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# THE JUDICIAL RESPONSE TO TERRORISM IN RELATION TO THE EU CHARTER OF FUNDAMENTAL RIGHTS

## The Fight Against Violent Radicalisation and Protection of Fundamental Rights

## SUMMARY


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# SUMMARY

This first seminar aims to examine the current response to violent radicalisation, something which has become a key challenge in a large majority of European societies. Starting off the programme, it endeavours to present an overview of practices implemented since the 2000s, with a strong focus on prevention measures designed to counter radicalisation and violence. The other three seminars will address investigation procedures, media relations and the judgement phase and sentencing respectively.

***The main challenge in terms of knowledge and practices is without doubt the danger of confusing radicalisation and use of political violence***. The difference is not merely semantic, since it directly influences means of action and spectrums of measures between prevention and repression, as well as judicial and administrative responses. In most European systems, this means that while terrorism comes under the judicial system, the response to radicalisation entails an administrative response. Although the separation of these two actions is frequently present in discourse and procedures, ***in practice and on the ground, it comes up against the complexity of the individual and collective histories of extremist, violent people. The border line is therefore porous and linked to individual social, cultural and political realities.*** Judges and prosecutors are consequently often faced with situations in which their ability to act is limited to specific cases (management of minors or detention, for example). ***From this perspective, feedback constitutes a vital source of knowledge to provide listeners with concrete and reflexive reflection***.
***The programmes presented in this report come more within the competency of prevention actors, both before entry into violent groups and in the framework of sentencing and probation work. The diversity of these sets of actions,*** (programmes for individuals, radical discourse or means of communication), ***shows the existence of a protean response from public authorities and social players.*** Like the knowledge they have presented, the European professionals constitute a heterogenous group of players. Although the structure and coherence of these programmes will be addressed in particular through the idea, still in its early stages, of European standards, this protean aspect is in fact a key point**. *This diversity should not be considered an obstacle but, on the contrary, good knowledge of it seems necessary for professionals who have to adapt their practices and who can draw inspiration from it in their everyday actions, which must remain coherent with a multifaceted reality.***

To present this overview, this report is structured around the different players involved and their experiences and reflections. ***First of all, social players will be presented through two on-the-ground experiences***: ***the Legato social programme in Germany and the work of an Imam in the Muslim community in London***. Later on, after presenting on the inclusion of the response to violent radicalisation in the political agenda in Europe, we shall cover ***administrative counter measures, concerning discourse, its dissemination and management of prison programmes***. Through these practices, questions will be directly addressed which are both technical and more general in terms of the legitimisation of justice.

It seems that within this corpus of heterogenous practices a ***line of convergence common to all actions*** is nonetheless emerging: ***public freedoms and the place given to them in national orders and the European order***. In a situation of pressure on the justice system, the question resides, according to **Cyril Roth**, in "*fighting without losing what we are"*. Faced with political and social tension, judges and prosecutors must take

account of the question of freedoms and their fragility in their action. This vital balance between liberty and security is directly linked to the articulation between judicial techniques and elements of Fundamental Rights. ***The case law of the ECHR appears implicitly as a possible common standard in an unprecedented European context of developing response measures to violent radicalisation, from this point of view, the freedoms of religion, speech, privacy and movement being core points of reference***.

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# THE EUROPEAN PROJECT AND PARTNERS

The balance between security and fundamental freedoms is an issue facing European authorities every day. This balance implies greater importance being accorded to the judicial treatment of terrorism, by placing judges and prosecutors at the heart of the exercise in their role as guardians of personal freedoms.

The Member States of the European Union have guaranteed fundamental rights through the signature of a common charter.

Faced with the emotion caused by the terror attacks carried out in the aim of spreading fear, judges and prosecutors must reconcile security issues raised by the violence of terrorist attacks and protection of the fundamental rights of all European citizens.

With the financial support of the European Union Justice Programme, the project for “The Judicial Response to Terrorism in Relation to the EU Charter of Fundamental Rights” aims to reinforce practitioners’ knowledge in the field of fundamental rights in order to deal with cases of terrorism in accordance with the requirements of the Charter.

**Running dates:** 1 July 2016 – 31 May 2018

**Sessions –** 4 seminars and 1 final conference:

- Seminar 1: The fight against violent radicalisation and protection of fundamental rights (*Strasbourg, Council of Europe – 8 and 9 December 2016*)
- Seminar 2: Terrorism and fundamental rights: the investigation and intelligence phase *(Brussels, Judicial Training Institute – 23 and 24 February 2017)*
- Seminar 3: Media response to terrorism *(Paris, City Hall – 15 and 16 June 2017)*
- Seminar 4: Terrorism and fundamental rights: hearings and the execution of sentences *(Sofia, National Institute of Justice – 12 and 13 October 2017)*
- Closing conference: The protection of fundamental rights in the judicial response to terrorism *(scheduled for Mars 2018, Paris)*

**Partnership –** the ENM is coordinator for the group composed of:

- The judicial training institutes of Sweden, Bulgaria and Belgium;
- The Council of Europe;
- The European Judicial Training Network (EJTN);
- The Academy of European Law (ERA);
- International Justice Cooperation (JCI).

**Target audience -** It will allow approximately 270 judges and prosecutors to be trained in 10 European countries. 40 participants from prison administration, the police and journalism will also be attending the sessions.

**Type and number of deliverables -** 5 scientific reports available in French and English

**Scientific committee –** the project will be led by a small team within the scientific committee.

| Members | Functions |
|---|---|
| 1 scientific advisor –<br>**Cyril ROTH**, Junior Judge at the Court of Cassation, France | - Overall scientific design of the project<br>- Selects speakers<br>- Supervises the seminar directors and rapporteurs<br>- Participates in seminars<br>- Validates the seminar reports |
| 1 Project Director – member of the judiciary, ENM<br>**Nathalie MALET**, member of the judiciary, International Department, ENM<br>Replaced by<br>**Marie COMPERE**, member of the judiciary, International Department, ENM | - In charge of pedagogical engineering<br>- Selects and confirms speakers<br>- Supervises the project team<br>- Validates the seminar reports |
| 1 project manager, ENM,<br>**Ségolène POYETON**, International Department, ENM | - Daily project management<br>- Coordinates the partners of the group<br>- Point of contact with the European Commission on contractual, administrative and financial questions |
| The scientific committee will be joined at every seminar by:<br>- A seminar director<br>- A rapporteur<br>Seminar 1:<br>**Vanessa PERREE**, Assistant Public Prosecutor, Court of Appeal, Aix-en-Provence, France<br>Seminar 2:<br>**Anne KOSTOMAROFF**, Public Prosecutor, Paris Court of Appeal, France<br>Seminar 3:<br>**Nicolas BONNAL**, Trial Judge, Court of Cassation, France<br>Seminar 4:<br>**Sabine FAIVRE**, First Vice-President, Paris Regional Court, France<br>Rapporteur<br>**Antoine MEGIE**, Lecturer at the University of Rouen, Director of the *Politique Européenne* journal – Member of the editorial committee of *Cultures et Conflits* journal, France | - Prepare the detailed programme for the week<br>- Select speakers or the speaker profile to request among partners<br>- Moderate the seminar<br>- Write the seminar report |

**Steering Committee –** ensures effective coordination between all the partners: it will meet three times during the project and will be presided by the ENM.

