appears in TAP files that those instances that are responsible for forming opinions and making decisions on the early release of terrorist convicts and inmates suspected of "radicalisation" in prison – the Director, the SPS, the DGD or even the TAP – significantly lack *relevant* information crucial to evaluating legal contraindications to said release. In the case of terrorist convicts, official criminal records and judgments of conviction provide an insight into the background and extent of involvement in radical and extremist behaviour and often serve in themselves as indicators for the risk of committing similar serious crimes in future. It appears however that the line between what is and is not an indicator of (vulnerability to) "radicalisation" has otherwise been significantly blurred in a context of institutional panic and unforgiving counterterrorism policies, and the scope of what is seen and monitored as a matter of concern has progressively been extended. In addition to alarming behaviour and discourse in detention, past and present antisocial conduct of any type (juvenile delinquency including non-violent acts, previous recidivism after undergoing punitive measures, and especially during previous periods of leave, etc.) is often interpreted as a sign of durable commitment to crime, and serves as a measure of the inmate's untrustworthiness and likelihood of turning to violence driven by radical ideology.

Analysis of different components of each inmate's files (primarily Directors' and Prosecutors' opinions and DGD decisions) shows that the primary reason for delays in early release procedures is an ongoing federal investigation due to suspicions of "radicalisation". In this context, we notice however that the complexification of the information cycle and its "*thrombose zones*", as raised by Fabienne Brion (Brion 2021), lead to significantly complicating the way in which information regarding these investigations is conveyed between institutions, ultimately obstructing the cycle itself. Instances with access to first-hand information on reasons, events and sources behind the suspicions at the origin of these investigations – such as CelEx and CUTA – do not in fact participate in release related decision-making, and seem to rigorously guard crucial details regarding these investigations, as well as to protect original information sources deemed confidential. Decisionmakers' lack of access to classified information – often present in "terro" cases – and the TAP's unsuccessful attempts at having the Federal Prosecutor directly involved in early release audiences in order to create a somewhat adversary debate, further exacerbate the

congestion. As a result, early release decisions cannot but rely on fragmentary, vague or disorganised information that is alarming enough to raise doubt, all the while classified or otherwise inaccessible files often contain heavily mitigating or exculpatory information. *When in doubt*, authorities urge caution and requests for leaves of absence and early release are met with interrogative refusal until further clarity is gained.
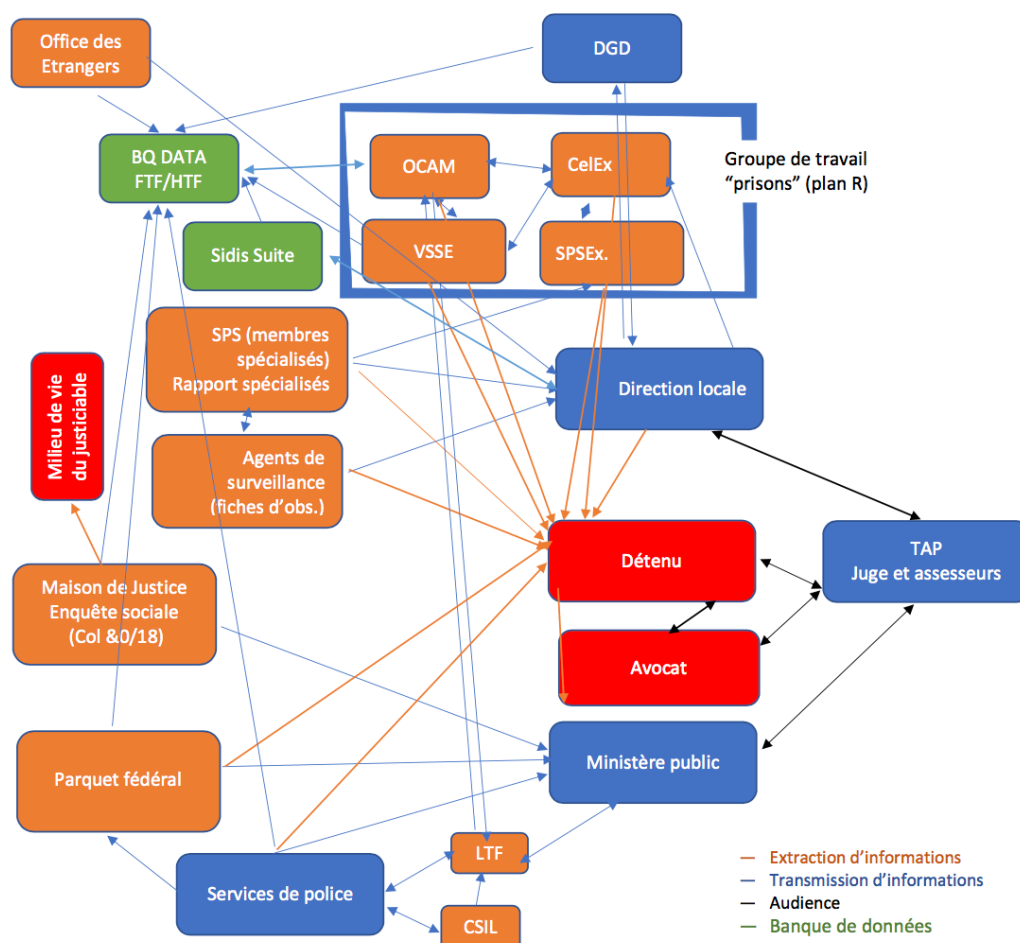

Figure 8. Information cycle (in orange, the extended network for CelEx prisoners, Brion 2020)

In this context, the fragmentary or ambiguous nature of available information is further exacerbated by the fact that in decisive documents, inmates' "*concerning*" statements and behaviours that raise suspicions of a potential "radicalisation", often appear already categorised as "*pressuring fellow inmates*", "*pursuit of contacts with radicalized individuals*" or "*growing strength of ideology and proselytism*" ("*montée en force au niveau idéologique et proselyte*"), while details remain systematically withheld, sometimes for several months on end. Referring to classified information, CUTA evaluations speak even more generically as "*signs of radicalisation*" or "*propensity to practice proselytism*", without further precision. In a particularly telling example, suspicions raised by CUTA of an "*intention to commit a violent act against persons or material interests, for ideological or political reasons, with an aim to create a climate of terror*" and quoted in a decision of termination of right of residence in Belgium, have blocked the inmate's every attempt to obtain temporary leave before the DGD. In this case, the evaluation

quoted in the decision had stated that the inmate "*is supposedly one of the three most influential members, if not 'the brain' of a dormant terrorist cell which is thought to be ready to perpetrate something more serious, without further precision*", deeming the latter a level 3 terrorist threat[88]. Even though these *ready-to-wear* categories are inherently stigmatizing and significantly impact inmates' reintegration trajectories, their use is however rarely called into question. Instead, opinions and decisions follow and draw upon each other, quoting and infinitely recycling unspecific, fragmentary and often outdated information with insufficient context and precision. It seems moreover that while actors frequently quote each other, it is sometimes impossible to determine the original source of pieces of information that are nonetheless treated as essential. Lines between each instance's categorizations and opinions are thus increasingly blurred as the procedure advances. Uncertainty resulting from this lack of precision on different levels, although not in itself a legal contraindication, has thus become another *leitmotiv* as a prime reason for delayed decision-making in early release procedures.

While waiting for clarifications from information-bearing instances, Directors and the DGD heavily rely on psycho-social services to "investigate" and provide some insight on reasons behind placement in specialised units or individual regimes and ongoing investigations. We notice however that although PSS reports are only filed once a leave of absence or early release has been requested, and thus – depending on the length of sentence and therefore on the moment of eligibility for these arrangements – after several years of detention, a significant number of written opinions acknowledge the need to "continue psycho-social investigations" in order to accurately evaluate and potentially mitigate risks related to early release. Lack of psycho-social analysis is, in some cases, due to the inmates' persistent reluctance to meet with the service, but appears to be more often linked to the inability of the service itself to make useful recommendations as a result of missing information[89]. In fact, some reports mention lack of access to judgments of conviction (which are routinely confronted with the inmates' recounting of events in order to assess the authenticity of statements and attitudes towards crimes) or absence of clarity on the reasons for an inmates' placement in a terrorism unit or individual security regime, while others deplore lack of perspective regarding the inmates' mindset due to exceptional circumstances such as longer periods of isolation. In the absence of sufficient information emanating from the PSS, authorities appear all the more cautious, and therefore less likely to express a favourable opinion on granting release.

Although it is pointed out at several instances that the existence of an ongoing judicial investigation is rightfully taken into consideration within the evaluation of risk of committing further serious crimes, we argue that systematic refusal of release provisions on grounds of this "*when in doubt*" mindset disregards the presumption of innocence and undermines any effort of

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[88] While a 2016 decision of refusal to grant temporary leave from the DGD mentions the « potential links with radical Islam », no other information seems to be available to the DGD at the time. A 2017 decision then mentions the ongoing « terro investigation », and asks for precisions. In 2018, the Foreign Office issues a termination of residence quoting a 2017 CUTA evaluation, which had not however been available to the DGD before. A 2019 decision of refusal to grant the same temporary leave from the DGD, then mentions a 2017 report from State Security (Sûreté de l'Etat/VSSE), conferring a « radical islamist profile » to the detainee, deeming him a « radicalisator » and a « recruiter ». Temporary leaves are finally granted by the TAP in 2018 and 2019.

[89] Since non-collaboration on the inmate's part is deemed an indicator for …, When this is not mentioned, we can assume that other reasons

reintegration that might in fact mitigate risk of "radicalisation" itself. In fact, while it is observed that the probation court "*does not decide whether the detainee is guilty [but] determines whether the information collected during this investigation provides indications of a possible risk of serious recidivism*", it is the uncertainty itself that will serve as said indication, and it appears therefore that the mere existence of an investigation linked to terrorism is enough to undermine reintegration perspectives, significantly delaying detainees' effective access to release arrangements – sometimes blocking them altogether. In the words of the DGD denying temporary leave on grounds of the presence of risk of recidivism, "*it can be feared, in the absence of information regarding the ongoing investigation, that the inmate is preparing an act that is dangerous for society*". The Director's mitigating analysis of available information, or his concluding to the presumption of innocence in a previous favourable opinion, do not appear to be taken into consideration. In this particular instance, when the case is finally dismissed 8 months later, both the Director and the DGD first call for CelEx to issue an "*updated insight in the light of developments in the case*" allowing them to "*reconsider the previous analysis of legal contraindications*", in the absence of which "*the risk of further serious offences is still present*". While the ongoing investigation had appeared to be the most important deterrent from granting early release, the dismissal of the case does not automatically unblock the situation, and temporary leave of absence in preparation of a potential conditional release is ultimately never granted to the inmate[90].

4.3.7.3. The Precarious Status of *"Almost-Nationals"*

It is impossible to usefully analyse obstacles to early release, a fortiori in the case of terrorist convicts and persons suspected of "radicalisation", without referring to the uncertain administrative situation of persons whose Belgian nationality was revoked, as well as those of foreign nationality (often born and) living in Belgium who are in danger or in the process of being deported, as a direct consequence of the conviction or suspicion.

