



NETWORK PROJECT

## AFFECT

### Impact Assessment of Belgian De-“Radicalisation” Policies Upon Social Cohesion and Liberties

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## SUMMARY

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## Summary

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. 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.

### 1. Impact of Security and De-“Radicalisation” Programmes on Local Police Work

In this part of the report, we have seen that 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 (informal) processes of risk assessment.

We examined how a counterterrorism strategy is performed at the local level, and we focused specifically on the role of the local police. Based on ethnography, focus groups, and (life-story) interviews in three local police forces, we found that a counterterrorism strategy is the outcome of a process of situated problem-solving. As such, the past years, specific ways of dealing with terrorism have emerged at the local level, adaptations that are felt to be useful to counter terrorism and that have fundamentally changed the way policing is performed: (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 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 entails, when surveillance should end and which strategy to give priority to: criminal law enforcement or intelligence gathering; (ii) local counterterrorism policing relies too much on personal relationships and (iii) is too dependent on the presence – or absence – of a sense of urgency.

Our most fundamental observation, then, is that the present counterterrorism 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 counterterrorism policy. For that reason, the most urgent question at this time seems to be how to shape the future of our counterterrorism policy in ways that are much more structural and democratic.

## **2. Prosecution of terrorist offences and the impact of counter-terrorism and “radicalisation” prevention policy on the judiciary**

Legislative changes in recent years, politically justified by the need to fight terrorism more effectively and to prevent "radicalisation", have pushed back the boundaries of classical criminal law. A shift from the judicial to the administrative field has been identified by some. More broadly, a paradigm shift from repressive to pre-emptive justice has taken place, leading to fears of major infringements of citizens' fundamental rights and risks of societal dissension. On the basis of an ethnography of correctional hearings in terrorism matters (39) crossed with interviews with criminal lawyers (11) and federal prosecutors (10) as well as a quantitative analysis of all terrorism-related case law from 2003 to 2019 (179 cases concerning 540 defendants and 570 decisions), we have examined the impact of policies in the judicial field.

Almost non-existent until then in Belgium, it was in the context of the fight against so-called Islamist terrorism that litigation in the field of terrorism experienced a major boom in 2014. The context proved to be an essential element in the analysis and its weight was experienced by the judicial actors sometimes as a facilitator for the demands of the judiciary, as a generator of fear favouring the demand for repression, or even as a catalyst allowing to justify the decisions taken.

In terms of case handling, terrorism litigation is characterised by the centralisation of prosecutions within the Federal Prosecutor's Office and by the specialisation of prosecutors. Cases are judged by panels of three judges who have no specific specialisation in this area. Although terrorist cases are less frequently dropped than ordinary cases, they are subject to the same principle of “correctionalization”, which has the effect of referring most of these crimes to the correctional courts.

One of the most striking features of these trials is the large proportion of those held against defendants who are absent (41%), said to be “in default” and most often presumed dead in conflict zones. The direct effect of this situation is that the trial is deprived of its primary identity: the contradictory debate. This is an example of the logic of anticipation that is particularly prevalent in this area. The security measures are also exceptional, raising questions for the actors because of their variable geometry.

The investigation of terrorist acts is characterised by frequent recourse to special research methods, which are regularly the subject of debate as to their proportionality and even legitimacy. The significant mobilisation of notes from the security and intelligence services also raises questions,

especially if these elements become the main or only evidence. The centrality of "presumption" to the detriment of the establishment of objective evidence is also regularly denounced, as is, in this context, a feeling of inequality of arms as regards access to information between defence lawyers and the public prosecutor. An analysis of the case law also highlights the very limited use of legislative innovations creating new terrorist offences, as the previous provisions already met the needs encountered.

The principle of “correctionalization” has the effect of lowering the scale of sentences that can then be pronounced, which poses a problem for some actors. In fact, the sentence of imprisonment rarely exceeds five years (16%), which is relatively low compared to other countries. In this context, an examination of judicial decisions shows that it is above all the additional measures that clearly raise questions from the point of view of respect for fundamental rights: this is the case with the introduction of a period of unconditional imprisonment (law of 21 December 2017), the forfeiture of civil and political rights and, above all, the extension of the possibilities of forfeiture of nationality (law of 20 July 2015). However, positions and practices in this area may differ between actors and evolve significantly, with in particular the observation that federal prosecutors are gradually distancing themselves from an initially systematic request to apply forfeiture of nationality. Finally, the statistical analysis of judicial decisions with regard to the profile of defendants and proceedings points to two problematic structural effects that deserve particular attention, namely the differentiated use of suspension of sentence, reprieve or forfeiture of civil and political rights, depending on the linguistic role - all other things being equal - and the differentiated use of reprieve, which is disadvantageous to non-nationals - all other things being equal.

The research results led to seventeen recommendations formulated in four blocks aimed at I) (Re)thinking the political reaction and anticipating the consequences, II) (Re)thinking the procedure and the judicial system, III) (Re)thinking the penal and social reaction and IV) (Re)thinking the practices for research purposes.