# SEMINAR PROGRAMME

## Thursday 8 December 2016

**8.15am** **Participant welcome and registration**

**9.00am** **Welcome address**
Mikhail LOBOV, Head of Department for Policies and Cooperation on Human Rights, Council of Europe
Olivier LEURENT, Director of the National School for the Judiciary (ENM), France
Madgalena HÄGG BERGVALL, Director of the Swedish Judicial Training Academy, Sweden
Karin CARLENS, Member of the judiciary and project manager, Judicial Training Institute (IFJ), Belgium

**9.30am** **Presentation of the seminar programme**
Cyril ROTH, Deputy Judge at the Court of Cassation, Programme Coordinator, France
Vanessa PERREE, Assistant Public Prosecutor at the Court of Appeal of Aix-en-Provence, Seminar Director, France

### I. THE FIGHT AGAINST RADICALISATION AND PERSONAL FREEDOMS: CHALLENGES

**10.00am** **Is there a common definition of radicalisation in Europe?**
Romain SEZE, Researcher at the National Institute for Higher Studies in Security and Justice (INHESJ), France

**10.45am** ***Coffee break***

**11.15am** **Personal freedoms and the fight against radicalisation: ECHR case law**
Radoslav DIMOV, Senior Jurist at the Courts Service of the European Court of Human Rights

**12.30am** ***Lunch***

**2.00pm** **Defining and preventing radicalisation, example of a tool for evaluating the risk of extremism: VERA 2/R**
Elaine PRESSMAN, Senior Fellow at the Netherlands Institute for Forensic Psychiatry (NFIP), the Canadian Centre of Intelligence and Security Studies (CCISS) at the University of Carleton, Ottawa, the International Centre for Counter-Terrorism (ICCT) in La Haye, the Netherlands

**3.00pm** ***Coffee break***

### II. FREEDOM OF RELIGION, FREEDOM OF THOUGHT AND PREVENTION OF RADICALISATION

**3.15pm** **Extremist thinking, misuse of the key concepts of Islam**
Samir AMGHAR, Researcher at the Centre for Studies on Political Life (C-EVIPLO) at the Université Libre de Bruxelles, Belgium

**4.15pm** **Deradicalisation in practice: an Imam's experience**
Ajmal MASROOR, Imam in London, Great Britain

**5.15** *Discussion*

**6.00pm** **End of day 1**

## Friday 9 December 2016

**8.30am** **Participant welcome and registration**

**9.00am** **Preventing radicalisation through the associative network: the German experience**
André TAUBERT, Legato centre in Hamburg, Germany

**10.00am** **Preventing radicalisation in prison**
Yola WANDERS, Ministry of Security and Justice, the Netherlands

**11.00am** ***Coffee break***

### III. FREEDOM OF SPEECH AND CONTROLLING EXTREMIST PROPAGANDA

**11.30am** **Controlling the media?**
Ewa THORSLUND, Director of the Swedish Media Council, Sweden

**12.30am** ***Lunch***

**1.45pm** **Freedom of speech and blocking websites: the French experience**
**Alexandre LINDEN,** Honorary Deputy Judge at the Court of Cassation, Qualified person designated by the Commission Nationale de l'Information et des Libertés (CNIL), in charge of controlling the administrative blocking of websites, France

### IV. PRIVACY, PROTECTION OF PERSONAL DATA AND PREVENTION OF TERRORIST ACTS

**2.45pm** **Intelligence and surveillance: a Europe of security to the detriment of freedoms?**
**Pierre PIAZZA,** Lecturer at the University of Cergy-Pontoise, France

**3.30pm** *Discussion*

**4.00pm** **Summary of the work and closing address**

**4.30pm** **End of day 2**

# INTRODUCTION

***The act of joining today's terrorist groups is usually considered a result of political, cultural and generational rupture with the family environment and society of origin.*** These ruptures sometimes occur within a very short space of time, making detection and preventive social or judicial intervention against violent engagement very difficult.

There is no single form of violent radicalisation, which is multifaceted by nature. Although it is important to consider the process on an individual level, the operational consensus nonetheless refutes the stereotype of the "lone wolf" because each such engagement occurs in a specific environment. The collective and organisation dimension show that we must understand the group dynamics in terms of the rationale of recruitment and integration into these semi-clandestine, organised bodies. These rationales of rupture also raise the question of violence, because it is sometimes very difficult to draw the line between what comes under extremism (as an ideological position that rejects the values of society) and violent extremism (as a protest strategy using violence).

For **Romain Sèze,** the ***place of violence*** follows a typology that is relatively common today, based on three types of Salafism: purist, political and revolutionary. Although this typology is often cited as a frame of reference, Romain Sèze underlines that fact it is changing. In France, for example, the current tendency is to associate Salafism with violent extremism, in spite of the different currents that make up this vision of Islam. More concretely, while the extremism of purist Salafists poses a problem with regard to the principle of secularity, the violent aspect is not quite so straightforward. This understanding of the term Salafism is an important example, because in the media and political discourse today, this extremist take on Islam is considered evidence of or even synonymous with violent radicalisation***. The place of violence is therefore very unclear given the variety of engagements and protest rationales, but it is nonetheless the existence of violent strategies within radicalisation that defines to what extent judicial actions should be guided by a preventive or repressive, judicial or administrative framework.*** In the French example, this means that although terrorism falls within the competency of the judicial system, the response to radicalisation generally implies an administrative response (intelligence, social services). As **Vanessa Pérée** highlights, "*judges and prosecutors often find themselves faced with situations in which their actions are limited, except in the case of minors or prisoners"*. ***The violent acts or intentions that trigger the launch of investigation procedures will be the focus of the second training conference***. Although the question of violence seems ambiguous, the same is true for understanding the ***place of religion.***

## What is the place of religion in violent radicalisation?

**By *Samir Amghar***

**Samir Amghar** highlights that fact that researchers today still do not agree on the variable of religion, which remains the central unknown in the equation of violent radicalisation: "*There are two opposing views in the intellectual sphere today*".
The first insists "*on the need not to overlook politico-religious doctrines and to consider the continuum between the conception of Islam (fundamentalist reading of Islam) and radicalisation. According to this approach, an individual who adopts a fundamentalist reading may turn to violence*". The second approach considers "*that Islam as a religious doctrine is not a central part of the process of radicalisation or violent radicalisation. Islam itself is not a trigger. It is only a cover that provides a pretext for a person's pre-existing and underlying extremism. In other words, the individual finds elements in Islam that allow them to justify their violence*" (Bibliography). In the face of this disagreement, which also provokes tensions in institutional and academic spheres, Samir Amghar proposes an inclusive reading in the manner of other researchers. He explains that, "*there are multiple factors, making it difficult to consider a continuum between practicing orthodox Islam and the adoption of violent action. Not all those who fall into violence have taken a university course in Islamist science. There are other people practicing Islam. Although they share a common matrix and model, it is difficult to consider that these movements come under the same rationale*".

Such multi-factor processes of engagement cannot be summed up as rationales of just "madness": "*the question of freedom of choice is a central one, particularly in a cost-benefit analysis. Currently, the psychoanalytic approach is often presented as being central (among the prison authorities in France, for example, teams of two co-workers are systematically composed of a social worker and a psychologist), but it seems crucial also to consider engagement as a militant strategy. The central elements of these processes lie not only in the religious dimension, but also in the political one*". In these circumstances, such dynamics, far from being linear, can take on a cyclical form between engagement/disengagement/reengagement in violence.