In the years following the Brussels and Paris terrorist attacks and as a result of a 2017 legal reform significantly relaxing the conditions for termination of residence on the grounds of public order or national security, numerous terrorist convicts (as well as detainees suspected of "radicalisation" in prison) have been deprived of their right of residence in Belgium. Following the law of 5 February 2016 (« *Pot-Pourri II* ») and until the annulment of the corresponding provision by the Constitutional Court in December 2017, the termination of the right to reside in Belgium had legally prevented these detainees from accessing early release procedures. Earlier that year, Christelle Macq had pointed out the detrimental nature of this exclusion to the rights and opportunities of these detainees in terms of reintegration and the effective exercise of rights such as the right to family life (Macq, 2017), but also to what some legal researchers call a "*right to*

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[90] When reviewing the subsequent request for said conditional release, the Prosecutor then notes that the latter has "*not benefitted from any favour. His requests for [leaves of absence] have resulted in refusals from the DGD (…), given its difficulty to obtain information from the inmate, an insufficiently structuring host environment, the persistence of the inmate in violent delinquency severely detrimental to public security from the age of 16 and the risk of commission of further serious crimes that stems from it*".

reintegration" (Tulkens and Vandermeersch, 2015). Even though the Constitutional Court has deemed these provisions illegal and proceeded to rescind them, practice shows that illegal stay or uncertainty around the right of residence – when an order of termination has been issued and an appeal procedure is under way – is viewed as a major factor of uncertainty exacerbating the risk of evasion, and has thus remained a major obstacle to early release. In fact, Directors'/Prosecutors' opinions and DGD decisions frequently remind of the need to remain cautious when presented with uncertain administrative status, as this might "*compel the inmate to not return*" to prison when granted temporary leave, and declare to be wary of the possibility for the inmate of being deported while outside the prison, constitutive of the risk of escaping justice. In some cases – for instance, in early release proceedings in which the risk of evasion is not explicitly evaluated – and although the reasoning behind this choice is not explained, the absence of right of residence is filed as a risk factor for *recidivism*.

What is more, while the DGD notes in a decision refusing temporary leave that "*this termination does not in itself constitute a risk of evasion*", it also considers that "*it undermines the possibilities of socio-professional reintegration, and, in consequence [the inmate's] place as a citizen in Belgium*", and, in another decision, that "*given [a] decision of termination of the right of residence (…), the preparation of reintegration in Belgium does not currently make sense*". Important delays in the appeal procedure against decisions of termination and deportation, thus further intensify the negative impact on access of "radicalised" detainees to conditional release. Although legally eligible for temporary leave, detainees deprived of their right of residence are in fact also deprived of their right to prepare for definitive release and reintegration, for as long as the uncertainty around their administrative status remains.

4.3.7.4.   Evaluating Mindset: The Curious Concept of "*Loyal Cooperation*"

In implementing PSS reports within written opinions or DGD decisions, one of the most frequently reappearing phrases is "*urges caution*", continually highlighting the danger that is thought to be inherent to inmates linked in any way to the phenomenon of "radicalisation". In this context, the concept of taqiyya or concealment of radical ideological views, feeds into the climate of mistrust between authorities and detainees. The DGD especially, seems to adopt a position of almost naïve concern that is put in sharp contrast with inmates' supposedly concealed intentions and calculated behaviour. In its decisions, images of light and obscurity, blur and clarity aptly signify this contrast: "*gray areas*" ("*zones d'ombre*") regarding the inmate call for "*enlightenment*" ("*éclaircissements*"); unclear or missing details that "*puzzle*", "*cast doubt*" and therefore "*encourage caution*", require further "*clarifications*" ("*clarifier*"/"*nécessité d'y voir plus clair*"), "*precisions*" and "*reassurance*". Attempts to gain said clarity, especially through psycho-social investigations, appear however less focused on the realities behind suspicions and categorisations, and seem generally more centred around attitudes towards past crimes and events, with special attention to inmates' mindset while experiencing major obstacles in the release procedure for obscure reasons.

Especially in the case of terrorist convicts, the inaccuracy of the inmate's recollection of events when confronted with what is considered the "judicial truth" – denial, absence of remorse, or

perceptions of persecution due to a supposedly unjust or disproportionate conviction – is seen as a matter of great concern. It seems in fact that the concept of "*loyal cooperation*" prescribes the unconditional acceptance of this truth consecrated as objective by means of the judgment of conviction: discrepancies between what is deemed to be objectivised information and the inmate's subjective "*version*" of the facts are interpreted, at the very least, as a tendency for the inmate to trivialize the gravity of their crimes and deny responsibility, and are perceived as signs of higher risks of both evasion and recidivism. As the DGD states, "*[i]n view of the elements available to us, the unchanged state of mind of the inmate (he still gives the same explanation for his departure to Syria despite his conviction and the various elements included in the judgement) and his current lack of cooperation with the PSS, the risk of evading the execution of the sentence and committing new serious offences appear to remain present*".

Meanwhile, subsequent expressions of remorse and an (increasingly) moderate ideological discourse are handled with particular *caution*. Authenticity of discourse and intention is repeatedly called into question, authorities finding it "*difficult to know whether [the inmate adopting a more moderate ideological discourse and a rejection of violence] has really reinterpreted his ideology*". Decision-making and opinion-providing instances therefore not only look for positive evolution, but insist upon the objectivation of progress through acts and proof of long-term consistency: "*while during the hearing, [x] uses a rhetoric that would tend to show an evolution on the personal level, nothing allows, at this stage, to objectivise this evolution and to evaluate the risk he represents for the security of persons once he is released*" (cit. DGD quoting TAP, refusal of leave of absence). The ways in which evolution could be objectivised are however unclear, especially since efforts towards rehabilitation (such as readiness to address past crimes and processes that led to them, or commitment to specialised guidance with services such as CAPREV) are often viewed with mistrust and deemed "*utilitarian*"[91]. More often than not, good behaviour in detention and evidence of personal development are furthermore significantly relativized in light of the person's past crimes and discourse, even when these date back to several years and have not been reiterated since ("*[x] has always behaved correctly towards staff and fellow detainees. Nevertheless, the factors that led the DG to place [x] on the Deradex section should not be overlooked*").

Finally, while significant weight is conferred to mindset when evaluating legal counterindications to early release, surprisingly little consideration is however given to the direct effects of terrorist labelling and subsequently stigmatising treatment on said mindset. In this regard, inmates' capacities in terms of the emotional management not only of stigmatisation and repeated refusals or withdrawals of release provisions, but also of the general difficulties linked to detention, seem to be held to disproportionately high standards. Especially in the absence of evidence of sufficient introspection and remorse, feelings of injustice are often deemed unwarranted, their mode and

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[91] "*In this regard, the SPS mentions the multitude of services that follow X and the workers cannot help but express doubts about his investment, which could be utilitarian. The beneficial work on his emotions or his life path put forward by the external workers is not really observed by the SPS during their interviews or even in the behaviour of the inmate in detention. X's behaviour is always smooth, controlled and does not give access to certain areas of his life. The SPS speaks of a strategy that calls for caution.*"

tone of expression extensively policed by the PSS[92]. Rather than being explicitly acknowledged as responses to exceptional frustrations linked to the opacity on the intelligence and security services' end and its dire consequences on reintegration trajectories, reluctance to cooperate and an increasing bitterness towards society will further reinforce perceptions of the inmates' dangerousness and lack of *loyalty*. Utopian expectations of a nothing-short-of-perfect attitude as the ultimate proof of said *loyalty* – which inmates understandably prove incapable to live up to – consequently exacerbate the difficulty to obtain release. Even though Directors' opinions appear overall more nuanced and understanding of human responses and coping mechanisms, they sometimes seem equally oblivious to inmates' wariness of the terrorist label and its consequences on their willingness to *cooperate* with a view to obtaining release provisions. One opinion states for instance that "*[w]hile [x] requested the PSS for his psychosocial assessment when he was detained in Ittre on a classic section, it must be noted that since his placement on the Deradex section, there has been a change at this level*", while another notes that the inmate "*was very unhappy with the revocation of electronic surveillance and his new detention and appeared to be more anti-social than before, although the PSS cannot comment on the origin of this change in his discourse, which nevertheless calls for caution*". Directors' recognition of the legitimacy of these frustrations does not however lead to a more positive outcome in terms of the evaluation of risks: "*The fact that he was placed on RSPI for many months may have led [x] to develop a feeling of injustice (partly understandable if we take note of the recent decision to stop this regime in the absence of concrete elements), but which could lead to a reaction of not wanting to reintegrate the prison. These elements suggest that the risk of non-reintegration should be considered with caution and, in the absence of sufficient insight into his current state of mind, we consider that it is not yet possible to rule out this risk.*"

It should nevertheless be noted that while the consequences of labelling and stigmatization are rarely acknowledged within the evaluation of mindset with a specific view to granting early release, their impact on the vulnerability to radical ideas is repeatedly recognized by authorities. Thus, the absolute priority of prison-based counterterrorism policies can be clearly perceived in the light of early release tendencies for terrorist convicts and persons suspected of "radicalisation". While an emphasis on granting early release on time would be sign of a commitment to provide real opportunities for reintegration into society and rehabilitation, important delays in release procedures for this category of inmates are evidence of a security-based approach driven by the need to identify and separate "dangerous" populations from society, rejecting state accountability and transferring responsibility of their reintegration to the inmates' themselves, their "countries of origin", their families, and civil society actors (for instance, the SADs).

4.3.8. Recommendations

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I. Labelling

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[92] "*X sees himself as alienated from the image of a delinquent because of his judicial past, which reinforces his feeling of injustice. While his argument contains objective elements regarding a stigmatisation, it contains few introspective elements regarding his past and present failings.*"

The "radicalisation"-specific *categorisation* of inmates via CUTA is highly problematic for several reasons. Firstly, CUTA categories – directly used for penitentiary categorisation – are still grounded in a one-pyramid pattern of radicalisation which presupposes a continuum between beliefs, attitudes and behaviour. Recent research (McCauley and Moskalenko, 2018) moves away from Moghaddam's reductive "staircase to terrorism" and replaces it with a two-pyramid model, insisting that the "radicalisation" of opinions does not make it possible to predict, nor to explain, violent action.

The AFFECT team thus **recommends for CUTA categories (as used by CelEx) to be redesigned in order for them to take into consideration the lack of correlation and correspondence between the development of radical ideas/adhesion to a radical ideology and the engagement in violent action**.

Furthermore, it has to be noted that the placement on the CelEx list was initially intended as an internal penitentiary measure, not to be communicated to the inmate nor included in their penitentiary file (Brion, 2018). Notably, in the perspective of early release procedures, the (concealed) categorisation of inmates linked to terrorism or labelled as "radicalised" produces major effects on their prison and reintegration trajectories. The AFFECT team therefore **recommends for information-bearing entities such as CUTA and CelEx to ensure systematic and transparent communication towards the prison administration, inmates and their legal counsel** on:

- Inscription on the CelEx/CUTA list and the precise reasons for inscription on the list (referring to incidents and not to accusations such as "suspicions of proselytism);
- Federal investigations regarding a potential affiliation with the jihadist milieu or signs of "radicalisation", especially when these become grounds for the refusal of early release provisions.

While the extent of the terrorist label's impact tends to fade when a relationship of trust is established with the inmate, the intelligence missions assigned to prison officers and members of the psycho-social services have had a strong impact on social relations and the trust that could exist. The logic of intelligence permeates the prevailing prison culture and contributes to the climate of generalised suspicion. The possibility of implementing disengagement programmes is, for example, strongly compromised because prisoners fear that they are only pretexts for gathering information. Furthermore, the confusion surrounding the definition of "radicalisation" allows for an essentialisation not only of CelEx detainees, but also, in some cases, of Islam as a supposedly dangerous religion. This confusion results in an *infobesitas* which is also hard to manage.

Therefore, the AFFECT team **recommends that the system of systematic labelling of terrorist or "radicalised" inmates be eliminated and that prison officers and psychosocial service members no longer be given specific intelligence assignments.** Prison officers should not have to resort to specific observation forms, but rather to **the incident report**, which already exists

and provides all the space necessary for prison officers to transmit relevant and critical information.