### **3. Prevention of “Radicalisation” in Prison and Impact of Security Measures on the Penitentiary System**

In this part of the report evaluating different action points of the Action Plan against Radicalisation in Prison (Plan P), we argue principally that the mechanisms of the management of detainees included in the CelEx database, as well as of their perspectives regarding disengagement and reintegration, have largely been consumed by a precautionary logic of information and “pre-emptive” security.

When presenting prison-based policy, we conclude that, in the absence of adequate disengagement efforts in prison, the so-called “specialised management” of CelEx inmates promoted by the Plan P mainly consists of subjecting the latter to highly restrictive prison regimes and constant observation. In this respect, we find that (i) the criteria and tools used for observation are inadequate, in that they allow for little to no individualisation and rely on a model of “radicalisation” which implies that engagement in violent action can be prevented by disrupting

the spreading of radical ideology; (ii) in enlisting penitentiary personnel in the detection of “radicalisation”, observation policies generate mistrust, stigmatisation and the progressive isolation of inmates, and create an environment in which the observation itself becomes entirely artificial; (iii) the specialised “D-Rad:ex” sections, operating with the aim of limiting opportunities for recruitment and the entanglement of criminal networks, are dysfunctional not only in that they fail to fulfil initial objectives, but more importantly in that they hinder the process of disengagement by fostering feelings of injustice and contributing to the polarisation of the prison population.

We question, furthermore, different practices linked to spiritual and psychosocial help to “radicalised” detainees and the granting of opportunities for effective reintegration. Although the presence of religion in prisons is seen as an element of “dynamic security”, we note firstly that the practice of Islam has been subjected to enhanced control, notably through the supervision of missions entrusted to Muslim chaplains. Through interviews with Muslim counsellors, chaplains and lay advisors, we uncover important obstacles to their practice, lodged between (i) the risk for Muslim counsellors of falling outside the precarious category of the “trusted Muslim” and being suspected of “radicalisation by association” inside and outside prison; (ii) the possibility of losing inmates’ trust when accepting to take part in seemingly unavoidable detection missions. We find, secondly, that “external services” (SAD and CAPREV) intervening in the transition from prison to society – which do not bear any observation missions – did adapt their practices when working with “radicalised” detainees. However, they did so in response to repressive measures, and not because they have found that these categories of detainees required new ways of working. Finally, addressing prison leave and early release procedures, we expose ways in which major obstacles to the flow of information – due to the complexification of the information cycle, as well as institutional uncertainty and panic around the notion of “radicalisation” – undermine attempts at the reintegration and rehabilitation of terrorist and “radicalised” convicts. While demanding “loyalty” in the face of stigmatising, discriminating and polarising practices, the system ultimately serves a policy of identifying and separating “dangerous” populations from society, while rejecting state accountability and the responsibility of their reintegration.

Much of the hindrance to the management, “de-radicalisation” and disengagement of inmates, stems directly from the haze surrounding the notion of “radicalisation” itself, resulting in a form of State islamophobia that manifests itself through intrusive observation and labelling practices on all levels. In our recommendations, we urge for stigmatising and discriminating (and ultimately counterproductive with regards to initial intentions) counterterrorism policies to be revised in order to ensure better (re)integration and social cohesion.

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

As the two issues of “terrorism” and “the law on foreigners” are no longer as watertight as in the past, examining the impact of anti-terrorist policy on the field that lies on the Administrative-Judicial Boundary was a very useful addition to the research process. An analysis of the judgments

of the Council for Alien Law Litigation Council (CCE/RVV) from 2009 to 2019, concerning persons suspected of or convicted of terrorism offences, shows first of all a significant increase in the number of judgments from 2016 onwards, but especially from 2018. This can be explained on the one hand by the increase observed from 2016 in the number of 'terro' cases dealt with by the correctional courts (see point 2) and on the other hand by the effects of the law of 24 February 2017 widening the possibilities of removing foreigners on grounds of public order and national security. However, the main interest of these judgments was to be able to analyse the evolution of the measures adopted by the Immigration Office (OE/VZ) (and referred to in the judgments). This analysis revealed both an increase in the number of removal and residence withdrawal measures and a tightening of these measures in various forms. Foreigners previously enjoying full immunity or reinforced protection and 'quasi-nationals' are particularly affected, clearly raising questions about fundamental rights. The analysis also highlights the increasing importance of intelligence reports, and in particular CUTA, in the OE/VZ's decisions.

The results of this research have led to the recommendation (I) to consider extending the control exercised by the CCE/RVV, currently limited to the legality of decisions, to a control in full jurisdiction in order to make up for some of the democratic imbalances that emerge from the analysis. As a secondary matter, three recommendations aim at reflecting (II) on the means to be implemented to ensure more transparency in the procedure, (III) on a questioning of the hierarchy and/or the systematic opposition between the "safeguarding of public order and national security" and "individual rights" and (IV) on the taking into account of the diversity of the facts that can justify a conviction for terrorism, which also implies a questioning of the merits of the removal and the systematic nature of the OE/VZ' decisions.