Today, in concrete terms, the challenge is not only to counter departures for war zones, but to manage the return of people who have not been deradicalised by the hardships on the ground in Syria. To what extent should these returns be systematically criminalised? Deradicalisation processes (re-education centres) for political militants often lead to dead ends. According to Samir Amghar, "*there is a danger that through general criminalisation of extremist positions, we are encouraging the adoption of violent action. In these circumstances, focussing on rationales of disengagement, i.e. accepting political and religious extremism if it does not lead to violence, may be a way out*". The objective now is to "*make these individuals understand that their ideas are acceptable if they do not threaten public order and national security*".

While these two questions on the place of violence and religion remain a central theme in scientific debate, at the same time they are key elements in the way prevention and security measures are apprehended and, above all, applied. ***Justice professionals must often carry out their work using a predictive rationale for which it is difficult to establish a stable definition on both a practical and judicial level.***

***This instability is reflected in the a minima political consensus developing on a European level concerning the definition of radicalisation and violent radicalisation.*** As **Ivan Koedjikov** reminds us, the Council of Europe has adopted a series of rulings, programmes and manuals which give an implicit definition of radicalisation and violent radicalisation (Bibliography). Nonetheless, it mainly includes positions of principle based on political agreements in which the operational aspect is not always a central focus. Alongside this relative convergence taking place on a European scale, there are sharp differences between countries' public policies due to the national reality and institutional prisms in each country (Bibliography). ***It is vital to apprehend these operational practices in order to understand the way extremism and violent extremism are addressed in European democracies. Different European states' concrete approaches to the question of the place of religion, for example, and in particular the concept of secularity, can be very different.***

A series of ***lines of division can be observed between these national response programmes.*** Of course, these divisions are linked to national cultures and prisms, but ***the diversity of players involved is also a key reason***. The heterogeneous nature of the programmes presented (concerning individuals, extremist discourse or means of communication) shows the existence of a protean response from a broad group composed of public authorities and social players. ***Incidentally, the heterogeneous nature of the instruments for prevention of and the response to violent extremism is an important feature of what the action being taken in Europe today. Although it is regularly considered a hindrance, this heterogeneousness can also be seen has an advantage for countering such phenomena by an approach that is not exclusively national, repressive or preventive.*** According to the majority of justice professionals, the exclusive use of one of these approaches is a hindrance to an overall, efficient response to these phenomena with social and political dimensions.

Similarly, ***while the question of the articulation and coherence of these programmes is of course important, and more particularly through the idea of European standards which is still in its early stages, certain participants believe it is necessary to promote these differences and national specificities***. For example, the prison programme presented in the Netherlands (Part 2) exists in a very different context to that in France, both in terms of the funding available to prison institutions and the number of people concerned (approximately 40 prisoners in the Netherlands, against around 300 in France for this type of crime). Consequently, although it is clearly necessary to consider making these methods and approaches to the response to violent radicalisation coherent with each other, this process ***must not lead to the imposition of discarnate, general standards against processes of radicalisation and engagement in violence, which follow very different paths*** coming under a variety of realities, whether religious, political, social or psychological. ***It seems necessary to remain as coherent as possible with this reality in the rolling out of a broad range of actions, as highlighted on a number of occasions during this seminar by professionals and researchers.***

***Within this heterogeneous corpus of practices, a line of convergence seems be emerging between the different prevention measures: public freedoms and the place they are given in national orders and the European order***. Faced with growing political and social tension as European societies are affected by attacks, judges and prosecutors must take account of the question of freedoms and their fragility in their actions. As **Karin Carlens** highlights "*the justice system must take into account the rights of the victims, while also respecting the rights of the culprits, so as not to create further pressure within the targeted society"*. According to **Vanessa Perrée**, "*the methods used*

*against those who use violence can enable us to protect our freedoms, but these programmes also raise the question of the protection of these same freedoms in a situation of "war against terrorism". So how should we defend ourselves?".* To what extent should States and their representatives turn to a form of resilience in the face of terrorist violence? For **Olivier Leurent**, "*to what extent to does an efficient judicial response imply giving up on the rights of each of us?".* This vital balance between liberty and security is directly linked to the articulation between judicial techniques and the principles of fundamental rights (Part 3). ***The case law of the ECHR appears implicitly as a possible common standard in these heterogenous on-the-ground practices, in an unprecedented context of developing responses to violent radicalisation, since from this point of view the freedoms of religion, speech, privacy and movement are core points of reference.***

# PART 1: SOCIAL AND CULTURAL RESPONSES TO RADICALISATION IN EUROPE

In this section, comparison of intervention by social players in Europe will be structured around the presentation of a ***prevention programme developed in Germany and cultural work in the Muslim community in London***. Another interesting line of comparison lies in the fact that the present players use very different approaches, given the positions they hold and the objectives of their mission.

## 1.1 The Legato Programme (Hamburg)

The *Legato* programme was created by an initiative launched in 2011 by the German Ministry for Refugees and Immigration, through a network of people working on deradicalisation among immigrants. **Andre Taubert**, in Hamburg, coordinates ten or so social workers, educators and psychologists.

He believes that ***the German case has a unique feature compared with other European countries, in that one third of radicalised people converted to Islam recently***. In addition, most radicalised young people grew up in non-religious families: "*Based on these two strong trends, prevention in Germany consists in growing up in a family where Islam is known about and is a day-to-day topic*".

***The approach developed in the framework of the Legato programme is resolutely general in order to avoid stigmatising the religion and fundamentalist practice.*** Questions of crime, drugs and similar issues are also included in the prevention work: "*when we go into a classroom when a teacher reports that he believes he has extremist pupils, we must not start by talking about radicalisation, because we stigmatise them. We must intervene by working with the pupils individually**, although to be honest the danger of stigmatisation is still present. We can aim for a religious debate, but we must be careful.** These young people are confronted with propaganda from Daesh, which rejects the whole of Western society"*.

According to **Andre Taubert**: "*radicalisation starts and goes hand-in-hand with isolation on a social level. All the young people who went to Syria from Germany to become foreign fighters were completely isolated. Their families and friends opposed their opinions on a daily basis. There was a very high level of dispute within the family. I have not come across a single case in which this kind of isolation did not go hand-in-hand with a process of radicalisation. It is possible to intervene by ending this process of social isolation thanks to an overall approach"*. ***In this environment, isolation and rupture are very often reported by a social worker or a parent. These people then occupy a central place in the Legato programme***.

## Key Worker

***The most important person in the Legato programme's preventive work is the "Key Worker", who is often someone close to the person, rather than a professional.*** They are considered a kingpin, able to have an influence on the process of radicalisation. It is essential to identify and support the Key Worker, who must have a clearly defined connection with the person being radicalised and must ultimately have been chosen by the latter.

It may be a social worker, but it is vital that it should be someone trusted by the person being radicalised. According to A.Taubert, "*a number of social workers think they are asked to work with these young people because they are competent or charismatic. While this may be true, such an approach is not always pedagogical or efficient*". The first, vital step lies in fact in the ability to create and maintain contact with these individuals in a position of rupture. The *Legato* association places a lot of importance on this relationship of trust: "*it is a question of coming alongside these social workers, teachers or parents who call us, so that they don't feel guilty"*.