II. Regimes: the end of segregation and isolation

In D-Rad:ex units especially, reinforced isolation and daily observation and intelligence practices lead to a feeling of injustice and persecution among the inmates, risking the consolidation of initial grievances and making already scarce disengagement initiatives more difficult to implement. Furthermore, the ultra-secure conditions of detention in the D-Rad:ex units do not allow for the observation of inmates in natural situations, making it impossible to gain useful knowledge of risks. The system of dispersal and maintaining inmates in open regimes, allow for better interpersonal knowledge of the inmates and offer more opportunities for socialisation – eliminating the need for more vulnerable inmates to rely on more charismatic figures to offer them protection, identity, or recognition. Conditions of detention furthermore raise important issues regarding Human Rights, while the objectives justifying failure to comply with them do not seem to have been met.

The AFFECT team **advocates for the closing of D-Rad:ex units**, which are already significantly depleted. The team **recommends the generalisation of the dispersal of CelEx inmates throughout the entire prison population**.

III. Muslim counsellors, chaplains and lay advisers

Regarding **security attests**, the AFFECT team recommends, that, at the minimum level, the procedure be verified to make sure that people can exercise their right of defence by providing complete motivation for retracting/ refusing a security attest. An **assessment of the appeal system, especially of its accessibility** (technicality and time limits for lodging an appeal), is necessary. Besides, we recommend examining the possibility of giving access to carceral institutions before the security attest is granted. A system similar to the **internships** of Catholic chaplains could be considered in order to introduce new chaplains and lay advisers to the work, under the supervision of one of their colleagues. This could reassure security actors in those institutions and therefore prevent some tensions. Salary should already be paid to those people in the meantime.

While we first and foremost recommend the replacement of the "staircase to terrorism model" by a two-pyramid model, we note that introducing a new role, the mediator of the religious practice, following the French model (see de Galembert, 2019), could have the advantage of releasing Muslim chaplains from detection missions (and to a certain extent, from ideological reframing missions), reducing invitations to breach their professional secrecy. The counsellors could therefore focus on their care missions, which would appease defiance/ mistrust dynamics towards them from the prisoners' end. However, the introduction of such role also has the disadvantage of further stigmatising a religion as being the reason behind terrorism.

Most importantly, the AFFECT team **recommends that a dialogue be re-established between the Minister of Justice and the Executive of Muslims of Belgium**. Further than that, Stephanie Wattier (2016, 621) suggests the formalisation of a dialogue between public bodies and people representing religious and secular organisations.

IV. Psychosocial help to detainees from external services (S.A.D., specific services and the CAPREV)

Observing the difficulties that some S.A.D. and specific services face, the AFFECT team joins Olivia Nederlandt and Coline Remacle (2019) in recommending that "**Federal justice and security actors in carceral institutions must guarantee the possibility for services under the competence of federate entities to be able to accomplish their missions, in a spirit of shared responsibility**" (418). In order to do so, the federal government should:

- **Backpedal the process of rationalisation that "lead to the decrease of the number of penitentiary agents**", which, in turn, impacts negatively "the possibility for the [psychosocial help] services to organise activities in prison" (Nederlandt, Remacle, 2019, 420)
- Adopt the Royal Decrees necessary in order for the articles of the Law of principles relative to the individual detention plan to come into effect. Those articles provide that "as soon as he/ she arrives in prison, the detainee is offered the possibility of developing, with the penitentiary administration, his/ her detention path, by defining the activities he/ she intends to carry out during his/her time of detention in terms of preparation for reintegration and compensation for victims (work, training, psychosocial support, etc.). This would imply truly devoting significant resources, both at the federal level and community, to reintegration" (Nederlandt, Remacle, 2019, 421).

A subsidiary recommendation would be for the **management of prisons in general to be transferred to the competence of federated entities**. This would allow external services of psychosocial help to detainees to be better integrated in the carceral landscape, which could in turn guarantee them a better access to the establishments. It would also allow a **better distribution of budget** between the security objective of the carceral institutions and their (often-forgotten) objective of rehabilitation and reintegration of detainees into society.

V. Recommendations regarding both sectors of psychosocial help as well as spiritual and philosophical assistance to detainees

Given the importance of respecting the rights of detainees to avoid escalation of social conflicts, both within and outside carceral institutions, we recommend **guaranteeing access to prisoners in isolation regimes as well as confidentiality of encounters** of these detainees with chaplains, lay advisers and workers from S.A.D. and specific services. When access is denied, the reason for it should be motivated and only temporary.

Inmates filed as "radicalised", whether they are in solitary confinement or not, should be **allowed to take part in collective activities that include other inmates** from all horizons; dialogues and discussions happening in those activities being a way for them to encounter diverse perspectives that challenge their views and stimulate reflection. Allowing chaplains, lay advisers and social workers to lend books and newspapers to CelEx prisoners (and others) is also recommended. (On this, see also Sykes, 1965, 12).

VI. Temporary leaves of absence and modalities of sentence enforcement

Presupposing the aforementioned transparency towards inmates and their counsel (see point I), the AFFECT team recommends **the transfer of the competence of temporary leaves of absence and modalities of sentence enforcement to the TAP for all prisoners labelled as "radicalised" or "terrorist"**, including those condemned to sentences of less than or up to three years. This recommendation follows the experience of what happened to so-called sexual delinquents after the Dutroux affair. This recommendation could therefore be extended to detainees whose cases are highly mediatised (and therefore put more political pressure on the more politicised Ministry of Justice).

VII. House searches and police visits at home

Because of the traumatic impacts on people, and especially on young children, the symbolic use of house searches as well as police visits after detention aimed at demonstrating the power of the state should be banished.

VIII. Training

The labelling of terrorist or "radicalised" prisoners leads to an essentialisation of their dangerous nature. The phenomenon of "seeking and finding" traps inmates in an inescapable identity. In this context, while well-established literature refers, in more complex ways to issues of religion and conversion in prison – meaning given to the prison experience, help in the face of harsh regimes (Béraud, 2013), a resource for action (Brillet, 2013), a strategy for protection (Khosrokhavar, 2014) – an inmate's conversion to the Muslim religion or religious intensification, especially if in contact with a CelEx/CUTA inmate, will easily be perceived as a sign of Islamist radicalisation.

The AFFECT team **recommends for all instances involved to gain better understanding of the many aspects of radicalisation, and to strive to be able to recognise the psychological impact of labelling and stigmatising treatment in detention, with a view to more efficiently distinguishing signs of distress from signs of adherence to radical ideology and extremist violence**.

The AFFECT team thus **recommends the organization of more extensive training for prison officers and members of the SPS on the following topics:**

- The difference between holding radical views and engaging into violent action (the **two-pyramid model**);
- The stigmatising and discriminating impacts of labelling;
- **The importance and relevance,** in terms of dynamic security and of respect of human/ detainees' rights, **of social help provided to inmates** (Nederlandt and Remacle, 2019), as well as of **spiritual and philosophical assistance to detainees** who want it. This latter point can also be reinforced by presenting the aforementioned literature on the many uses and meanings of religion in prison.

The AFFECT team also **recommends that these modules be integrated into the basic training of prison officers**.

IX. Improving living conditions in prisons

Consistent with the Plan P's pledge to improve conditions of incarceration in prisons, the AFFECT team equally **advocates for better living conditions in all prison units**. For this to be achieved, the problem of overcrowded prisons should be tackled directly. Our research shows how some mechanisms introduced with the repression of terrorism and "radicalisation" can only worsen the problem of overcrowding, as they increase the length of sentences, ignoring, at the same time, the necessity of reintegration into society to avoid recidivism. **Further research** could be conducted to further document this phenomenon and find solutions to it. In the same way, further **research investigating and assessing the impacts of long-term imprisonmen**t as well as of long-term **imprisonment in solitary confinement** are needed.

Finally, provided that "there is more than enough work for the associations in the field [of social help to detainees], [but that] it is not the same for subsidies […] **Raising awareness of the prison problem among the general public** remains essential so that everyone can become aware of the impasse represented by investing in a costly extension of prison buildings rather than in the social sector, making it possible to avoid upstream intervention" (Nederlandt, Remacle, 2019, 419). The logic is only exacerbated with detainees filed as "radicalised": while the media relays opinions that want to protect society as long as possible from the perceived threat of terrorist attacks, the solitary confinement infrastructure as well as the increased need for professionals to counteract the negative impacts of solitary confinement make it a very costly repression apparatus. Until now, the measures taken the government in the management of extremist offenders in prison tend to exclude and isolate the latter, be it through segregation or isolation, with no guarantee that these will have the slightest incapacitating effect, and with the consequence that they are released without any preparation. We recommend, on the contrary, a U-turn be taken, which bets on inclusion (such as happened in Denmark, for example). This can be achieved by **redirecting parts of this budget to social inclusion programmes,** which could then have trickle effects and allow to effectively work on the reintegration of ex-terrorists, a condition which is seen as essential in literature, especially within democracies.

4.4. On The Administrative-Judicial Boundary: The Results Of The Analysis Of The Decisions Of The Council For Alien Law Litigation (CCE/RVV)

4.4.1. State of the Art

When it comes to terrorism and radicalisation, the law on foreigners tethers on the borderline between criminal justice and administrative law. Literature shows that the two issues of "terrorism" and "the law on foreigners" are no longer as airtight as in the past (Labayle, 2017). Gauthier (2019) stresses "the insidious erosion of the refugee status" (free translation) influenced by suspicions of terrorism, calling for particular vigilance (Labayle 2017, Lacaze 2019, Pivato 2017, Vanneste 2022). Indeed, the conflation of terrorism and immigration, observable both in the media and in political discourse (Vanneste 2022), has also given rise to legal extensions. This is what Marion Lacaze (2019) argues with regard to France, identifying them both in legislation on terrorism and in the law on foreigners. According to the author, the law on foreigners appears in many ways as a source of inspiration, a "laboratory" for the law on the fight against terrorism in France. In both cases, lawmakers resort to preventive measures attached to the administrative police. The study of the law on foreigners therefore very often makes it possible to better understand the new problems raised by the development of this administrative anti-terrorist police. While initially, as the author points out, the desire to prevent terrorist acts resulted in the development of preventive criminal law, for some years now lawmakers have decided to use the framework of the administrative police to enhance the effectiveness of the fight against terrorism. In particular, she mentions identity checks in a delimited area and house arrests outside the framework of criminal law. In an approach aimed at reporting on the situation in Belgium in 2017, Audrey Pivato (2017) attachée to the Council for Alien Law Litigation (CCE/RVV) notes that, under the combined influence of international and European law, the trend towards ever-expanding categories of acts that must be condemned as "terrorism", has an undeniable impact on refugee law.

4.4.2. Introduction

The purpose of this part of the AFFECT research was to examine more specifically **the impact of Belgian anti-terrorist policy on the application of the law on foreigners** as manifested in the case law of the Council for Alien Law Litigation (CCE/RVV).

Operational since 1 June 2006, the **CCE/RVV** is an administrative court "solely competent to hear appeals lodged against individual decisions taken in application of laws on access to the territory, residence, establishment and removal of foreigners"[93] (free translation). It rules on appeals in "full jurisdiction" lodged against decisions of the Commissioner General for Refugees and Stateless Persons (CGRA/CGVS) relating to refugee status or subsidiary protection (Article 39/2, §1), as well as on appeals for annulment introduced against decisions taken in application of the legislation on foreigners by the Immigration Office (OE/VZ) and the municipal administrations (Article 39/2,

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[93] Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners (Articles 39/1 and 2/).

§2). In the second case, the competence of the CCE/RVV is limited to the examination of the legality of the disputed decision. Appeals to overturn decisions may follow a traditional procedure or a procedure of the utmost urgency when the applicant is the subject of an order of removal the execution of which is imminent.