When the association works with parents, they try to provide them with concrete support by helping them interpret the information in the media. The Key Worker must examine and discuss this propaganda with the young person: "*the key person must avoid the question of religion, because these conversations have no positive impact. It is always difficult to come to an agreement. Sometimes, these young people watch the propaganda videos and it is impossible to intervene. Most of the time we have to get away from the perspective of religious extremism and take an interest in the young person to avoid any form of dogmatism*". These systemic methods had been developed as a frame of reference in the face of situations which are always very different and sometimes hard to grasp.

**Rationalisation of the steps in the prevention process**

**1st step:** Contact. The Hotline has received 2,000 calls. This number is that of actual cases, and not just calls. Between 2012 and 2015, 80% of calls were made by parents. The person who calls will not necessarily be the Key Worker. We must therefore use methods to analyse the person's social environment in order to identify the one who will take on this role.

**2nd step:** Specific analysis of the radicalised individual's personal situation in order to understand what is leading them to isolate themselves socially.

**3rd step:** Strengthening the trust between the "client" and the key person in order to halt the isolation process. The aim is to build a relationship of trust between the person and the prevention system that is being proposed. The Key Worker plays a central role, because if this support is removed, the relationship may be destroyed. In such cases, another source of support must be proposed afterwards, which means wasting time and may lead to losing contact completely.

## 1.2 Prevention through religion and action in the religious community

***The place of religion is uncontestably one of the current major debates in studies to explain radicalisation and engagement in violent groups*** (cf. Introduction). To propose an alternative model that includes questions about different approaches, **Samir Amghar** highlights the fact that when these processes are observed on the ground, it appears that "***while the social dimension of radicalisation is a vital key, at the same time we must understand the importance that a certain reading of Islam has in these same processes of radicalisation***". This second perspective evidently includes the risk of falling into a form of essentialisation of Islam. Putting the culturalist view of this religion to one side is therefore all the more necessary.

It is therefore ***very important to separate religious radicalisation processes which lead in fine to violence, from religious radicalisation processes which do not lead to the use of violence***. In Belgium and France, practicing orthodox Islam is a first step in radicalisation which does not necessarily lead to engagement in activist violence. On this point, it would appear useful to not always consider radicalisation processes in a gradual, linear way. ***Cyclic or even disorganised radicalisation processes can also be observed. According to Samir Amghar,*** "*this to-ing and fro-ing is all the more difficult to grasp since it can occur in a very disordered manner, between a very orthodox reading of Islam that defends a depoliticised and non-violent view, and a contrasting reading which is highly political and violent.* ***The porosity of these doctrines and the organisations that uphold them leads some European States to be tempted to counter radicalisation by defining a "good Islam".***

In these circumstances, creation of institutions by a "top-down" approach is often preferred, in spite of a lack of legitimate and adequate social foundations. Here, the problem of recognition by believers, and thus the legitimacy of these interventions, arises in a very concrete way. ***The place of communities in these programmes appears the central concern but it is sometimes not sufficiently highlighted. On this point, European responses are still relatively heterogenous***. In Great Britain, the authorities are developing policies that rely on the religious communities, whereas in France the principle of secularity leads to a certain refusal to interfere with these Muslim cultural issues. The strategy is to encourage the emergence of certain Muslim intellectuals in order to develop a "good Islam". For **Samir Amghar**, "*it seems vital to "acclimatise" to the current Islam, even if it is orthodox, so long as it is not violent"*. When Muslim communities get involved, their State-legitimised representatives are usually strongly rejected. Their access to some people undergoing a process of radicalisation is in no way facilitated, much to the contrary. ***In this context, European States and components of their civil and religious societies are faced with several core questions: "When does a belief become inacceptable?", "Can states legitimately produce religious leaders?".***

## Preventive action in the Muslim community in London

**By *Ajmal Masroor***

**Approach**

"*My aim is to give the right view of Islam if I feel that the person in front of me is vulnerable. I spend a lot of time with these young people telling them not to go down this path. They don't all listen to me. The biggest problem is that those who come are not the most vulnerable. The most vulnerable ones live in their own world and don't come to the Mosque.*

*"In Maastricht I met two mothers who had lost their sons; they were isolated, they were shut inside. Those people do not come to the Mosque. I would like to attract them; I believe that it isn't just the desire to die or fight which drives them, I want to understand the trigger element for each of them. How can I reach these young people? I don't have the solution, but my door is open to meet them at any moment."*

For **Ajmal Masroor**, two topics must be central to the discourse: "identity and belonging" and "knowledge of the world and activism".

**"Identity and belonging"**

*"This is a question asked by the young people I meet. Identity is very important for everybody. I am a Muslim born in Europe with parents from different continents; should I choose between these different identities? Why can I not have all these identities at once? Why does that frighten people?*

*"In my work as an Imam I have to help young people build their confidence in their identity. What does belonging mean? Will I be rejected by the European society, the Muslim society? For young people, it is often difficult to be European and Muslim at the same time, for them the values seem to be completely opposite"*.

"*I have to help strengthen their confidence in their identity, and in particular by showing how Islam contributed to building the world they live in. We must be proud of this culture of knowledge and reading. They have a lot of difficulty believing it when they talk with other people in society*".

**"Knowledge of the world and activism"**

"*Islam and extremism are not compatible. A balance is needed. When young people are extremist, I tell them it is contradictory with Islam, which does not advocate violence. The young people say to me, "tell the governments to stop supporting dictators". They think the West is responsible for their situation.*

*"When they talk to me about their grievances and anger, I try to channel this anger. I tell them to campaign politically. I showed these young people that they should campaign, that they should become journalists if they found the media unjust. When I found I didn't like what the media said, I did radio broadcasts.*

*"The situation in Burma where Buddhists burn Muslims has become an example often cited in discourses. I feel ashamed because the world isn't doing what is needed to stop such horrors. There will be no deradicalisation if injustice prevails and we close our eyes in the face of this injustice".*

# PART 2 – THE RESPONSES OF THE AUTHORITIES TO VIOLENT RADICALISATION

## 2.1 Placing violent radicalisation on the political agenda in Europe

**By *Romain Sèze***

For **Romain Sèze**, prevention policies in Europe date from the 2000s and a particular context of terrorist violence that raised serious questions for most European countries. Although terrorism perpetrated in the name of Islam already existed, a considerable revival in the 2000s led to the first counter-terrorism policies, which then spread across Europe. These became more structured thanks to a paradigm shift in political and security discourse, in particular through the figures of domestic terrorism, or what some would call in somewhat excessive terms "lone wolves" in reference to the dynamics of empowerment and individualisation behind certain violent actions. ***The authorities decided at national level to set up enquiries and produce reports that emphasise a common sociology: radicalisation concerns different social groups***. This being the case, explanations based on political Islam and Salafism appear somewhat inadequate, given that certain individuals do not pass through these loose ideological webs, but develop their commitment mainly through friendship groups (internet, associations, friends). ***As a result of these endogenous and exogenous causes of the commitment to the jihadi cause, many European countries would certainly be affected by a relatively similar phenomenon, but with different national structures of opportunity*** (social environment, historical and political background).

The massive wave of volunteers for the jihad that Europe saw from the beginning of the 2010s onwards has made this issue a fixture on the political agenda. At the beginning of 2014, according to official figures, there were over 900 individuals involved in France, 600 in Belgium, 500 in Germany and in Great Britain and 200 in Kosovo. Several European countries have sought to tackle this issue from a mainly repressive standpoint, whilst also launching prevention plans at the same time. Several countries stand out as pioneers in this regard, Germany, Great Britain and also the Netherlands. Some very different programmes have been organised around axes that are nevertheless relatively convergent (Bibliography).

The European Union, for its part, is seeking to integrate this momentum. When Great Britain held the presidency of the European Council in 2005, it decided to set up ***a European radicalisation prevention strategy focused on 4 main pillars: prevent, protect, pursue and respond. Against this background, although the EU urges the Member States to integrate this approach in addition to their repressive strategies, the transposition of these measures remains largely dependent on the security culture and domestic context of the different countries. Although we have seen displays of common political intent at European level, the fact remains that each country deals with these problems in its own specific way.*** In these circumstances,

as **Romain Sèze emphasises*, "radicalisation and violent engagement are objectified realities before they are objective realities"***.

## 2.2 "Freedom of speech" and schemes to combat "anti-democratic propaganda"

Discourse and its dissemination on the internet play occupy a central place in prevention policies. As **Eva Thorslund (Swedish Media Council)** points out, before the digital revolution and the Internet, it was not easy to disseminate messages and information: "*Today texts and images are disseminated in a closed environment inside which it is difficult to have alternative discourses in the face of a rising risk of radicalisation. To prevent them being radicalised, young people need to be equipped so that they have the ability to stand back and interpret messages"*. ***It therefore seems essential to enable individuals to build individual and collective filters, including by stimulating critical thinking in order to prevent any discourse of intolerance.***

This development of digital media requires an analysis of the challenges faced by individuals and the public authorities. ***This concentration and ever greater power of the media*** across the globe has consequences which according to **Eva Thorslund** include the "digitisation" of the individual, a crisis of authority and the individualisation of common stories.

As far as the ***concentration of the media*** is concerned, this means that there are fewer and fewer players who are powerful enough to control the media sector. For example, "*we note that the number of professional journalists is decreasing, and according to one* Swedish study on the media, traditional newspapers can be expected to disappear *in the next 10 years. The news and its content are therefore being commercialised"*. Depending on the applications and search engines, information is used for commercial purposes and is the subject of digital solutions and information flows based on biased algorithms.

***Talking about the "digitisation" of the individual*** means considering the fabrication of what is today called individuals' "digital identity". These digital identities take several forms and are leading to the dissolving of the barriers between private and public life. In this context, digital identities are linked to our own models of consumption, political beliefs or membership of communities. Our cognitive abilities are transformed under the effect of this fragmented use of the media and therefore the information that they disseminate.

***In this environment, where we are seeing a fragmentation of the media and therefore of their uses, we are observing*** what some call ***a crisis of authority and a dissolution of common discourse***. For **Eva Thorslund**, "*today authority can be represented by a young you-tuber without his message being challenged or discussed. If 100,000 people say something, does that make it a reality? This fragmentation leads to a lack of a common framework of reference in society"*.

Access to an unending world of information therefore does not mean better information, but on the contrary ***a risk of a digital enclave or ecosystem when people are able to choose information that only confirms their own vision of reality***. Faced with these profound transformations, ***it seems vital that citizens have a good knowledge of the media and be able to evaluate them critically, remaining the deciders in their own access to information.*** Although it seems difficult to measure precisely the real impact of consulting these sites on the logics of radicalisation and engagement in violent groups, many countries have nevertheless set up different tools to prevent and combat radicalisation since the beginning of the 2010s.

## "The Swedish experience"

**The Swedish Media Council**

This Media Council is a government agency whose role is to protect minors against the influence of the media. The Ministry for Culture is responsible for this organisation which puts together and circulates numerous analyses on trends in the media landscape. The target public is deliberately very wide as the information can be used in schools and libraries. Concerning the legal framework used, this is based on the 4 fundamental laws that structure the Swedish constitution. At the heart of the law on press freedom and free speech, the common cornerstone is the principle of the abolition of censorship (the only exception concerns the age for viewing certain films).

Since 2011, the Swedish government has been conducting a mission on internet strategies that promote "anti-democratic messages". The conclusions of this analysis published in 2013 look specifically at methods of recruitment in the Swedish context (Bibliography). It is important to note that at this time, the far right in Sweden accounted for a large majority of these milieus compared to other radical tendencies (ultra-left and jihadis). Several similarities are noted between these 3 environments:

- ***Very strong dichotomy: true/false, good/bad;***
- ***Logic of victimhood resting on the idea that they are subjected to constant attacks;***
- ***Accounts based on conspiracy theories that are governed by the idealisation of direct action and a rejection of all discussion and consensus.***

For **Eva Thorslund**, these tendencies can today be found to a strong degree in jihadi discourse, through: *"the idea that the West is waging a war on Muslims all over the world. While a few years ago their films were still very amateurish, today the content and their dissemination use the internet landscape and the means it offers. The aesthetics of these films feature many similarities with those made by the far right. They often feature men doing things together in a cosmetic setting straight out of the cinema industry*". A subculture phenomenon is thus created to produce so-called "cool" propaganda expressed through rap music, magazines and films. *"Young people are familiar with these methods of dissemination and that means that it is very easy to become a follower. This involves, for example, participating in an open online platform, then moving on to a more restricted platform in order for the group to communicate among themselves*". This is therefore how media ecosystems and echo chambers closed in on themselves are created where no contradictory messages are possible.

Faced with this situation, the strategy developed by the Swedish Media Council consists of reinforcing young people's capacity for analysis: "When the State condemns an ideology there is a risk of reinforcing the extremists' arguments and therefore having the opposite of the desired effect. *This is why we refuse to block material in Sweden. The only time this was done was 7 years ago when the law enforcement agencies decided to block child pornography sites; and it was decided to stop at just those sites*".

## "The French experience"

**The Commission nationale de l'informatique et des libertés (CNIL, French data protection authority)**
**By *Alexandre Linden***

**Background and organisation of the administrative system**

"*Against a background of a terrorist threat that has been growing since 2014, the French government brought in a plan to combat violent radicalisation and terrorist networks*, with the adoption of Law no. 2014-1353 of 13 November 2014*. Reinforcing the measures relating to the combating of the dissemination of terrorist images, the 2014 plan boosted the measures already in place in France since 2011. Thus, where the 2011 law states that "Directly causing acts of terrorism or publicly glorifying such acts is punished by five years' imprisonment and a fine of €5,000", since 2014 the penalties have been increased to seven years of imprisonment and a fine of €100,000 when the offence was committed using a public online communication service"*.

"*Generally speaking, this administrative blocking measure* is intended to involve *the technical service providers directly in the fight against terrorism and* child pornography and to block sites that are not the subject of legal *investigations. The administrative measure of dereferencing said websites completes the package of* blocking measures and is intended to remove all visibility from the sites blocked in this way*. (…) It is a "qualified person" appointed by and from within the French data protection authority, the CNIL (Commission nationale de l'informatique et des libertés)* who is charged with checking that requests for removal, blocking and dereferencing are *justified*. In the event of any irregularity, the qualified person may recommend to the administrative authority that the blocking be ended, and if this *recommendation is not followed, bring the matter before the administrative court with jurisdiction in summary proceedings or by petition. (…)* The administrative authority with jurisdiction over these matters is the *central office for combating information and communication technology crime, the OCLCTIC (Central Office for the Fight against Crime Relating to Information and Communication Technologies). Applications to this authority will mostly result from reports by web users and the authority for processing and referring reports of illegal web content (Pharos), which has a staff of twenty. The OCLCTIC checks at least once a quarter that the content of the offending communication service is still unlawful. If the service has disappeared or its content is no longer illegal, the authority removes the corresponding electronic addresses from the list and informs the qualified person and the IAP without delay. Within twenty-four hours of this notification, the IAPs restore access to the services provided for the electronic addresses removed from the list and the transfer to those services"*.