Through an analysis of the judgements of the CCE/RVV, the research aims both to account for certain **rationalities** that (1) underlie the **work of the CCE/RVV** in the context of controlling the decisions taken by the administrative authorities when applying the law on foreigners, and simultaneously (2) to offer an overview of these authorities' (OE/VZ) work relating to the cases of foreigners suspected or convicted of acts of terrorism in Belgium. The first quantitative findings and the time constraints led us to focus solely on the appeals for annulment for this second objective, and to concentrate the analysis on the **decisions rendered by the OE/VZ**, as they emerge from the judgments of the CCE/RVV. In doing so, the research aims to report on the different ways in which the terrorist label attributed to these persons is used and made operational by the authorities implementing the law on foreigners. Finally, it wonders about the characteristics and the ability of the control carried out by the CCE/RVV to ensure an effective defence of the rights of the persons concerned.

4.4.3.   Legal Framework and Contributions of the Law of February 24 2017

In view of its significant impact, the law of 24 February 2017 deserves specific attention. This law substantially modifies the system of removal (on grounds of public order and national security) and considerably extends the scope of action for terminations of residence and orders for removal. Two types of extension can essentially be identified: (1) the extension of the scope *rationae personae* of measures, combined with the choice of the precept to leave the territory (OQT) as the sole instrument for removing foreigners and (2) its extension *rationae materiae*. Finally, the intervention, through reports submitted to the OE/VZ, of the intelligence services such as VSSE and CUTA, must be addressed.

Studies have reported in detail on the ***rationae personae* extension** implemented by this law (Brion 2020, Macq 2018). We should essentially note that this puts an end to the absolute immunity against expulsion enjoyed by foreigners born in Belgium or having resided there since childhood ("quasi-nationals"), as well as to the reinforced protection enjoyed by several other categories of foreigners (meaning for instance that they could only be removed in the event of a serious breach of public order or national security – for example: foreigners residing in Belgium for more than 10 or even 20 years, spouses of Belgians or parents of Belgian children).

Moreover, foreigners established or benefitting from a long stay in Belgium could only be removed by means of a royal decree of expulsion or a ministerial decree of deportation respectively, which are relatively complex procedures accompanied by strict conditions and guarantees. The law of 24 February 2017 abolishes both procedures and generalises the precept to leave ("ordre de quitter le territoire" or "OQT") as the only tool for removal regardless of the initial residence status. This reform has two major implications: the considerable simplification of the conditions and guarantees linked to the expulsion of foreigners established in the Kingdom

or benefitting from a long-term stay there, and the elimination of often time-consuming procedural steps allowing the administrative authorities to act more quickly. Finally, overturning these decrees means that the time of effective removal is dissociated from the time of termination of the right of residence in the Kingdom[94].

The *rationae materiae* extension of the scope takes shape in the 2017 reform by the replacement of the concept of "breach of public order or national security" by the concept of "reasons of public order or of national security". While a conviction was never expressly required for removal due to a breach of public order or national security before 2017, a large majority of foreigners to whom this removal was applied had been previously convicted. The 2017 reform now expressly provides that a conviction is not necessary to meet the new criterion of "reason" (of public order or national security). However, a criminal conviction is not in itself a sufficient basis for a decision to remove. The OE/VZ's decision must be based on a body of evidence allowing it to conclude that said individual poses a threat to public order or national security through his or her personal behaviour.

Two bodies responsible for intelligence collection and threat assessment[95] contribute indirectly to the decisions of the OE/VZ. On the one hand, there is **State Security** (VSSE), the official Belgian intelligence service, which participates in particular in the implementation of the Plan R(adicalism). VSSE has access to all the ordinary, specific and exceptional methods of data collection, but is also subject to dual control by the BIM Commission and the Standing Intelligence Agencies Review Committee (R Committee)[96].

On the other hand, the **Coordination Unit for Threat Analysis** (CUTA)[97], was set up specifically to assess terrorist and extremist threats[98], and operates under the joint supervision of the Ministers of Justice and Interior. The SPF/IBZ Interior 2016 activity report[99] notes a greater flow of information to CUTA and a significant increase in the number of requests from the authorities, as well as assessments drafted by CUTA from 2015 onward, directly linked to the series of attacks committed across Europe. CUTA is not an official Belgian intelligence service in the same way as State Security. It therefore does not have access to the specific and exceptional methods of data collection open to the intelligence services. As such, it is not subject to the dual control of the BIM Commission and the R Committee. If the R Committee controls CUTA's operations in principle, jointly with the Standing Police Monitoring Committee (P Committee), the nature of this control remains unclear to this day.

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[94] The termination of residence is the act of ending the legal stay of a person on Belgian territory. Expulsion, on the other hand, is the act of ordering the foreigner to physically leave the territory. It was originally taken against foreigners residing illegally or on a short stay in the territory, and recently against any foreigners regardless of the length or status of their stay.

[95] Article 8, 1° of the organic law of 30 November 1998 on information and security services.

[96] In accordance with the organic law on intelligence and security services, as well as the law of 4 February 2010 on data collection methods.

[97] Established by Article 5 of the law of 10 July 2006 relative on threat analysis.

[98] Listed in points b) and c) of Article 8, 1° of the organic law on information and security services insofar as they are "likely to harm the internal and external security of the State, Belgian interests and the security of Belgian nationals abroad or any fundamental interest of the country as defined by the King".

[99] Rapport d'activités Intérieur 2016, "L'Organe de coordination pour l'analyse de la menace", 28 April 2017, https://2016.ibz.be/2017/04/28/organe-controle-analyse-menace/, viewed on 25 November 2020.

4.4.4. The Development of the Application of the Law on Foreigners Suspected or Convicted of Terrorism

4.4.4.1. General Trends Relating to Judgments in Annulment of the CCE/RVV

Table IV shows the development of judgments until 2019. The data reports the development of judgments until 2019, and shows a significant increase in the number of judgments rendered by the CCE/RVV starting from 2016, but especially from 2018. A double hypothesis can be formulated, namely (1) that this increase may be linked to the rise also observed from 2016 on the level of "terro" litigations handled by the correctional courts (Remacle, Van Praet & Vanneste 2022) and (2) that it may be linked to the effects of the law of 24 February 2017, expanding the possibilities of removal of foreigners for reasons of public order and national security. The average volume of judgments in annulment is also increasing, as is the number of judgments delivered in chambers of three judges or in combined chambers. Finally, the number of appeals lodged under the procedure of the utmost urgency has also increased, particularly since 2018. It can be deduced from these observations that cases regarding a foreign national suspected of or tried for terrorism, are taking on an increasingly important and challenging role in the exercise of the law on foreigners. Moreover, the observable growing urgency may reflect the relative severity of the OE/VZ with regard to foreigners with links to terrorism.

Table IV. Development of the number of judgments and decisions rendered by the CCE /RVV regarding a person suspected or convicted of acts of terrorism (2009-2019).

Year	Full Jurisdiction		Annulment							
	Judgments	Decisions	Judgments	Decisions	Average no. pages	Max no. pages	A single judge	3 judges or combined chambers	Classic procedure	Extreme urgency
2009	2	2	1	1	8	8	1		1	
2010			1	1	8	8	1			1
2011	2	2								
2012			3	3	8	10	1	2	3	
2013			1	1	12	12	1			1
2014										
2015	1	1	1	1	12	12			1	
2016	2	2	7	10	14,5	46	4	3	7	3
2017	1	1	8	10	14,8	34	7	1	8	2
2018	2	2	23	29	19,3	37	17	6	14	15
2019	12	12	40	44	21,1	55	31	9	25	19
Total	**22**	**22**	**85**	**100**	**18,5**	**55**	**64**	**21**	**59**	**41**

4.4.4.2. The Development of the Actions Taken by the OE/VZ as Shown in the Judgments of the CCE/RVV

The only socio-demographic information collected in the judgments that can be used statistically relate to gender, nationality, birth in Belgium or the time of arrival in Belgium. Family information that could be relevant with regard to residency status, such as marital status and the residency status of the (ex) spouse, or the circumstances of arrival, are too incomplete to be used. Men make up 82% of the 51 people concerned and the predominant nationality is Moroccan (41%).

An examination of the action taken by the OE/VZ leads to highlighting **an increase and tightening of measures** (including *rationae personae*), which takes three main shapes.

- A multiplication of cases of removal starting from 2016 and especially 2017, whether taken or not in conjunction with the termination of residence, against foreigners suspected or convicted of acts of terrorism. These removal decisions are very often the subject of a first appeal in extreme urgency. They also apply in full force to people who previously enjoyed immunity or were protected. A total of 15 foreigners previously excluded from the scope of

the law of 15 December 1980 (and therefore benefitting from immunity against removal) were subject to such removal. 35% of the precepts to leave the country taken after the entry into force of the 2017 law were therefore taken against foreigners who previously benefitted from *full immunity* against removal[100] and another 35% concerned a foreigner who had previously benefitted from *reinforced protection[101]*. It should be noted that all of them have previously been the subject of criminal convictions, including 13 for acts of terrorism.

- The emergence of a notable amount of residence terminations not accompanied by removal starting in 2017 applied, first of all, to a category of foreigners previously excluded from the scope of the law. Over half (58%) of these measures concerned "quasi-nationals", foreigners born in Belgium or residing there legally since their childhood (who had previously benefitted from full immunity against removal), and 21% applied to foreigners who had benefitted from reinforced protection.

- A multiplication of entry bans starting in 2015. This multiplication mainly concerned entry bans imposed in the absence of any other measure. In addition, the ban periods are getting longer: whereas they were limited to 10 years until 2016, short-term bans (of three or six years) are disappearing to make way for 10, 15 or even 20 years starting from 2017.

The examination of the action taken by the OE/VZ according to whether there is a **criminal conviction** indicates that the decisions to withdraw residence and/or remove, take into account one or more convictions in 87% of cases, and terrorist offences are involved in 89% of these. Even if the law of 24 February 2017 widened the possibilities of removal with regard to non-convicted foreigners, these therefore remain a minority among the people targeted by these decisions. Moreover, the observation that their number dwindles in 2017 and 2018, could be explained by the fact that the first 18-24 months following the 2017 reform were above all marked by the accomplishment of the government project to remove a large number of foreigners already known to the criminal justice system. The following period, beginning in 2019, could be the starting point for a different treatment of removal aimed more at foreign suspects. An examination of this hypothesis would require an analysis of decisions subsequent to 2019.

Finally, it appears that starting in 2017, **intelligence reports are taking up increasingly more space** in the OE/VZ's decisions. During the period following the 2017 law, 69% of the OE/VZ's decisions examined mention at least one report from an intelligence service, compared to 31% for the previous period. In addition, CUTA is increasingly called upon starting in 2017, to a slightly lesser extent but comparable to the VSSE. The use of the intelligence services more often than prior to 2017 concerns foreigners who had previously been convicted. Rather than filling a lack of information linked in particular to the absence of court records available to the OE/VZ, information provided by intelligence is most often added to information produced during the criminal trial. A detailed examination also shows that CUTA's interventions particularly concern (76%) foreigners who have acquired permanent resident status in Belgium and have been living a family life there for many years.

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[100] Born in Belgium or living there since childhood.
[101] Previously only deportable by means of a royal deportation or a ministerial deportation judgment, depending on residency status.

4.4.4.3.   Assessments of the CCE/RVV

This section reports on the action taken by the CCE/RVV regarding the appeals lodged against the OE/VZ's decisions, as analysed above[102].