*"A comparison can be made with other European states, thanks to the study conducted at the request of the Council of Europe by the Swiss Institute of Comparative Law: this is a comparative study on blocking, filtering and take-down of illegal content on the internet in its 47 Member States. This study describes and assesses the legal framework but also the relevant case law and practice in the field. It includes a comparative analysis of the national reports which reveals the trends in Europe as well as any shortcomings. It is divided into two man parts: country reports and comparative considerations*". (bibliography)

**Practical cases**

1 - *The recommendation concerning a photograph taken at one of the sites of the terrorist attacks of 13 November 2015.*
"*Among the many requests for content to be taken down following the terrorist attacks of 13 November 2015, one concerned a photograph of dead people lying on the floor taken inside the Bataclan concert hall, published on social media, blogs and by a media outlet. The OCLCTIC wanted this photograph, which was extensively disseminated, taken down considering that it constituted a violation of human dignity, as well as provocation to commit acts of terrorism or the glorification of such acts.*

(…) *The possibility of seeking the take-down or blocking of content disseminated to the public online supposes that such content in itself constitutes the crime of provocation to commit acts of terrorism or the glorification of such acts. Accordingly, only the context of the dissemination of this photograph was of a nature to characterise these offences. In the case in point, I considered that this was not the case for 96 of the URLs from which its take-down was requested by the OCLCTIC, as the photograph in question was either treated neutrally or explicitly used to denounce the acts of terrorism committed. This recommendation was followed".*

2 - *The recommendation concerned a site reproducing a speech by Al-Baghdadi, head of the Islamic State, calling for his followers to "erupt volcanoes of jihad everywhere".*
*"This site contained the audio file of this speech in its entirety. The author of the article did not comment upon Al-Baghdadi's declarations. Several media outlets considered that such content was legal. The Minister of the Interior argued that the speech was reproduced in full without being placed in perspective and that the site was not recognised as a news outlet. I considered that in view of these facts, the content was illegal. Generally speaking, the fact that content emanates from the official site of a terrorist organisation is taken into consideration. Images of the war in Syria will not be analysed in the same way if they are broadcast on the site of an official Islamic State body or on that of a journalist*".

**Control activity**

The terrorist attacks carried out on French soil in November 2015 led to a significant increase in the number of requests for the take-down of content provoking acts of terrorism or glorifying it.

| | Number of requests to take down content | Number of items taken down | Number of blocking requests | Number of dereferencing requests |
|---|---|---|---|---|
| Terrorist websites | 1286 | 1080 | 68 | 386 |
| Child pornography websites | 153 | 99 | 244 | 469 |

What position can the judicial authorities take in the face of the risk of violations of freedom of speech?

"*Constitutionally, the judicial judge is the guarantor of individual freedoms. Given the risk of violating freedom of speech by blocking a site, should such a measure not necessarily be a matter for a judicial judge, and all the more so as the control function is of the same type as that exercised by a judicial judge, in that it concerns the existence of an offence? For a certain number of organisations, in particular the OSCE, it is a question of principle. But the CNIL has in its ranks two members or former members of the Court of Cassation, and it is precisely one of them that has been appointed as the qualified person. This choice has given rise to much comment in the media, including remarks such as "the judge for judge-less blocking*".

"*As far as the independence of the control authority is concerned, it seems to me equivalent to that of a judicial judge: the CNIL is itself an independent authority, and that independence is effective, as its opinions on draft laws show, and the qualified person it has chosen from its ranks is independent with regard to it, in that he is not accountable to it for his positions. There remains only the question of means: it is obviously indispensable that the qualified person should effectively have the material and human resources to fulfil his mission. This is an issue that can also affect the judicial judge.*

*- The risk of unjustified blocking:* the measures taken by the OCLCTIC have virtually all *been justified.*
*- the risk of "overblocking": opponents of the bill claimed that there was a risk of "overblocking*", *that is to say that the blocking of a site with illegal content would instantly lead to the closure of legal sites*".

"*Experience has shown that this risk did not arise. The OCLCTIC's decisions all complied with the principle of proportionality applicable in matters relating to freedom of speech. The differences of appreciation between the OCLCTIC and myself have exclusively concerned the substance. Plans have been made to extend the scheme to pimping websites as well to racist or xenophobic content. (…) In the fight against terrorist propaganda, there is no doubt that the political agenda plays a definite role and that in this context, there is a risk of a decline in freedom of expression. We must constantly keep what the European Court has written in mind.*"

## 2.3 Probation and "disengagement" programmes in prisons

For **Olivier Leurent**, "***one of the needs of the judicial authorities in the judgment phases is to have a better grasp of demands or the concealing of prisoners' motivations". This issue is a very concrete one at the core of judgment and sentence enforcement procedures***.

In these circumstances, and faced with the sentencing across Europe of more and more people to prison for belonging to "jihadi groups", prisons are crucial places. Two types of experience were presented during the training session, one concerning a ***specific "Super Max" programme in a Dutch prison*** and the other ***a statistical tool for violent extremist risk assessment, VERA***. These two schemes are closely linked as the VERA system is used by the Dutch authorities as it is by other European or Canadian institutions.

It should be stressed that existing as it does in the specific reality of the Netherlands, the ***"Super Max" experiment illustrates a case that is very different to other EU countries, which like France***, are confronted with a far greater number of people behind bars (over 300 at the end of 2016) and with financial and structural resources that are inversely proportional. In this context, ***we are nonetheless seeing a convergence of the issues around the running of specialised units and the objective that has come to be shared by all European prison and judicial administrations: the assessment of their prisoners and their violent radicalisation, in particular by means of programmes like VERA***.

On this point, which will be the central focus of the fourth seminar in this programme, we can note the ***numerous debates concerning the effectiveness of these schemes, whether in terms of their scientific content or to what extent prison staff have the resources and training to apply them.*** At the current time, in certain countries, the negative effects of these experiments appear to be more salient than the positive outcomes.

## “The Dutch experience”
**“Super Max” prisons**

This prison programme has 26 places and 50 extra places are planned for January 2017. A team of 12 prison officers is set up for each unit within the prison, with specialised psychologists and social workers. According **Yola Wanders, prison governor,** *"Respect and support are the keys to any connection between prison staff and the inmate, but it is difficult. The officers have learned to take a structured approach - they try to begin showing some trust. You have to give that trust"*.

Concerning the staff, training programmes are "*offered to train them to pick up on certain signs of radicalisation. There are reciprocal exchanges of information between the judicial and the prison systems. The public prosecutor attends meetings about the prisoners. He can explain why a person is in prison, and I provide the information on his behaviour in prison. I am not talking about psychological information as that could be used before the courts".*

**The prisoners:** These are people suspected of committing and/or intending to commit terrorist actions, or else individuals who express a violent radicalised message.

**The salient elements of the prison regime**: The level of security is very high: *"all contacts with the outside world are monitored. All their calls, we read all their letters, we supervise meetings with family. We can do this because we have a special regime in place. We have a special department that listens around the clock. There are strip searches before and after any contact with free society"*.