In the long term (2009-2019), our examination shows a significant increase in the number of judgments since 2016, mainly in 2016 and 2017, by confirmations of the OE/VZ's decision (nine out of 10 judgments). After 2017, the sharp rise in the number of judgments is accompanied by a more balanced distribution of confirmations on the one hand and overturns or suspensions on the other (only 38% confirmed in 2018, compared to 59% in 2019). Hence, we can deduce that during the significant increase in the number of terminations of residence /removal actions taken by the OE/VZ, the CCE/RVV fulfilled its mission of control to a certain extent, thereby acting as a relatively effective counterweight to the foreign office's severity.

However, some findings deserve attention. For certain foreigners, for instance, up to four successive attempts at removal have been made in just a few years, testifying to a certain relentlessness on the part of the OE/VZ, despite the apparent effectiveness of the appeals lodged with the CCE/RVV. The legal framework regulating the appeal procedure does not seem capable of sheltering these foreigners from a series of renewed attempts at removal. For some people, removal decisions, appeals and annulments follow one after another, with no end in sight.

Furthermore, 77% (10 decisions) of the definitively confirmed decisions (conventional procedure) are aimed at termination of residence without OQT, an option seldom used by the OE/VZ before 2017, and which since 2017 has been taken mainly with regard to foreigners previously benefitting from reinforced protection against removal ("quasi-nationals" born in Belgium, having grown up there, or benefitting from a long stay).

Finally, when we analyse the CCE/RVV's decisions, depending on whether the OE/VZ's contested decision refers to information provided by one of the intelligence services or not, we find very similar confirmation and suspension/annulment rates for the entire period, as approximately 60% of the OE/VZ's decisions are confirmed in both cases. However, this observation must be qualified by examining the observable developments after 2017, with the appearance of CUTA as a new service in the OE/VZ's arsenal and its relatively greater targeting of "quasi-national" foreigners or foreigners staying in Belgium for a long time.

4.4.4.4.   Stigma and Dangerousness in the Treatment of "Terro" Foreigners

Our quantitative analysis of the judgments can identify certain trends in the OE/VZ's and the CCE/RVV's practices, but it can only barely take into consideration the rationalities underlying the decisions examined. The "hybrid" analysis of classic case law and thematic analysis has brought a double added value.

The first was to show how the "label" of terrorism is directly operationalised in the context of implementation of the termination and removal measures taken by the OE/VZ. These measures then seem to fit into a dynamic of stigmatisation (Goffman 1975), which gives a decisive place to

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[102] The reference year here is again that of the CCE/RVV's judgment, and not that of the OE/VZ's decision.

discriminatory practices (Lacaze 2008) and appears here as structural (Link & Phelan 2001). The institutional approach to stigma (Plumauzille & Rossigneux-Méheust 2014) is particularly suitable for accounting for this process at work in the decisions of the OE/VZ that allows this body, as a manifestation of a dominant power, to punish or exclude categories of people who deviate from the norm by their way of life or their conduct. This process, which besides is designated by certain judges of the ECHR[103] as producing a "double penalty" effect, is therefore legitimised by the idea that the practices and ideologies of this category of the population represent a direct threat to public order and national security. The analysis of the assessments made by the OE/VZ shows that the commission of acts of terrorism, *a fortiori* if these acts result in a conviction, almost automatically leads to a unfavourable conclusion, in that the latter are perceived as directly constituting "reasons of public order and national security". CUTA assessments (and in some cases VSSE reports) are also directly converted into motivations. Although in many cases not based on categories of offences enshrined in the law, the OE/VZ's qualification practices then have the effect of sanctioning ideas and conduct either after the criminal sentence, or – worse – in place of it.

The second added value was to stress how, in the context of an appeal before the CCE/RVV, challenging the motivations of the OE/VZ can prove difficult due to the limitation of the control to the sole legality of the contested decision, *a fortiori* if this decision relied on information and assessments provided by the intelligence services and by CUTA. We then concluded that the assignment of a "terrorist" image leads to legitimising a certain dispossession of the self and of rights, which manifests itself, beyond significant obstacles to the rights of defence, through major difficulties related to the protection of fundamental rights as guaranteed by the ECHR. The individual right to private and family life, for instance, is sacrificed in the name of public order and national security. The right not to be subjected to inhumane and degrading treatment proves moreover to be all the more difficult to assert when residence is terminated without an immediate order for removal, as imminent removal is a condition to challenging the measure on this basis. Answering the question of whether the control of legality can ensure an effective defence of the rights of the foreigners concerned therefore requires a mixed answer. Statistical trends show that although many appeals are rejected during the urgent procedure, the final decisions of the Council after 2017 do not reveal an excessive rate of confirmation of the OE/VZ's decisions. Certain rationales emerging from the qualitative analysis of the decisions, as well as the relatively high confirmation rate of decisions to withdraw residency without removal – which particularly affect "quasi-nationals" – nevertheless bring nuance to the statistical observation and call for caution.

4.4.5. Recommendations

> At the end of this part of the study, the results lead us to make four recommendations:

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[103] Joint dissenting opinion of Judges Costa, Zupanic and Türmen in the European Court of Human Rights judgment, Üner vs. the Netherlands (GC), 18 October 2006.

- To consider extending the control currently limited to the legality of the OE/VZ s decisions to control in full jurisdiction, with a particular focus on the content and relevance of the motivations. The purpose is mainly to initiate reflection with a view to modifying the scope of the control exercised by the Council for Alien Law Litigation (CCE/RVV). This **extension of the CCE/RVV's field of competence** would likely remedy a large part of the democratic imbalances found in the results of this analysis.

- To think about the means to be implemented to ensure **higher transparency** concerning the elements held against persons in the context of the removal procedure. This recommendation is particularly centred around the **CUTA evaluation**, which is mostly brief and incomplete (often referring to the fact that the information is classified, sometimes for no apparent reason) and hardly communicated to the person concerned, but is given disproportionate weight in OE/VZ motivations.

- To provide more satisfactory consideration for **fundamental rights** as part of the procedures examined by questioning the idea according to which "the safeguarding of public order and national security" must necessarily and automatically overshadow individual rights (even though there is barely a consensus on the definition of the concept of public order and national security).

- To stimulate **discussion on the merits of removal** (deportation) for reasons of public order or national security, given the diversity of the facts (and their varying levels of seriousness) which may have justified suspicion or conviction for acts of terrorism, and particularly for participating in a terrorist group's activities. The discussion should be conducted with regard to the principle of equal treatment between litigants, as well as with regard to a principle of medium- and long-term effectiveness in the fight against terrorism.

5. CONCLUSION

In *The state of Preemption. Managing Terrorism Risk Through Counter Law*, Richard V. Ericson stated that "*[t]he American response to the terrorist attacks of September 11 highlighted a trend toward preemptive security that was already under way in Western societies. Preemptive security,*" he went on, "*is based on a precautionary logic that normalises suspicion (...). There is perpetual vigilance for signs of danger on the assumption that everyone is guilty of criminal intents. There is also a strong urge to criminalise not only those who actually cause harm, but also those merely suspected of being harmful (...)*". The eminent criminologist posed two important hypotheses. First, "*[p]reventive security requires a radical reconfiguration of the law*". Secondly, this reconfiguration, which he called "counter law", takes two forms, "counter law I" and "counter law II". Counter law I, he wrote, is "*the law against the law. New laws are enacted and new uses of existing laws are invented to erode or eliminate the traditional principles, standards and procedures of criminal law that get in the way of preempting imaginary sources of harm*". Counter-Law II, he added, "*takes the form of various "surveillant assemblages*" (2008, 57). At the end of this research, one is forced to conclude that he could not have been more

right. In addition, one also has to admit that the increasing use of preemptive measures is contributing to the solidification of a *"social sorting process"* (Lyon, 2007) and the (re-)production of the dangers it aims to prevent, be it the polarisation of society or the resentment and grievances of its members, that are allegedly leading to the so-called "radicalisation".

"Radicalisation" is a "strategic invention" – just as, according to Jacques Donzelot (1984), the notion of "solidarity" was in the social formula of government – that, in advanced liberal societies, allows the passage from social security to "pre-emptive security", the reconfiguration of law and the "surveillant assemblages" it requires, in a framework that is no longer that of democracy as thought by Hans Kelsen, but, tendentially, the state of exception as conceived by Carl Schmitt. As stated by Frank Bulinge (2016), the backdrop is the "clash of civilisations" imagined by Huntington (1997), a scholar who, it is worth noting, saw terrorism as a means of producing and reproducing *"America's national identity"* and solving the challenges it faces at lower political and economic cost, through the designation of an enemy (2004).

In this report, we have shown that the notion of "radicalisation" is pervasive for all actors throughout the criminal enforcement apparatus, and that these actors continuously grapple with this "empty signifier" (Fadil, 2019). In the face of no uniform profiles, root causes or pathways leading to terrorism, the counterterrorism network has not been able to adopt a uniform set of criteria in assessing profiles and detecting potential "radicalisation". Yet, because the actors of this network still have to make the notion of "radicalisation" operational to comply with their assigned missions, the lack of clarity around the notion itself seems to participate to its efficiency and has major implications in terms of practical policing, criminal ruling and governing offenders in prison.

Moreover, we observed that most actors of the criminal law enforcement apparatus rely first and foremost on the idea that access to and adoption of radical ideas is a condition of engagement in violent action – and, consequently, that violent action can be prevented through inhibiting the spreading of radical ideology. This reasoning is consistent with Moghaddam's "Staircase to terrorism" (Moghaddam, 2005) which views the "moral engagement that justifies terrorism" and "joining a terrorist group" as consecutive steps of a process, the second being impossible without the first. This pre-supposition together with a pre-emptive logic hence call for early detection of potential "radicalisation" threats and lay the groundwork for the rationale of counterterrorism policing, manifested particularly in the "CoPPRa" training model, which has been conceived to teach police officers how to detect early signs of radicalisation with the same mono-pyramidal approach in mind. The seemingly clear but de facto inconsistent framework of "CoPPRa" combined with an immunity logic (the so-called "umbrella-policy") have created major uncertainties in the surveillance process and consequently a congestion of databases, preventing police forces from operating efficiently.

In the criminal justice context, extremism – and more specifically Islamist extremism – is placed at the heart of the process leading to terrorism, religious convictions and motives being continually questioned with a tremendously stigmatising effect on both the persons directly involved, and the communities they represent. While there has been little to no debate as to the political choice of using criminal law over the perhaps more appropriate tool of international

humanitarian law (Cesoni, 2018), thwarted attempts made by legal counsels at mitigating the "terrorist" involvement of Belgian youth in Syria, particularly highlight how Belgian counterterrorism policy is – at least partly – built around the treatment of the Syrian conflict through national criminal law, and more specifically through an extensive (secondary) criminalisation of terrorism and "radicalisation". The impossible pinpointing of "radicalisation" due, among others, to undeniable links between the Syrian conflict and the progressive construction of the phenomenon on the Belgian level, ultimately affects the length of sentences and thus aforementioned life prospects beyond detention.

While the Plan P calls for the "sensible" sorting of inmates into adequate penitentiary regimes and a "specialised management of radicalisation with the aim of an individualised approach" in the penitentiary system, it fails to define a single set of criteria that could accurately detect signs of "radicalisation" and therefore makes it impossible to design a sensible individualised way to manage "radicalised" inmates. Yet, inmates labelled as "radicalised" see their prison trajectories and pathway to reintegration deeply impacted. As Moghaddam's approach has since been deconstructed and reconstructed with reference to independent, rather than converging and successive, processes related to different forms of "radicalisation", notably in McCauley and Moskalenko's study "Understanding Political Radicalization: The Two-Pyramids Model", we therefore urge for the counterterrorism network to review their counterterrorism policies, taking into consideration these new findings.