**Grouping prisoners together**: The solution that has been opted for is to put radicalised prisoners together in order, according to **Yola Wanders,** *"'to avoid proselytising. We want this group to remain visible, we want to track them very closely. The members of our administration are trained to work with them, which is very difficult. They are allowed to worship every Friday in a prayer area. In their cells they have a clock that indicates prayer times. (…) We have a few problems regarding praying in the part of the prison where the leaders are concentrated (they pray in the courtyard, in the relaxation areas, whereas it is not allowed)"*.

Placing such a group together nevertheless leads to other effects: "*sorts of gangs, with influences that make themselves felt. A leader emerges, etc... together, they are very strong, which is the most important negative effect. The biggest challenge is to reduce this negative effect - we have to reinforce the positive effects of grouping them together".*

**Rehabilitation activities**: The classic rehabilitation activities are conducted: *"how to find somewhere to live, how to find a job. Sometimes these people have to learn how to live on the outside again (life coach who can help them return to normal life). We offer systemic therapy: wives, children, other acquaintances, the imam might be able to intervene to help the person onto a new path. It is important that the person should eventually re-establish ties with his community (family, friends)"*. Transfers to an ordinary prison regime are possible when a 1/3 of the sentence has been completed, for a maximum of one year. The conditions are linked to the prisoners' behaviour.

## VERA

**<u>VERA</u>: "Violent Extremism Risk Assessment"**. According to **Elaine Pressman**, originator of this programme, "although there are other tools for assessing violence, the indicators that are useful regarding violence are quite different from the indicators that are useful for individuals engaged in violent radicalisation". **This system has been in use for 8 years and has been updated to integrate new knowledge.** In 2016, in close conjunction with the Ministry for Justice, in the Netherlands, a new version, VERA 2, was introduced. The entire spectrum of violent extremism is analysed beyond the exclusively religious dimension. From a practical point of view, a set of indicators is drawn up to measure the risk and what motivates the people involved: "Another aim of the scheme is to measure each of the indicators at a time N+1 or +2 or +3 in order to determine whether any progress is being made, with a fall in the risk or whether on the contrary the curve is taking on another form. Changes can be made to one or two indicators in an approach that is intended to be scientific and rational".

In this programme, "the threat is defined as the capacity multiplied by the intention. The intention therefore takes on more and more importance in the result, through the will to calculate it". If the stated aim is to study risk and reduce it, the system's creators nevertheless consider that the judgment of professionals still remains necessary: "It is up to professionals (in particular in prisons) to emit a judgment".

### <u>The VERA 2 indicators</u>

- 7 indicators relating to attitudes and beliefs,
- 7 indicators relating to the person's context and intentions (membership of a conspiracy, history and capacity, ideological training, competence of the individual, financial means, etc.)
- 8 indicators relating to motivation. For E. Pressman: "If there is no ideological component, then it is not extremism. The aim is to analyse the individual using this motivation matrix".
- Risk lessening indicators: "Is it possible to de-radicalise someone? We can try disengagement using different forms of action, no longer violence; we can get the family or the group, the community involved. We have these indicators and we are looking for more, whilst trying to strengthen the individual's resilience".

### <u>The question of access to the intention and sources</u>

The question of dissimulation ("Taqiya") stood out as a central issue for the professionals participating in this seminar and in particular the way the VERA system could get round this type of strategy. Other questions raised by the professionals present concerned the real valued added of this type of risk assessment programme, when specialised services have already included analysis grids and indicators in their daily intelligence work.

For the creator of this programme, VERA's contribution lies "in the rationalisation of these grids and the way these indicators are collectively defined by experience in the prison service". Under these conditions, again according to the programme's coordinators, "there is evidence to prove the motivation behind the acts. The important thing is to benefit from objective elements, even if many radicalised individuals in prison refuse to talk. The assessment is then done without the active contribution of the individuals".

# PARTIE 3 – PUBLIC FREEDOMS AS EUROPEAN STANDARDS

In this corpus of heterogeneous practices, some ***form of convergence*** would seem to be emerging around a line that is ***common to all the different actions: public freedoms and the place given to them in national orders and in the European order***. Faced with tense political and social situations, judges and prosecutors must take account of the question of freedoms and their fragility in their actions. ***This indispensable matching of freedom and security leads very directly to the articulation between techniques (judicial and policing) and elements of the Fundamental rights.***

## 3.1 "Freedom of movement" and surveillance measures

For **Pierre Piazza***, "over many years in Europe, practices have developed involving identification, data retention, surveillance and profiling of individuals whose absolute necessity has become more and more justified in recent times in the name of counter-terrorism"*. In this context, he emphasises ***the important moments in a "long history" of these measures, which have recently begun to raise new questions*** due to the growing use of biometric identification systems. ***Furthermore, the tension between security and freedom seems to have been exacerbated by the recent adoption of the European PNR Directive***.

### A long European history
**By Pierre Piazza**

"At the end of the 19th century in France, there was a change in the situation regarding personal identity. Indeed, at that time several phenomena made it particularly difficult for the authorities to reliably identify individuals:
- The gradual crumbling of the "community-based world" in which the French population remained mainly sedentary
- A general increase in the mobility of the population
- Urban expansion (demographic growth in the cities and the areas around them) conducive to crowd phenomena and the development of anonymity in large cities."

"Against this background, it was becoming more and more crucial for the authorities to be able to identify each person reliably because:
- The national society that was coming into existence obliged the public authorities to be able to identify and distinguish French nationals from foreigners.
- The State was beginning to pay social benefits, but only to its nationals (which therefore required that they be rigorously identified).
- "As constantly more reliable methods of identifying people developed, they were

therefore applied to constantly growing categories of populations considered as suspicious, deviant or potentially dangerous whom the authorities considered it necessary to monitor, control and keep under surveillance. Finally - at the end of the chain – it was all the country's citizens who were affected by this process due to the imposition of rationalised identification techniques involving the issuing of identity cards in particular".

**Pierre Piazza and Xavier Crettiez (dir), Du papier à la biométrie. Identifier les individus, Paris, Les presses de Science po, June 2006, 350 p.**

## The European PNR programme

Although the Europe/USA PNR agreement was finally ratified in April 2012, the specifically European PNR project, for its part, was first put forward in 2007, and then again in a second version in 2011 by the European Commission. This version was to be rejected by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) in April 2013. Nevertheless, under pressure from France following the terrorist attacks of 2015, a Directive on the subject was finally adopted by the European Parliament on 14 April 2016 (561 votes to 179). This PNR directive organises the collection and exchange of personal data (20 criteria) on air passengers travelling within and entering or leaving the European area (intra and extra-EU flights). These data are collected by airlines when flights are booked and transmitted to the authorities of the 28 Member States of the EU.