In addition to the pervasive and problematic reliance on the notion of "radicalisation", the report brought to light, throughout the analysis of different fields, how counterterrorism policies have taken their toll on the ways in which relevant information is gathered and conveyed to actors and especially decisionmakers on all levels. Under pressure after the 2014-2016 attacks, the security services have promoted the formation of new surveillant assemblages. Faced with the impossible task of circumscribing the phenomenon of "radicalisation", they have imposed on police officers and prison guards responsible for detecting warning signs and for collecting information decreasingly discriminating – but increasingly discriminatory – reading grids and sets of criteria, ultimately leading to an overall *infobesitas* across all institutions of the State's law enforcement system. A challenge (of gathering, cataloguing and managing *crucial* information without overloading databases in policing and the penitentiary system) and a "weapon" (against defendants in criminal procedure) at the same time, the accumulation of raw, unfiltered information triggered a demand for experts to determine what "radicalisation" is, but more importantly, for field actors such as social workers, faith and lay advisers or chaplains serving as prolongations of the intelligence services – albeit initially holding missions of help and care – to act as ad hoc analysts capable of making sense of the mass of otherwise useless data. The creation of the Coordination Unit for Threat Analysis (CUTA), can be seen as the institutional emblem of the offers meeting this demand, the use of ready-made categories – which significantly complicate the mission of institutions such as the probation court (TAP) – being symptomatic of the inability of the system to stand up to the rationale of all-embracing information collection. Still, the enrolment of more actors in intelligence collection and analysis is far from being self-evident. Actors from different analysed sectors remind that an important, yet disregarded, pitfall of this

practice is the consequences it entails when it comes to relationships of trust between social or other care workers and their beneficiaries, which is a prerequisite to the effectiveness and efficiency of said actors' work with the target population. When trust cannot be built or is broken, the (potential) beneficiaries of social (or disengagement) programmes can decide to put an end to the follow-up, and thus not only do these persons fall off the radar, but the workers initially supposed to assist them on their way to reintegration forfeit the possibility to do so.

This logic of extended information collecting was elaborated so as to increase the efficiency of a criminal law enforcement paradigm seen as limited because purely reactive. Yet, the results of our research show that when individuals affected by counterterrorism and intelligence efforts – whether because of their involvement in some groups, or because they belong to what became a suspected community – discover which "signs" are interpreted as signs of "radicalisation", they adapt their behaviour accordingly in such a way that observation and analytical grids are always outdated. This is observed, for instance, by local police forces who find that many of the outward signs, gestures and behaviours that they used to associate with "radicalisation", are now less obvious or visible in public spaces. This, in turn, leads to a tendency to obliterate the phenomenon itself and to transfer the perceived danger to all members of the Muslim population constructed as suspect, since pinpointing the conducts that constitute signs of "radicalisation" – just like pinpointing "radicalisation" itself – is made virtually impossible. Although Khosrokhavar seemed to have solved this problem in the penitentiary system by introducing the category of *taqyia* (or dissimulation), this category only gave more power to essentialising tendencies which link Islam with dangerousness by recommending the consideration of the absence of signs of "radicalisation" as in itself a sign of "radicalisation".

If action plans like the Plan P stated that the "most powerful weapon in the fight against radicalisation [...] is without a doubt a policy [...] which respects fundamental rights [...] and consistently focuses on rehabilitation and reintegration" (6), the results ensuing from our research suggest that, beyond information and documentation, the dominant logic in preventing "radicalisation" and terrorism – in line with pre-emptive security –, seems however to be the banishment of the supposedly dangerous. Thus, counter-radicalisation policy is, in its own way – which is not Anthony Bottoms' way – a policy of bifurcation (Brion, 2020) in which the prevention of recidivism seems to be ensured by two different processes depending on whether or not one has an immigrant background: removal ("reintegration in the country of origin") versus social reintegration. While the penitentiary system serves as a first level of "internal" and temporary banishment (the analogy of the "fridge" being particularly accurate in describing its effect) – exacerbated by the lengthening of sentences through lack of access to modalities of sentence enforcement and the enforcement of old sentences – the foreign office becomes the major actor in the prevention of recidivism through removal of "dangerous" populations made vulnerable by their foreign or double citizenships – the second of which they sometimes cannot renounce to although they have little to do with the country of "origin". As important as the prevention of recidivism has become in the institutional construction of (counter)terrorism, it is however crucial to highlight once again that (i) as found by prominent counterterrorism researchers such as Thomas Renard, terrorist recidivism is close to none and mainly limited to the immediate period

after release which, owing to sentence enforcement practices, is too often left unsupervised; and (ii) discriminatory treatment and radical exclusion from society – increasing security measures applied within the criminal procedure, an almost exclusive application of the deprivation of citizenship to terrorism-related Belgians with double citizenships, the increasing recourse to terminations of residence of suspected or convicted foreign nationals and "quasi-nationals", major hindrances to the effective reintegration into society of terrorist convicts – continues to prove counterproductive with regards to the initial intentions of these policies.

In this regard especially, despite the still prevailing primacy of a criminal law enforcement approach in counterterrorism policing, an overall shift – sometimes deliberate and organised, sometimes manifested in its effects – can be observed towards addressing terrorism through administrative bodies and procedures. Mostly, these however lack sufficient tools and guarantees to ensure the adequate protection of rights in the face of an increasingly severe treatment of the phenomenon and of the persons who are deemed its representatives and conveyors. Polarising, discriminating, obstructing practices highlighted throughout the different fields of research ultimately all amount to, in a way, branding the person beyond (or instead of) the criminal conviction, affecting their administrative status and, more pragmatically, basic life prospects. In this context, we have exposed different ways in which the "terrorist" label leads to the judicial, administrative, social and psychological alienation of the individual, manifested among others in the difficulty to assert and protect fundamental rights of the labelled.

In the face of such impacts, it appears necessary, for researchers and policy-makers alike, to reconsider the pertinence of the geopolitical approach to terrorism, presented by Daniel Dory (2017) and which requires to 1) distinguish, in what is said about a "*terrorist fact*", the polemical, legal and scientific layers; 2) to study, on a case-by-case basis, what he names "*the terrorist complex*" (a dynamic structure linking various elements, such as the act, the operators, the victims, the message, the recipients and the audiences, which together form the "*terrorist fact*", but also the causes, the sponsors and the organisers on the one hand, as well as the tactical and strategic effects and the informational and media treatment, on the other); to think of terrorism as "*occurring at the articulation of various processes resulting from successive choices made by actors according to concrete geopolitical conjunctures and situations*", and describe the sequence articulating the field of dissent, the field of insurgency and civil war in which it takes place. This, he writes, would "*allow to identify possible sequences (diverse and not necessarily linear), which make it possible to understand and possibly sometimes predict (...) mobilisation trajectories*". It would also allow to build a consistent counterterrorism policy independent from a ready-made and catch-all explanation in terms of "radicalisation"; an explanation that, in addition to being – literally – schematic, has the effect of scotomising the dangerous situation or, more precisely, of shifting the spotlight and transferring dangerousness from the situation to the religious group they consider and constitute as a suspect community. Finally, even though our focus was here to assess the counterterrorism policies entrusted to the repressive apparatus of Belgium, we ought to remind that the best prevention should and could, after all, be achieved mainly through measures ranging from the fostering of a less discriminatory school education system, the support of youth and social work, to the development of policies that tackle issues such as unemployment or

alienation and their impacts on mental health problems, among others. Only those measures can encourage and nurture a strong and diverse civil society, one of the cornerstones of healthy democracies.

6. ACKNOWLEDGEMENTS

7. DISSEMINATION AND VALORISATION

7.1. Organisation of Research Seminars and Conferences

22 March 2019. *La radicalisation en prison. Entre mythes et défis/De radicalisering in de gevangenis : tussen mythes en uitdaging*, co-organised by the Egmont Institute and Université catholique de Louvain, with the support of BELSPO
- Introduction : Th. Renard (Institut Egmont), **F. Brion (UCLouvain, coord. AFFECT)**,
- Academic panel : F. Truong (Université Paris 8), **F. Brion (UCLouvain, AFFECT)**
- Panel « Evaluation et contrôle » : Tom Grandjean (analyst, VSSE), G. Vercauteren (Adj.dir. OCAD), Chr. Vancoppenolle (CelEx), K. El Khmlichi (Directeur Régime, Prison de Saint-Gilles)
- Panel « Réintégration » : M.-N. D'Hoop (director), I. Jellouli (justice assistant, Maison de justice de Bruxelles), Hafid Kaidi (CAPREV) et M. Dumonceaux (SAD La Touline)
- Concluding Keynote Remarks : Prof. Andrew Silke (Cranfield University, UK).

22 November 2019. *Formes et effets de la suspicion dans le dispositif belge de contre-radicalisation*, seminar organised within the framework of the AFFECT programme
- **F. Brion (UCLouvain, AFFECT),** *Introduction : concepts, hypothèses, terrains*
- **E. Hanard, K. Veraillie (VUB, AFFECT),** *La détection de la radicalisation par la police locale: une étude ethnographique*
- S. Jaminé (KULeuven, FAR), Entre prévention et sécurité : les politiques de lutte contre la radicalisation en Belgique
- M. Bouhon (SPF Justice) Financement du terrorisme via le secteur associatif belge : absence d'infraction avérée et surveillance de l'associatif musulman
- Chr. De Valkeneer (MP/UCLouvain), Terrorisme et radicalisation : les glissements du judiciaire vers l'administratif
- **C. Crahay, L. Kervyn de Meerendré (UCLouvain, AFFECT),** *Contre-radicalisation et prison : la construction d'une population dangereuse ?*
- **C. Vanneste, C. Remacle (INCC, AFFECT),** *De quelques traits saillants des mesures belges fédérales en matière de contre-terrorisme*
- N. Fadil (KUL, FAR), Les formes de solidarité autour de questions liées au « terrorisme »
- P. Massay (CAPREV) Conclusions de la journée d'études.

12 & 19 March 2022. **Impacts of counter- and de-'radicalisation' policies in prisons and beyond. Presentation of research results. Exchanges on experiences of impacted people and stakeholders from the (Muslim) organised civil society**, seminar organised within the framework of the AFFECT programme
- M. Hamidi (UCLouvain, AFFECT), Introduction
- F. Brion (UClouvain, AFFECT), Presentation of previous research results on counter-radicalisation policies, at the local municipality level

- C. Crahay (UCLouvain, AFFECT), Impacts of security regimes on detainees labelled "radicalised"
- R. Varga (UCLouvain, AFFECT), Impacts of the terrorist label on reintegration perspectives and the right of residence
- L. Kervyn (UCLouvain, AFFECT), Impacts of de-"radicalisation" policies on the work of external workers (S.A.D., specific services, Muslim counsellors, chaplains and lay advisors).

7.2. Contributions to International Conferences and Seminars

BRION, F. « *Crimmigration* », Communication Seminar *Tous égaux derrière les barreaux ? L'étranger cible du droit pénal* organised by Observatoire International des Prisons and ULB at the Institut de Sociologie of ULB, 09 November 2019

BRION, F. «*Prison et radicalisation : premiers enseignements d'une recherche*», Communication, Seminar organised by the Société d'Information Psychiatrique at Antibes, 4-6 October 2018.

BRION, F. *« Prison et radicalisation »*, Communication, Research seminar *Radicalisation et terrorisme*, Université Paris Diderot, 29 November 2018.

BRION, F., KERVYN, L. AND CRAHAY, C. « *Evaluating the Belgian Action Plan Against Radicalization in Prisons: moral performances and impacts* », Communication within the pre-arranged panel « Evaluating the Counter Radicalization Approach to Countering Terrorism: Questions and Lessons from the French and Belgian Fields », 19th Annual Conference of the European Society of Criminology, Ghent, Belgium, 19th September 2019.