For **Pierre Piazza**, "*There therefore seems to be a discrepancy between the reality the instrument introduced refers to and the impact of politically motivated announcements favoured by a veritable "window of opportunity" resulting from the urgency of dramatic situations generated by the repeated occurrence of terrorist attacks: saying (in security-oriented, warlike language) – and showing (through concrete measures that give substance to the rhetoric used) - that effective action is being taken. In April 2012, the Europe/USA PNR agreement was ratified: the European PNR project was initially put forward in 2007, and then again in a second version in 2011 by the European Commission (to be rejected by the European Parliament's LIBE Committee -Civil Liberties, Justice and Home Affairs) in April 2013) (…) A Directive on the subject would finally be adopted by the European Parliament on 14 April 2016 (561 votes to 179). This directive organises the collection and exchange of personal data (about twenty items in total) on air passengers travelling within and entering or leaving the European area (i.e. intra and extra-EU flights). These are data collected by airlines when flights are booked and transmitted to the authorities of the 28 Member States of the EU. In spite of these guarantees, the European PNR scheme is not without its problems, which concern its purpose and its proportionality, two of the important principles of the protection of certain fundamental rights in Europe.*"

**On the purpose**: "*In the Directive of 14 April 2016, it is stated that PNR data are to be used to prevent and detect terrorist offences. Which can be considered as a "specified, explicit and - why not - legitimate purpose." However, this Directive also specifies that the PNR date must also serve to prevent and detect serious forms of crime. Here the intended purpose of the scheme is much less clear since the notion of "serious crime" refers to an annex of the Directive which includes no less than 26 offences, ranging from corruption to cybercrime and taking in child pornography, counterfeiting of the euro, industrial espionage, facilitation of unauthorised entry and residence, sabotage, etc.*"

**On proportionality**: *"Is it proportionate - in the name of the fight against serious terrorism - to implement a system of mass, indiscriminate, arbitrary and intrusive collection of personal data concerning innocent travellers whose necessity and efficacy have not really been demonstrated? Is it proportionate to do so in the name of the fight against serious crimes, the list of which includes offences of extremely different types? When that involves long data retention periods (5 years) and when the Directive provides for the*

*possibility of transmitting these data to third countries, is it proportionate to do so when it is liable to violate the fundamental rights guaranteed by the EU Charter of Fundamental Rights, in particular Articles 7 (respect for private life) and 8 (the right to protection of personal data)?"*

## 3.2 "Freedom of movement and speech" What place for ECHR case law?

***The case law of the ECHR appears implicitly as one of the possible common standards in a European context of unprecedented development of measures intended to deal with violent radicalisation. The different freedoms: religion, speech, privacy and movement being from this point of view core reference points.***

Concerning data retention and controls**, Pierre Piazza *has referred to opinions given by the ECHR.*** These factors will need to be placed in perspective within the general panorama of the European Court's case law drawn up by **Radoslac DIMOV on the prevention, investigation and sanction phases.**

### Data retention and controls

### "What does the Court of Justice of the European Union have to say?"

**On the issue of data retention, *the Digital Rights Judgement*** of 8 April 2014 invalidated the 2006 Directive obliging telecom operators to retain data for several months for security purposes in connection with the prevention of terrorism and the fight against crime.

For **Pierre Piazza** this ECHR judgment emphasises:
*"1 - That certainly the fight against terrorism and serious crime is a general interest objective for the Union. And yet, this objective alone cannot justify the retention of data as organised by the 2006 Directive as being absolutely necessary to conduct this fight.*
*2 - In addition, the 2006 Directive does not provide clear rules and sufficient guarantees to protect the rights of individuals whose data are exploited and which are liable to be the subject of abuse*
*3 - All the more so given that in terms of the use of the data and their retention the Directive does not make any differentiation or place any limitations or exceptions, in the light of the objective pursued in terms of the fight against terrorism and serious offences".*
According to him, "*the Court considers here that the principle of proportionality is violated as regards the link between the data exploited (what type of data exactly and to do precisely what?), as well as the length of time they are retained, and the purpose specified (too wide, insufficiently precise)"*.
According to **Pierre Piazza**, *"such arguments could of course be advanced to denounce the content of the Directive of April 2016 on the European PNR*".

► **Max Schrems Judgment (6 October 2015), on the transfer to the United states of data provided by this person to the Irish subsidiary of Facebook)**: *"The ECHR reiterates its condemnation of any generalised and undifferentiated retention of data (in the case in point by the American authorities) which violates the content of the*

*fundamental right to privacy (…) Especially if no access to judicial remedies is provided for people with a claim (everyone has a right to an effective remedy under Article 47 of the Charter of Fundamental Rights)”*

► **Marper judgment (December 2008)**: *"the retention over a long period of data (fingerprints and DNA profiles) concerning persons suspected but not convicted of offences is not necessary in a democratic society and it constitutes a disproportionate interference with their right to respect for private life"*.

► **Roman Zakharov judgment (4 December 2015, concerning the tapping of the telephone of a Russian publisher by his country's secret service)**: *"The automatic retention, for six months, of data that is clearly irrelevant cannot be considered justified under Article 8 of the European Convention on Human Rights [which concerns the right to respect for one's private and family life, home and correspondence])*.

► **Szabo and Vissy judgment (12 January 2016, concerning the secret anti-terrorist surveillance operations to which two Hungarian nationals were subjected since the adoption in their country in 2011 of a law on such operations**): *"The ECHR considers that the Hungarian law constitutes a violation of Article 8 of the European Convention on Human Rights (…) it ruled that mass, indiscriminate surveillance was unlawful pointing out that "a measure of secret surveillance must, as a general consideration, be strictly necessary for safeguarding the democratic institutions and, as a particular consideration, for the obtaining of vital intelligence in an individual operation. Any measure that does not correspond to these criteria will be prone to abuse by the authorities with formidable technologies at their disposal"*.

## ECHR case law

For **Radoslav Dimov,** "the standards of the European Convention on Human Rights appear in the case law of the ECHR. They are found in the three stages of detection, preventive action and sanction"**.**

► **Detection of radicalised persons**

- Interception of communications and respect for privacy.
- Article 8 of the Convention – an analysis in three stages (law, legitimate aim, necessity in a democratic society).
- the Roman Zakharov v. Russia [GC] case, no. 47143/06, 4 December 2015 - the importance of the quality of the legislation governing secret surveillance.

► **Preventive action by the authorities**

**1. Measures relating to persons**

**a) House arrest, preventive detention and the guarantees of Article 5 of the Convention**: Cases Guzzardi v. Italy, no. 7367/76, 6 November 1980; Shimovolos v. Russia, no. 30794/09, 21 June 2011; Ostendorf v. Germany, no. 15598/08, 7 March 2013 - applicability of Article 5 § 1(b) and (c) of the Convention.

**b) Counter-terrorism operations by law enforcement agencies and Article 2 of the Convention.** Cases McCann and Others v. United Kingdom [GC], no. 18984/81, 27 September 1995 and Armani Da Silva v. United Kingdom [GC], no. 5878/08, 30 March 2016 – the State's negative and positive obligations with respect to Article 2 of the Convention.

**2. Measures relating to the environment**

**a) The dissolution of political associations and Article 11 of the Convention.** Herri Batasuna and Batasuna v. Spain case, no. 25803/04 and 25817/04, 30 June 2009 – compliance with the requirements of Article 11 (law, legitimate aim, necessity in a democratic society).

**b) The censorship of propaganda on the internet and Article 10.** Ahmet Yıldırım v. Turkey case, no. 3111/10, 18 December 2012 –blocking of websites and compliance with the requirements of Article 10 (law, legitimate aim, necessity in a democratic society).

► **The sanction**

**a) a) The prosecution of terrorists and compliance with Article 6 of the Convention.** Ibrahim and Others v. United Kingdom [GC] case, nos. 50541/08, 50571/08, 50573/08 and 40351/09), 13 September 2016 –restriction of the right of access to a lawyer and compliance with Article 6 § 1 and 3(c) of the Convention.

**b) The enforcement of prison sentences on dangerous prisoners and the compliance with Article 3 of the Convention.** Ramirez Sanchez v. France [GC] case, no. 59450/00, 4 July 2006 –compatibility of extended periods of solitary confinement with Article 3 of the Convention.

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