BRION, F. « *Le parcours du combattant : l'impossible retour, l'impossible pardon ?* » (plenary session), Communication, International Conference *De la récidive et du pardon ; à la croisée des chemins du destin ?* organised by the Ecole de criminologie critique européenne (ECcE), Faculté de droit, Université catholique de Lille, 6-9 November 2019.

CRAHAY C. « *Lutte contre la radicalisation en prison : impact sur les pratiques professionnelles des agents pénitentiaires belges* », Communication, International conference *Prisons du monde et extrémismes violents*, Lille, 8 and 9 March 2021.

CRAHAY C. AND GAUTHIER L., « *Les représentations de la femme 'terro' : une ressource cognitive de justification relationnelle* », Communication, 6e Colloque Jeunes chercheurs et jeunes chercheuses sur la privation de liberté, Paris, 17 and 18 March 2022.

GUITTET, E.-P. « *Le sens de la peine après la paix* », Communication, Maison du Barreau de Paris, 13 December 2018.

KERVYN L. « *Soutien spirituel en prison sous surveillance – quelques dilemmes* », Communication, International conference *Prisons du monde et extrémismes violents*, Lille, 8 and 9 March 2021.

REMACLE, C. « *Lutte contre le terrorisme et prévention de la radicalisation : les nouveaux dispositifs de l'action publique en Belgique sous le prisme des droits fondamentaux et des libertés individuelles* », Communication, Conference of the Association internationale des criminologues de langue française (AICLF), Lausanne, 4 June 2018.

REMACLE C. AND VANNESTE C. « *Socio-political context and anti-terrorist measures in Belgium : the impact on rights and social cohesion* », Communication within the pre-arranged panel « Evaluating the Counter Radicalization Approach to Countering Terrorism: Questions and Lessons from the French and Belgian Fields », 19th Annual Conference of European Society of Criminology, Ghent, Belgium, 19 September 2019.

REMACLE C. AND VAN PRAET S. « *Between here and there. Ethnography of Belgian trials for terrorist offences* », Communication within the pre-arranged panel « The effects of counterterrorism policies », 21st Annual Conference of European Society of Criminology, Online, 9 September 2021.

REMACLE C. « *Les procès correctionnels en matière de terrorisme en Belgique : ethnographie d'un contentieux émergeant* », Communication, Conference of the Association internationale des criminologues de langue française (AICLF), Ottawa, Canada, 15 May 2022.

REMACLE C. « *Asset freezing as an administrative measure: a stumbling block to the reintegration of people convicted of terrorist offences?* » Communication, 22nd Annual Conference of European Society of Criminology, Malaga, Spain, 23 September 2022.

VANNESTE, C. « *Understanding the recent contrasting trends in prison population rates in times of economic crisis: a challenge for the Political Economy of Punishment approach* », Communication, Workshop *Crises, Punishment and Political Economy* organized by the University of Bologna (Law School - Criminology, and CIRSFID) and the European Journal of Criminology (SAGE Publisher), Bologna, 7 September 2018.

VARGA, R., BRION, F. AND VANNESTE, C. « *The impact(s) of counterterrorism on the enforcement of the Law on Foreigners in Belgium* », Communication within the pre-arranged panel « The effects of counterterrorism policies », 21st Annual Conference of European Society of Criminology, Online, 9th September 2021.

7.3. Contributions to National Conferences and Seminars

BRION, F. « *La « radicalisation » : un problème musulman ?* », Communication, Soirée de lancement de l'édition 2018-2019 du certificat « Sciences religieuses et sociales : L'islam dans le monde contemporain ».

BRION, F. « *Paroles de 'terros'. Premières analyses* », Communication, Seminar *Terrorisme et radicalisation. Etat des lieux du phénomène et dernières avancées* organisé by GEPS within the framework of the Certificat inter-universitaire de gestion des politiques de sécurité urbaine at Université de Namur.

BRION, F. AND GUITTET, E.-P. « *Sécurité, prévention et radicalisation à Molenbeek – retour sur une recherche* », Communication, FUSL/CRESPO, 2 May 2018.

BRION, F. « *Quelques réflexions sur la figure criminelle du 'passeur'* », Communication, Seminar organised by members of the « Justice et vérité pour Mawda » Committee of Université de Mons, Université de Mons, 25 October 2018.

BRION, F. « *Radicalisation in prison - Do not harm principle, ethical concerns and the risks of counter-productiveness from a human rights perspective* », Communication, Research seminar *The role of monitoring and evaluation methods on boosting the effectiveness of PVE measures*, organised by Open Society Initiative and Institut Egmont, Brussels, Palais Egmont, 10 December 2018.

BRION, F. « *Prévenir la radicalisation en prison ? Les orientations actuelles de la politique criminelle* », Communication, Conference *Polarisation sociale et radicalisation* organised by FWB, Brussels, Palais des Académies, 14 December 2018.

BRION, F. « *Datarevolutie en terrorismestudies in België. Een gedachtewisseling tussen praktijk en Onderzoek* », Contribution to the « Onderzoeksprioriteiten » Panel, Seminar orgnised by and at Egmont Institute, 14 June 2019.

BRION, F. « *Dialoguer avec les détenus poursuivis ou condamnés pour terrorisme ou décrits comme « radicalisés » : obstacles, conditions, enjeux* », Communication, *Journée de réflexion et d'échanges sur la prévention des extrémismes violents en prison*, Communication, Seminar organised by the Centre de ressources et d'appui (CREA) of the Réseau de prise en charge des extrémismes et radicalismes violents (RAR) of the FWB to the attention of SAD (Services d'aide aux détenus) social workers, 18 October 2019.

CRAHAY, C. « *Radicalisation et prison : construction d'un risque de dangerosité féminin et masculin* », Communcation, Interlabo du GERN *Les normativités carcérales à l'épreuve du genre*, Saint-Louis Bruxelles, 24 June 2022.

CRAHAY, C. AND KERVYN L. « *Construction institutionnelle d'une population suspecte* », Communication, Seminar *Les dispositifs de contre-radicalisation. Formes et effets de la suspicion dans le dispositif belge de contre-radicalisation* organised by Politeia, Bruxelles, 22 November 2019.

GUITTET, E.-P. « *Vies et fins d'ETA et de l'ethno-nationalisme violent. Fausses certitudes et vraies questions* », Communication, Seminar *Terrorisme et radicalisation. Etat des lieux du phénomène et dernières avancées* organised by GEPS within the framework of the Certificat inter-universitaire de gestion des politiques de sécurité urbaine at Université de Namur.

GUITTET, E.-P. « *Police et sécurité privée* », Communication, GEPS/CPL, Louvain-La-Neuve, 23 February 2018

REMACLE, C. « *Les modifications législatives et les mutations de l'architecture sécuritaire de lutte contre le terrorisme et de la prévention de la radicalisation au niveau de l'Etat fédéral* », Communication, Workshop, Belspo, Bruxelles, 5 February 2018.

REMACLE, C. « *Modifications législatives en matière de lutte contre le terrorisme et de prévention de la radicalisation : nos droits et libertés en question* » (intervention within the course « Actualités de politique criminelle » taught by Sybille Smeets, ULB), 20 February 2019.

REMACLE, C. AND VANNESTE, C. « *De quelques traits saillants des mesures belges fédérales en matière de contre-terrorisme : l'empreinte d'un contexte de montée des populismes et de déconsolidation des droits ?* », Communication, Seminar *Les dispositifs de contre-radicalisation. Formes et effets de la suspicion dans le dispositif belge*, Politeia, Bruxelles, 22 November 2019.

REMACLE, C. AND VANNESTE, C. « *L'avènement d'un contentieux judiciaire « terro » en Belgique dans un contexte spécifique : l'intérêt d'une approche méthodologique hybride fondée sur une démarche qualitative* », Communication, International conference, ARCh *Comprendre les processus de changement : apport des méthodes qualitatives et mixtes*, Université de Liège, 13-14 October 2022.

7.4. Interview and Articles in the Press

BRION, F. Contribution to the event « *Enfants belges en Syrie/Irak - Table ronde sur visite humanitaire dans les camps de réfugiés du Nord-Est de la Syrie* » organised by Bernard De Vos, General Delegate for Children's Rights of the French Community. Interview presented on the television news, 17 September 2019.

DELHAISE E., REMACLE, C. AND THOMAS, C. *La chronique Carta Academica : Ce que la gestion des « combattants terroristes étrangers » et de leurs enfants dit de la lutte contre le terrorisme*, https://plus.lesoir.be/344033/article/2021-01-02/la-chronique-carta-academica-ce-que-la-gestion-des-combattants-terroristes, *Le Soir*, 2 January 2021.

DELHAISE E., REMACLE, C. AND THOMAS, C. « Que dit la gestion des combattants terroristes étrangers de la lutte antiterroriste ? », https://blogs.mediapart.fr/carta-academica/blog/060121/que-dit-la-gestion-des-combattants-terroristes-etrangers-de-la-lutte-antiterroriste, *Mediapart*, 7 January 2021.

DENOËL, T. « Radicalisation en Belgique : des réponses sécuritaires adéquates ont-elles été apportées » and « On ne sait jamais prédire chez qui le djihadisme va prendre », interview with Fabienne Brion and Christian De Valkeneer, *Le Vif*, 13 June 2019.

GUITTET, E.-P. « De plaats en de rol van de private veiligheidssector aan de zijde van de politie/La place et le role de la securite privee aux cotes des forces de policee », *Blue Minds*, no3, June 2018, 16-19.

REMACLE, C. AND NEDERLANDT, O., « Drame de Liège : l'actualité fait-elle la loi ? », *La Libre Belgique*, 11 June 2018, 40-41.

VERFAILLIE, K. « Wij schrokken niet van Pano-reportage », *Knack*, 24 September 2018.

7.5. Guest in a Public Event

REMACLE, C. Invited to debate on « Prison et lien social, comment se reconstruire une fois dehors ? » on the occasion of the projection of « La part sauvage », film by Guérin Van de Vorst, organised by Bruxelles Laïque, Cinéma Le Vendôme, 15 March 2018.

8. PUBLICATIONS

8.1. Edited Volume

BRION, F., DE VALKENEER, Chr. AND FRANCIS, V. (eds) (2019). *L'effet radicalisation et le terrorisme. État des pratiques et des recherches*, Bruxelles : Politeia, 214 p.

GUITTET, E.P., ZEVNIK, A. AND EKLUNDH, E. (eds) (2018). *Politics of Anxiety*, London : Rowman and Littlefield.

8.2. Detailed Reports and PhD Dissertation

HANARD, E. (2022, forthcoming). *Politionele vooroordelen vanuit sociaalpsychologisch perspectief*. PhD Dissertation, Vrije Universiteit Brussel.

REMACLE C., VANNESTE C. (dir), VAN PRAET S. (décembre 2022), « Approche ethnographique et jurisprudentielle des poursuites en matière de terrorisme en Belgique. Rapport de la recherche réalisée dans le cadre du programme AFFECT (Evaluation de l'impact des politiques belges de déradicalisation sur la cohésion sociale et les libertés) financé par BELSPO (volet judiciaire) », *Collection des rapports de recherche de la Direction opérationnelle de Criminologie* n°51, Institut National de Criminalistique et de Criminologie, 330 p.

VARGA, R. , Vanneste C. (dir) (2022) L'incidence de la politique antiterroriste belge sur l'application du droit des étrangers. A travers la jurisprudence du Conseil du contentieux des étrangers (CCE). Rapport de la recherche réalisée dans le cadre du programme AFFECT (Evaluation de l'impact des politiques belges de déradicalisation sur la cohésion sociale et les libertés) financé par BELSPO (volet CCE), Collection des rapports de recherche de la Direction opérationnelle de Criminologie n°52, Institut National de Criminalistique et de Criminologie, 107 p. (décembre 2022)

8.3. Book Chapters

BRION, F. (2019). Qui sème le vent… Vers une évaluation du plan d'action contre la radicalisation dans les prisons, in BRION F., DE VALKENEER, Chr. AND FRANCIS, V. (eds) (2019). *L'effet radicalisation et le terrorisme. État des pratiques et des recherches*, Bruxelles : Éditions Politeia, 57-82.

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COOLS, M., VERFAILLIE, K. AND DE KIMPE, S. (2019). Counter-Terrorism Policing and the Prevention Paradox, in CLYCQ, N. & al. *Radicalisation : A Marginal Phenomenon or a Mirror to Society*, Leuven : Leuven University Press, 193-213.

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VANNESTE, C. (2018). From one recession to another: the lessons of a long-term political economy of punishment. The example of Belgium (1830-2014)", in MELOSSI, D., SOZZO, M. AND BRANDARIZ-GARCIA, J. *The political economy of punishment today. Visions, debates and challenges*, New York : Routledge, 107-136.

8.4. Articles and Book Review

CRAHAY, C. (to be published). « *Regards croisés sur les rationalités et le traitement pénitentiaire des collaborateurs après la Seconde Guerre mondiale et des terroristes djihadistes* », *Les Cahiers du GEPS*.

CRAHAY, C. (2022). « Négocier l'ordre carcéral : les particularités du traitement pénitentiaire des détenus CelEx en Belgique », *Déviance et Société*, 46, 3, 349-374.

DELHAISE, E., REMACLE, C. AND THOMAS, C. (2020). « Après le califat, l'embarras. », *La Revue Nouvelle*, nr.6, 49-66.

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HANARD, E., VERFAILLIE, K. & DE KIMPE, S. (2022). "*Defining terrorism down*. Stratégies d'adaptation de la police locale dans la lutte contre le terrorisme". Cahiers GEPS.

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10. ANNEXES

10.1. Annex 1

APPENDIX 1. SUMMARY – TERRORIST OFFENCES	
< 2003	Belgium does not have specific legislation on terrorism. Ordinary law is applied to offences of a terrorist nature.

	LEGISLATION	INCRIMINATIONS
2003	Law of 19 December 2003 on terrorist offences (*M.B.,* 29 December 2003) ▪ Article 140 of the Penal Code	▪ Participating in terrorist group's activities ▪ Leadership of a terrorist group
2013	Law of 18 February 2013 amending Book II, title 1er *ter* of the Penal Code (*M.B,* 4 March 2013) ▪ Article 140*bis* to 140*quinquies* of the Penal Code	▪ Incitement to commit a terrorist offence ▪ Recruitment to commit a terrorist offence ▪ Training (given or followed) to commit a terrorist offence
2015	Law of 20 July 2015 aimed at strengthening the fight against terrorism (*M.B.,* 5 August 2015) ▪ Article 140*sexies* of the Penal Code	▪ Travelling for terrorist purposes

2016	Law of 3 August 2016 laying down various provisions in the fight against terrorism (III) (*M.B.,* 11 August 2016)
	
	  ▪ modif. Article 140*bis* 140*ter* of the Penal Code
	
	Law of 14 December 2016 amending the Penal Code with regard to the repression of terrorism (*M.B.,* 22 December 2016)
	
	  ▪ Article 140*septies* of the Penal Code
		▪ Incitement to travel abroad for terrorist purposes
		▪ Recruitment to fight abroad
		▪ Preparing to commit a terrorist offence

2019	Law of 5 May 2019 laying down various provisions in criminal matters and in matters of worship and amending the law of 28 May 2002 relating to euthanasia and the Social Penal Code (*M.B.,* 24 May 2019) ▪ Article 140 §1er/1 of the Penal Code	▪ Participating in decision-making in the context of terrorist group activities

10.2. Annex 2

Appendix 2 - Summary table of terrorist offences likely to be punished			
Articles of the Penal Code	Charges	Sentences provided **before** punishment	Sentences provided **after** punishment
Certain offences referred to in Article 137, §2 of the Penal Code The offences referred to in Article 137, §3, 1st, 2nd, 5th and 6th of the Penal Code	*We have chosen not to include all the offences in this summary because there are too many of them and it would make this table difficult to read. Moreover, these offences are far from being the majority both in our sample of hearing observations and in our population of case law.* *Concerning the scale of penalties for these terrorist offences, the legislators aimed to distinguish common law terrorist offences committed with terrorist intent (Article 137, §2 of the PC) and terrorist offences criminalised as terrorist on their own (Article 137, §3 PC). The first are subject to a mechanism that toughens the sentences compared to sentences stipulated in common law and the second are governed by three distinct ranges of sentences.[104]* *Regarding the rules of "correctionalization" for these offences, some of which are crimes, Articles 25 and 80 of the Penal Code apply. Please note that not all crimes can be "correctionalized". It is necessary to carry out a case-by-case analysis and to refer to Article 2 of the Law of 4 October 1867 on extenuating circumstances (M.B. 5 October 1867)*		
Art. 140, §1	Participating in terrorist group's activities	Prison sentence of five to 10 years Fine of €100 to €5,000	Imprisonment from one month to five years Fine of €100 to €5,000
Art. 140, §1/1	Participating in decision-making in the context of terrorist group activities	Prison sentence of 10 to 15 years Fine of €1,000 to €200,000	Imprisonment from six months to 10 years Fine of €1,000 to €200,000
Art.140 § 2	Participating in a terrorist group's activities as a leader	Prison sentence of 15 to 20 years Fine of €1,000 to €200,000	Imprisonment from one to 15 years Fine of €1,000 to €200,000
Art. 140*bis* Art. 140*ter*	Incitement Recruiting	Prison sentence of five to 10 years Fine of €100 to €5,000	Imprisonment from one month to five years Fine of €100 to €5,000

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[104] For further details, see E. DELHAISE, *Infractions terroristes,* Répertoire pratique du droit belge, Larcier, 2019, 75-136.

Art. 140*quater*	Training	*If specifically aimed at minors:* Prison sentence of 10 to 15 years Fine of €5,000 to €10,000	*If specifically aimed at minors:* Imprisonment from six months to 10 years Fine of €1,000 to €200,000
Art. 140*quinquies* Art. 140*sexies*	Receiving training and self-training Travelling	Prison sentence of five to 10 years Fine of €100 to €5,000	Imprisonment from one month to five years Fine of €100 to €5,000
Art. 140*septies*	Preparing	For this charge, the penalties incurred are set according to the seriousness of the offence prepared so a series of punishments are already correctional penalties (and therefore they are not mentioned here) except one: Prison sentence of five to 10 years, if the prepared offence is punishable by 20 to 30 years of imprisonment or life imprisonment. The ancillary penalties provided for preparation are identical to those provided for the prepared offence.	Imprisonment from one month to five years The ancillary penalties provided for preparation are identical to those provided for the prepared offence.
Art.141	Aiding	Prison sentence of five to 10 years Fine of €100 to €5,000	Imprisonment from one month to five years Fine of €100 to €5,000

10.3. Annex 3

Summary table of the impact of the different variables on the probability of an acquittal, and of the imposition of a prison sentence in the event of non-acquittal

Variables	Significant impacts on					
	Acquittal		Prison sentences		Sentence duration	
Gender	No		Yes (weak)	More frequent for men	Yes (weak)	Longer for men
Age category	Yes (weak)	Proportion increases with age	No		Yes (weak)	Incoherent
Belgian nationality	No		No		No	
Year of judgment	Yes (average)	Very weak proportion in 2014, 2015, 2016 and 2019	Yes (weak to average)	More frequent in 2015 and 2016, then decreasing	Yes (weak to average	Year 2015 = the most repressive (litigation only Art. 140 §2)
Linguistic format	Yes (weak)	More acquittals in the Dutch-speaking role	No		Non	
Defendant's status	Yes (average)	More acquittals when the defendant appears free	Yes (average to strong)	Systematic prison sentence when "in default", much less if appearing free	Yes (strong)	More than five years: mostly "detained" and then "in default" Less than five years: mostly "free"
Categories of charges	No		Yes (weak to average)	Systematic for "leader", much less for non-terrorist offences	Yes (strong)	Art. 140 §2: mostly more than five years Other terro: nearly always equal to five years Other type: nearly always less than five years

Lawyer's presence	Yes (weak)	More acquittals in the presence of a lawyer	Yes (weak to average)	Fewer prison sentences in the presence of a lawyer	Yes (strong)	Promotes penalty of less than five years rather than equal to five years. No influence on more than five years. Correlated to "in default" status.
Logistic regression	Variables with an impact, "all other things being equal" - *Defendant's status: greater probability of being acquitted when appearing free than detained or "in default"* - *Lawyer's presence* - *Years of judgment 2017 and 2019*		Variables with an impact, "all other things being equal" - *Years of judgment 2015 to 2017* - *Charges: "other terro" (than Art. 140 §2) versus "other type"* - *Defendant's status: "detained" versus "free" in the proceedings*		Variables with an impact, "all other things being equal" (1) *More than/equal to five years or less than five years: two determining variables: **charges** (Art. 140§2 and other type) and **defendant's status** ("free" or "detained")* (2) *More than or equal to five years/less than five years: three determining variables: **gender** (men stronger than women), **charges** (all categories: Art. 140 §2 and other terro: more than five years or more) and **defendant's status** (all categories: more than five years or more for "in default" and "detained")* And (2) more significant than (1)	

Variables	Significant impacts on					
	Reprieve		Suspended sentence		Forfeiture of civil and political rights	
Gender	Yes (weak)	More for women	Yes (weak to average)	More for women	No	
Age category	No		No		No	
Belgian nationality	Yes (weak)	More for Belgians	No		No	
Year of judgment	Yes (weak)	Few in 2015 (and 2018 and 2019)	Yes (weak to average)	More frequent the last three years and especially 2019	No	
Linguistic format	Yes (weak to average)	More reprieves in the French-speaking format	Yes (weak)	More suspended sentences in the French-speaking format	Yes (strong)	More forfeitures in the French-speaking format
Defendant's status	Yes (strong)	Rarely for "in default", "free", twice as much as "detained"	Yes (average to strong)	Suspended sentences only when defendant appears free	No	
Categories of charges	No		Yes (weak)	Art 140 §2: never suspended sentence Other type (non-terro): the most suspended sentences	Yes (weak to average)	Art. 140 §2: more often forfeiture than "other terro" and "other terro" more than "other type"
Lawyer's presence	Yes (strong)	Only one reprieve in the absence of a lawyer (associated with someone "in default")	Yes (weak to average)	More suspended sentences in the presence of a lawyer (associated with the defendant's status)	No	
Sentence duration	Yes (strong)	More less than five years than equal to five years. (Exception more than five years?)			Yes (weak to average)	The more the forfeiture, the higher the criminal tariff

Logistic regression	Variables with an impact, "all other things being equal": three determining variables	Variables with an impact, "all other things being equal": just one determining variable	Variables with an impact, "all other things being equal": three determining variables
	- **Belgian nationality** *(more when Belgian)* - **Linguistic role** *(more when French-speaking)* - **Sentence duration** *(more when less than five years than equal to five years, nearly never more than five years)*	- **Linguistic role :** *more suspended sentences in the French-speaking* **role**	- **Linguistic role** *: more forfeitures in the French-speaking* **role** - **Charges** *(see* above*)* - **Sentence duration** *(see* above*)*